



38 CFR Part 21

RIN 2900-AQ88

Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern VA's administration of educational assistance programs to implement the provisions of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, which modified the manner in which payments of educational assistance are determined and expanded the types of programs students may pursue under the Post-9/11 GI Bill; section 1002 of the Supplemental Appropriations Act, 2009, which authorized the "Marine Gunnery Sergeant John David Fry Scholarship;" and a select number of provisions of the Harry W. Colmery Veterans Educational Assistance Act of 2017.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas Alphonso, Assistant Director, Policy and Procedures, Education Service, Department of Veterans Affairs, Veterans Benefits Administration (22), 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: (202) 461-9800. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Under chapter 5 of title 38, United States Code (U.S.C.), the Secretary has the authority to prescribe rules and regulations which are appropriate and necessary to carry out the laws administered by VA. Accordingly, on May 24, 2023, VA published a proposed rule at 88 FR 33672 to amend its regulations to implement section 1002 of the Supplemental Appropriations Act, 2009 (Pub. L. 111-32), which amended 38 U.S.C. chapter 33 to allow surviving children of active duty

Servicemembers who died on or after September 11, 2001, to receive educational assistance under the Post-9/11 GI Bill (chapter 33); the Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (Pub. L. 111-377), which amended the Post-9/11 GI Bill; six sections of the Harry W. Colmery Veterans Educational Assistance Act of 2017, or Forever GI Bill (Pub. L. 115-48); and a policy change to address how VA manages overpayments and discontinuance dates. VA provided a 60-day comment period, which ended on July 24, 2023, and received six comments on the proposed amendments. The comments are addressed below.

Eligibility for Post-9/11 GI Bill Benefits and Time Limit for Transfer of Entitlement

One commenter expressed the belief that all veterans—no matter the length of their service—should be entitled to Post-9/11 GI Bill benefits if they were not discharged early for disciplinary reasons. The commenter stated that individuals who served honorably but with less time in service than others are not afforded the same entitlement. The commenter also indicated that the rulemaking should expand the period individuals can transfer entitlement to their children.

Requirements for payment of benefits are explicitly set by statute in 38 U.S.C. 3311 and 3313. Payment of educational assistance is based on the length of an individual's service as prescribed in sections 3311(b) and 3313(c). Generally, the greater the length of service, the greater the payment. Additionally, the time period for transferring benefits is explicitly set by statute in 38 U.S.C. 3319. Under section 3319(f) an individual may transfer entitlement only while serving in the Armed Forces. VA does not have authority to change statutory requirements through regulatory action.

Accordingly, VA makes no changes to the rule based on these comments.

Expansion of Eligibility for Post-9/11 GI Bill Benefits for Individuals

Two commenters recommended that the final rulemaking include revisions to allow more individuals the opportunity to obtain Post-9/11 GI Bill educational assistance

benefits. One commenter suggested that VA should make the process to obtain these benefits easier and another suggested that individuals should be eligible for Post-9/11 GI Bill benefits regardless of when they attend school. This rulemaking implements the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, which among other things, greatly expanded the types of programs students may pursue under the Post-9/11 GI Bill and eligibility for these programs. The provisions also refine and enhance VA's administration of Post-9/11 GI Bill educational assistance, improving the efficiency to deliver these benefits to claimants. Implementation of these provisions, as reflected in this rulemaking, will make provision of benefits easier and more efficient.

Furthermore, under current law, individuals who were discharged on or after January 1, 2013, may use Post 9/11 GI Bill benefits to attend school any time after discharge. Individuals who were discharged prior to that date have 15 years from the date of discharge to use their benefits. 38 U.S.C. 3321(a). We have been implementing this law and will incorporate it into our regulations in a future rulemaking.

As such, VA makes no changes to this rule based on these comments.

Enhancement of the Definition of "In-Residence Course" and of an Attendance and Participation Requirement

One commenter suggested strengthening the definition of what constitutes an "on-site course," stating that educational institutions offering "hybrid" programs with only one residential class are actually distance-learning courses and that individuals enrolled in these hybrid programs should not be eligible for the payment of a full housing allowance when the majority of classes would be online and not "on-site." (The commenter used the term "on-site course" to refer to what VA's regulations define as an "in-residence course.")

