



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 21

RIN 2900-AP99

Streamlining Annual Rate Publication for VA Educational Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations regarding the monthly rates payable for the following educational assistance programs: Montgomery GI Bill – Active Duty (MGIB-AD), Montgomery GI Bill – Selected Reserve (MGIB-SR), and Survivors' and Dependents' Educational Assistance (DEA). Instead of publishing the monthly rates in regulations, VA will continue to publish the monthly rates annually on VA's Education Service rate tables website. This website publication provides the public with timely notification of the annual changes to monthly rates.

DATES: Effective Date: This rule is effective [insert date of publication in the FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The statutory amount of payment for basic educational assistance under the Montgomery GI Bill – Active Duty (MGIB-AD) program is set out in 38 U.S.C. 3015 and 3032, under the Montgomery GI Bill – Selected Reserve (MGIB-SR) program in 10 U.S.C. 16131, and under the Survivors' and Dependents' Educational Assistance (DEA) program in 38 U.S.C. 3532, 3686, and 3687.

In accordance with statutory requirements, VA annually adjusts the monthly rates of educational assistance payable under the MGIB-AD, MGIB-SR, and DEA programs to reflect cost-of-living increases. See 38 U.S.C. 3015(h); 10 U.S.C. 16131(b)(2); and 38 U.S.C. 3564. VA calculates the monthly rates based on the statutory provisions. Historically, VA annually revised its regulations with the updated calculated amounts.

Publication of the calculated amounts as regulatory amendments subject to the informal rulemaking process of the Administrative Procedure Act (APA) is unnecessary because the rates are set by statute and VA has no discretion in determining those rates. Furthermore, it is inefficient to utilize the rulemaking process as a vehicle for notifying the public of revised rates, because delays in the rulemaking process result in a delay in notification of the new rates to beneficiaries. Finally, the published monthly rates of educational assistance are

often out-of-date because of the delay of publishing the monthly rates in regulations.

To reduce the administrative burden and improve the provision of notice of the changes in monthly rates payable for basic educational assistance under the MGIB-AD, MGIB-SR, and DEA programs, we are amending 38 CFR 21.3131, 38 CFR 21.7136, and 38 CFR 21.7636. Instead of publishing rates payable for various types and levels of training in regulations, we refer to the statutory provisions, which specify the rates, or, where the statute authorizes VA to provide an appropriately reduced rate by regulations, we provide a percentage by which VA will reduce the rate in regulations. We also refer to the GI Bill education and training website, currently located at:

http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rate_tables.asp, where, every year, VA will continue to publish the calculated rates, as increased annually to account for annual increases in the cost of living. VA has consistently made current rates available on its website, and this revision ensures that VA's regulations will notify the public of where to find the most up-to-date rates.

MGIB-AD

Although 38 U.S.C. 3015 establishes the rate of payment under the MGIB-AD program for full-time training only, section 3015(a)(2) and (b)(2) authorizes VA to establish an appropriate reduced rate in regulations for less than full-time training. VA established the rate of payment for educational assistance for less than full-time training under the MGIB-AD program in a 1990 regulatory

amendment in 38 CFR 21.7136. See 55 FR 28382, 28386 (July 11, 1990). The rate of payment for various levels of less than full-time training was based on a percentage of the statutory amount for full-time training as VA determined appropriate: VA determined to pay $\frac{3}{4}$ time training at 75% of the full-time training rate; $\frac{1}{2}$ time training at 50%; less than $\frac{1}{2}$ time but more than $\frac{1}{4}$ time training at 50%, and less than $\frac{1}{4}$ time training at 25%. For veterans whose service is described in § 21.7136(a), the full-time rate in current § 21.7136(b)(1)(i)-(iii) is covered by new § 21.7136(b)(1), and the less than full-time rates of pursuit in current § 21.7136(b)(1)(i)-(iii) are covered by new § 21.7136(b)(2).

For veterans whose service is described in § 21.7136(a), the rates for apprenticeship or on-the-job training in current § 21.7136(b)(2) are covered by new § 21.7136(b)(3). The rates for apprenticeship or other on-job training are based on the limitations established in section 3032(c): first six months of training at 75% of the full-time training rate; second six months of training at 55%; and remaining pursuit of training at 35%. Also, the rate for cooperative training for these veterans in current § 21.7136(b)(3) is covered by new § 21.7136(b)(4). The rate for cooperative training is the same as the full-time rate covered by new § 21.7136(b)(1).

For veterans whose service is described in § 21.7136(c), the full-time rate in current § 21.7136(c)(1)(i)-(iii) is covered by new § 21.7136(c)(1), and the less than full-time rates of pursuit in current § 21.7136(c)(1)(i)-(iii) are covered by new § 21.7136(c)(2). Also, for these veterans, the rates for apprenticeship or other on-job training in current § 21.7136(c)(2) are covered by new §

21.7136(c)(3), and the rate for cooperative training in current § 21.7136(c)(3) is covered by new § 21.7136(c)(4).