According to 38 U.S.C. 3313(c)(1)(B)(i)(I), an individual who "pursues a [degree] program of education on more than a half-time basis" is entitled to a monthly housing

allowance based on “the campus of the institution of where the individual physically participates in a majority of classes.” However, 38 U.S.C. 3313(c)(1)(B)(iii) expressly authorizes payment of a monthly housing allowance at half the national average of the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E-5 (which we will refer to as “the national average”) for “an individual pursuing a [degree] program of education *solely* through distance learning on more than a half-time basis.” (Emphasis added.) Similarly, for an individual pursuing a non-degree program of education on a more than half-time basis, 38 U.S.C. 3313(g)(3)(A)(ii)(I)(aa) provides a monthly housing allowance based on “the campus of the institution of where the individual physically participates in a majority of classes.” But 38 U.S.C. 3313(g)(3)(A)(ii)(I)(bb) authorizes payment of a monthly housing allowance at half that amount for “an individual pursuing a [non-degree] program of education through distance learning” on more than a half-time basis without specifically requiring that pursuit be “*solely* through distance learning.” (Emphasis added.)

VA faces several challenges in interpreting these statutory provisions. First, aspects of the statutory language at 38 U.S.C. 3313(g)(3)(A)(ii)(I)(bb) are unworkable as literally drafted. That provision calculates the monthly housing allowance for individuals pursuing non-degree distance-learning programs by reference to 38 U.S.C. 3313(g)(3)(A)(ii)(I)(aa), which is based on a locality (“campus of the institution of where the individual physically participates in a majority of classes”). However, it would be impossible to apply 38 U.S.C. 3313(g)(3)(A)(ii)(I)(bb) according to its literal terms because, for students in distance learning programs, there is no campus where the individual “physically participates in a majority of classes.”

Second, although 38 U.S.C. 3313(c)(1)(B)(iii) refers to “an individual pursuing a program of education *solely* through distance learning” (emphasis added) and 38 U.S.C.

3313(g)(3)(A)(ii)(I)(bb) refers to “an individual pursuing a program of education through distance learning” (omitting the word “solely”), VA does not believe that Congress intended to attribute any significance to this omission because a strictly literal reading would have absurd and inequitable results. With respect to the specific scenario raised by the commenter, VA is concerned that it would be absurd and inequitable to pay the full housing allowance for an individual who is taking one on-site course as part of a degree program (and thus not “solely” through distance learning) but to pay only half the housing allowance for an individual who is taking one on-site course as part of a non-degree program (and thus also not “solely” through distance learning). To avoid this absurd and inequitable result, we have interpreted the language in section 3313(g)(3)(A)(ii)(I)(bb) as referring to an individual pursuing a non-degree program *solely* through distance learning, which is still consistent with the plain language of the statute, which refers to “an individual pursuing a [non-degree] program of education through distance learning.”

Taking into account both of these interpretive challenges, the VA has concluded that the best reading of the statute is reflected in § 21.9641(c)(4), which provides that “[a]fter September 30, 2011, an individual . . . , who is pursuing a program of education solely via distance learning at a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance . . . equal to 50 percent of the [national average].” The interpretation reflected in this regulatory language best avoids absurd and illogically inequitable results. See *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available”). Consequently, *all* classes an individual takes must be online or otherwise characterized as distance learning for the individual to receive a monthly housing allowance at the rate of half the national average; otherwise, the individual would receive the full monthly

housing allowance. In other words, if an individual takes only one “on-site” class, that individual could still be eligible for the full monthly housing allowance. Because this regulation reflects the best reading of the statute, it would be beyond our authority to pay less than the full monthly housing allowance for programs that include as little as one online course as it would require statutory rather than regulatory action.

We recognize that § 21.9641(c)(4) provides for a monthly housing allowance based on the national average, regardless of whether an individual is pursuing a degree or non-degree program. As noted above, Congress provided elsewhere in section 3313 for payment of the monthly housing allowance for distance learning based upon the national average. Thus, we are calculating the rate for all distance-learning programs in a manner that is administratively feasible and consistent with the statutory scheme. Also, we plan to define “resident learning” in a separate rulemaking. As such, VA makes no change based on this comment.

As for the commenter’s suggestion that the school attendance and participation requirements be enhanced, this rule makes changes that would ensure that an educational institution is not unjustly enriched by receiving payments when a student fails to attend or participate in class for which he or she is certified. Under current § 21.9695(b)(3), an educational institution is liable for overpayments when an overpayment is the result of willful or negligent false certification by the educational institution, or willful or negligent failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual. Revised § 21.9695(b)(3) will add that an educational institution is also liable for an overpayment of educational assistance paid on behalf of an individual when a student never attends classes for which he or she was certified (regardless of the reason for non-attendance), or completely withdraws from all courses on or before the first day of the certified period of enrollment. These added provisions will help ensure VA is not

paying for education that is not provided. Thus, an “enhanced attendance and participation requirement” is not necessary. Consequently, VA makes no changes based on this comment.

Personal Claim

One commenter referenced a personal claim and proceedings unrelated to this rulemaking. This comment is outside of the scope of this rulemaking, and VA makes no changes based on this comment.

Terminology Correction

A commenter noted that, in proposed § 21.9676(d), the usage of the term “veteran-nonveteran” is not accurate for purposes of the 85 percent requirement in 38 CFR 21.4201(a) or 38 U.S.C. 3680A(d)(1), otherwise known as the “85/15 rule.” The commenter pointed out that the 85/15 rule measures the number of students using VA or institutional funds versus those students who do not receive assistance from VA or the institution; and, therefore, the correct terminology is “supported students versus nonsupported students” rather than “veteran-nonveteran.” VA concurs with this comment and replaces the term “veteran-nonveteran” with “supported students versus nonsupported students” in § 21.9675(d)(5) and includes the term “supported students versus nonsupported students” in new § 21.9676(d)(5).

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs 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 14094 (Executive Order on Modernizing Regulatory Review)

supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 and Executive Order 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866, section 3(f)(1), as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Although this final rule will affect some small entities, such as testing organizations or educational institutions that qualify as “small” using the most recent official revenue standards, the economic impact on them is minor. Educational institutions of all sizes voluntarily apply for approval to receive GI Bill benefits likely because tuition and fees revenue from student Veterans consists of guaranteed government funding (from U.S. taxpayer funds). However, if the cost for smaller educational institutions applying for GI Bill approval and meeting the requirements for continued approval were substantial, participating in the GI Bill program would not be financially viable. Because the policies memorialized in this final rule have been in effect for a long period of time and small institutions continue to seek and maintain GI Bill approval, likely profiting from this status, we conclude that the rules and policies in this final regulatory action do not significantly impact these entities. Furthermore, realizing that there are costs to educational institutions associated with their participation in GI Bill programs, Congress enacted Pub. L. 115-48, sec. 304, which increased the reporting fee payable to testing organizations and educational

institutions for carrying out reporting requirements, as provided in 38 U.S.C. 3684(c)(2), consequently further minimizing the economic impact on smaller educational and testing organizations. On this basis, the Secretary 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. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act of 1995

This final rule includes provisions constituting a revision to current/valid collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The revisions also require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. VA received no comments on the revised collections of information.

OMB has received the revised collections of information. OMB's receipt of the revised collections of information is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR part 1320, the revised collections of information associated with this rulemaking are not approved by OMB at this time. OMB's approval of the revised collections of

information will occur within 30 days after the Final rulemaking publishes. If OMB does not approve the new collections of information as requested, VA will immediately remove the provision containing the related new collection of information or take such other action as is directed by OMB.

The collections of information associated with this rulemaking are described immediately following this paragraph, under its respective title.