New § 21.7136(i) provides that “VA will publish the monthly rates of basic educational assistance payable under this section on the GI Bill education and training website each time there is an increase in the rates.”

MGIB-SR

New § 21.7636(a) provides that “VA will publish the monthly rates of basic educational assistance payable under this section on the GI Bill education and training website each time there is an increase in the rates.”

For reservists pursuing institutional training, the rates of payment for the various rates of pursuit in current § 21.7636(a)(1)(i)-(ii) are covered by new § 21.7636(a)(1). The rates for apprenticeship or other on-job training in current § 21.7636(a)(2)(i)(A)-(B) and current § 21.7636(a)(2)(ii) are covered by new § 21.7636(a)(2). The rates for apprenticeship or other on-job training are based on the limitations established in 10 U.S.C. 16131(d)(1): first six months of training at 75% of the full-time training rate; second six months of training at 55%; and remaining pursuit of training at 35%. The rate for cooperative training in current § 21.7636(a)(3)(i)-(ii) is covered by new § 21.7636(a)(3). The rate for cooperative training is the same as the full-time rate covered by new § 21.7636(a)(1).

DEA

New § 21.3131(a)(1) provides that “VA will publish the monthly rates of basic educational assistance payable under paragraph (a)(2) of this section on the GI Bill education and training website each time there is an increase in the rates.”

For an eligible survivor or dependent of a veteran, as defined in § 21.3021, the rates of payment for the various institutional rates of pursuit in current § 21.3131(a)(1)-(7) are covered by new § 21.3131(a)(2). The institutional rates are based on the rates provided in 38 U.S.C. 3532(a). The rates for apprenticeship or other on-job training, cooperative training (other than farm cooperative), farm cooperative training, and correspondence courses provided in current § 21.3131(a)(1)-(7) are covered by new § 21.3131(a)(2). The rates for apprenticeship or other on-job training are based on the rates provided in 38 U.S.C. 3687. See 38 U.S.C. 3534. The rate for cooperative training (other than farm cooperative) is the same as the full-time rate covered by new § 21.3131(a)(2). See 38 U.S.C. 3532(b). The rate for farm cooperative training is based on the rates provided in 38 U.S.C. 3532(c). The rate for correspondence courses is based on 38 U.S.C. 3534(b) and 3686.

We also revised the authority citation for § 21.3131 to include references to 38 U.S.C. 3534, 3564 and 3686, and to remove the reference to 38 U.S.C. 3542(a) governing special training allowances, which are not covered in § 21.3131.

Administrative Procedure Act

VA currently publishes on its Education Service website the monthly rates payable for MGB-AD, MGB-SR, and DEA, as increased annually to account for annual increases in the cost of living, and this rule ensures that VA's regulations will notify the public of where to find the most up-to-date rates. This rule does not make any substantive policy change or impact the calculation of rates for educational assistance but simply reflects a change in agency procedure or practice regarding publication of such rates, which are set by statute and over which VA has no discretion. As discussed above, it is inefficient to utilize the rulemaking process as a vehicle for notifying the public of revised rates, because delays in the rulemaking process result in a delay in notification of the new rates to beneficiaries. Finally, the published monthly rates of educational assistance are often out-of-date because of the delay of publishing the monthly rates in regulations.

To the extent the regulations being revised previously specified the payment amounts determined as prescribed by existing statute and regulation and these revised regulations merely describe the existing formulas for determining those rates, the rules are, at most, interpretive rules, because they merely reiterate and explain the existing statutory and regulatory requirements without establishing additional requirements or standards. *Paralyzed Veterans of Am. v. West*, 138 F.3d 1434, 1436 (Fed. Cir. 1998) (An interpretive rule "simply indicates an agency's reading of a statute or a rule. It does not intend to create new rights or duties, but only reminds affected parties of existing duties." (citation and internal quotation marks omitted)). To the extent the revised regulations

specify the location at which VA publishes the current rates, they are rules of agency practice or procedure.

As a rule of agency procedure or practice and, at most, an interpretive rule reiterating and explaining statutory and regulatory requirements, this rule is exempt under 5 U.S.C. 553(b)(A) from the prior notice-and-comment requirements of 5 U.S.C. 553. Also, because this rule is not a substantive rule, it is exempt from the delayed effective date requirement under 5 U.S.C. 553(d).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or

communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interest, Defense Department, Education, Employment, Grants programs-education, Grants program-veterans, Health care,

Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expense, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on April 25, 2019, for publication.

Dated: May 14, 2019.

Jeffrey M. Martin,
Assistant Director,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

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

Chapter 35

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

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

2. Amend § 21.3131 by revising the section heading and paragraph (a) to read as follows:

§ 21.3131 Rates of payment.

(a) Rates. (1) VA will publish the monthly rates of basic educational assistance allowance payable under paragraph (a)(2) of this section on the GI Bill education and training website each time there is an increase in the rates.

(2) Except as provided in § 21.3132, the monthly rate of basic educational assistance allowance payable to an eligible person, as defined in § 21.3021, will be the applicable rate provided in 38 U.S.C. 3532, 3686 or 3687, as increased each fiscal year in accordance with 38 U.S.C. 3564 and 3687(d). The rate of pursuit will be determined in accordance with § 21.4270.

(Authority: 38 U.S.C. 3532, 3534, 3564, 3686, 3687)

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Subpart K—All Volunteer Force Educational Assistance Program (Montgomery

GI Bill – Active Duty)

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

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

4. Amend § 21.7136 by revising paragraphs (b) and (c) and adding paragraph (i) to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) Rates for veterans whose service is described in paragraph (a) of this section--(1) Institutional training (full-time rate of pursuit). Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (a) of this section and who is pursuing full-time institutional training will be the applicable rate provided in 38 U.S.C. 3015(a), as increased each fiscal year in accordance with 38 U.S.C. 3015(h).

(2) Institutional training (less than full-time rate of pursuit). Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (a) of this section and who is pursuing less than full-time institutional

training, as determined in accordance with § 21.4270, will be the full-time rate described in paragraph (b)(1) of this section reduced proportionately based on the rate of pursuit in accordance with the following:

Table 1 to Paragraph (b)(2)

Training	Percentage of full-time monthly rate
¾ time	75%
½ time	50%
Less than ½ but more than ¼ time	50%
¼ time	25%

(3) Apprenticeship or other on-job training. The monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (a) of this section and who is pursuing apprenticeship or other on-job training will be the full-time rate described in paragraph (b)(1) of this section reduced in accordance with the following:

Table 2 to Paragraph (b)(3)

Training period	Percentage of full-time monthly rate
First six months of training	75%
Second six months of training	55%
Remaining pursuit of training	35%

(4) Cooperative training. Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (a) of this section and who is pursuing cooperative training will be the full-time rate described in paragraph (b)(1) of this section.

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

(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 (c).

(1) Institutional training (full-time rate of pursuit). Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (c) of this section, and who is pursuing full-time institutional training, will be the applicable rate provided in 38 U.S.C. 3015(b)(1), as increased each fiscal year in accordance with 38 U.S.C. 3015(h).

(2) Institutional training (less than full-time rate of pursuit). Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (c) of this section and who is pursuing less than full-time institutional training, as determined in accordance with § 21.4270, will be the full-time rate described in paragraph (c)(1) of this section reduced proportionately based on the rate of pursuit in accordance with the following:

Table 3 to Paragraph (c)(2)

Training	Percentage of full-time monthly rate
¾ time	75%
½ time	50%
Less than ½ but more than ¼ time	50%
¼ time	25%

(3) Apprenticeship or other on-job training. The monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (c) of this section and who is pursuing of apprenticeship or other on-job training will be the full-time rate described in paragraph (c)(1) of this section reduced in accordance with the following:

Table 4 to Paragraph (c)(3)

Training period	Percentage of full-time monthly rate
First six months of training	75%
Second six months of training	55%
Remaining pursuit of training	35%

(4) Cooperative training. Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran whose service is described in paragraph (c) of this section and who is pursuing cooperative training will be the full-time rate described in paragraph (c)(1) of this section.

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

* * * * *

(i) Publication of monthly rates. VA will publish the monthly rates of basic educational assistance payable under this section on the GI Bill education and training website each time there is an increase in the rates.

Subpart L—Educational Assistance for Members of the Selected Reserve

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

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

6. Amend § 21.7636 by revising paragraph (a) to read as follows:

§ 21.7636 Rates of payment.

(a) Monthly rate of educational assistance. VA will publish the monthly rates of basic educational assistance payable under this section on the GI Bill education and training website each time there is an increase in the rates.

(1) Institutional training. Except as otherwise provided in this section or in § 21.7639, the monthly rate of basic educational assistance payable to a reservist pursuing institutional training will be the applicable rate provided in 10 U.S.C. 16131(b)(1), as increased each fiscal year in accordance with 10 U.S.C. 16131(b)(2). The rate of pursuit will be determined in accordance with § 21.4270.

(2) Apprenticeship and other on-the-job training. (i) The monthly rate of basic educational assistance payable to a reservist pursuing apprenticeship or other on-the-job training will be a percentage of the full-time rate determined in paragraph (a)(1) of this section. In accordance with 10 U.S.C. 16131(d)(1), VA will determine the monthly rate payable by multiplying the full-time monthly rate payable to the reservist by the applicable percentage based on the reservist's training period as follows:

Table 1 to Paragraph (a)(2)(i)

Training	Percentage of monthly rate payable
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First six months of training	75%
Second six months of training	55%
Remaining pursuit of training	35%

(ii) Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

(3) Cooperative training. The monthly rate of basic educational assistance payable to a reservist pursuing cooperative training will be equal to the applicable full-time monthly rate determined in paragraph (a)(1) of this section.

(Authority: 10 U.S.C. 16131)

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