Title: Application for Approval of an Institution of Higher Learning Facility;
Institution of Higher Learning – Program Submission List; Application for
Approval of Org Other Than Inst of Higher Learning

OMB Control No: 2900-0932

CFR Provision: 38 CFR 21.4259(b)

- Summary of collection of information: Pub. L. 117-333 section 11, enacted January 5, 2023, amended 38 U.S.C. 3672, “Approval of Courses”. This law required VA to create and design two new uniform applications and any accompanying documentation for approval of courses of educational programs, and for those forms to be available for use by October 1, 2023. These forms are completed by educational institutions, training establishments, and other organizations seeking approval of one or more programs of study for the payment of VA education benefits rendered to eligible beneficiaries. The institutions submit the forms to the State Approving Agencies (SAAs) of jurisdiction for their review. By law, each SAA has the authority to make such approvals in their respective state. VA contracts with SAAs in each state for this approval assessment work. There is some duplication of collection information found in the discontinued OMB 2900-0051 “State Approving Agency Reports and Notices” as required by 38 CFR 21.4154, 4250(b), 21.4258 and 21.4259. However, there wasn’t an official

uniform application available for use by all stakeholders; educational institutions, training establishments and SAAs to ensure the information collected was the same based on the type of educational institution seeking program and course approval.

- Description of need for information and proposed use of information: The collection of information is necessary to ensure all entities have access to the same collection of information, thus making the approval assessment and enrollment certification process more efficient.
- Description of likely respondents: SAAs, educational institutions, and training establishments.
- Estimated total number of respondents: 8,800.
- Estimated total number of responses: 8,800.
- Estimated frequency of responses: Once.
- Estimated average burden per response: 8 total hours.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 70,400 burden hours. Using the annual number of responses 8,800, VA estimates a total annual reporting and recordkeeping burden of 70,400 for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$2,216,192 (70,400 respondents x \$31.48*)

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Title: Dependents’ Application for VA Education Benefits.

OMB Control No: 2900-0098

CFR Provision: 38 CFR 21.9520(d), 21.9530(f), 21.9691(e), 21.9691(h)

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9520(d), 21.9530(f), 21.9691(e), and 21.9691(h) would require certain children to submit an application to establish eligibility for the Fry Scholarship, and certain individuals who must elect the Fry Scholarship or either Dependency and Indemnity Compensation (DIC) or Survivors' and Dependents' Educational Assistance (DEA) to submit an application to establish eligibility for the elected benefit.
- Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to determine an individual's eligibility for the Fry scholarship, DIC, or DEA.
- Description of likely respondents: Individuals
- Estimated total number of respondents: 83,972.
- Estimated frequency of responses: Once.
- Estimated average burden per response: 45 minutes.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 48,983 burden hours. Using the annual number of responses 83,972, VA estimates a total annual reporting and recordkeeping burden of 48,983 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$1,982,578.92 (83,972 respondents per year x 45 minutes per application) / 60 x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for "all occupations" of \$31.48 per

hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm.

Title: Application for Reimbursement of a National Exam Fee.

OMB Control No: 2900-0706

CFR Provision: 38 CFR 21.9626(a)(3), 21.9668, 21.9681(b)(5)

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9626(a)(3), 21.9668, 21.9681(b)(5) would require individuals to submit a claim and supporting documentation to be reimbursed for the cost of a national test for admission or a national test for credit.
- Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to determine if an individual is eligible to receive reimbursement for a claimed national test, and to determine the amount of the reimbursement.
- Description of likely respondents: Individuals
- Estimated total number of respondents: 310.
- Estimated frequency of responses: Once.
- Estimated average burden per response: 15 minutes.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 78 burden hours. Using the annual number of responses 310, VA estimates a total annual reporting and recordkeeping burden of 78 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$2,440 (310 respondents per year x 15 minutes per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm.

Title: Application for Reimbursement of Licensing and Certification Fees.

OMB Control No: 2900-0695

CFR Provision: 38 CFR 21.9667

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9667 would require individuals to submit a claim to be reimbursed for the cost of licensing and certification tests.
- Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to determine if an individual is eligible to receive reimbursement for a licensing and certification test, and to determine the amount of the reimbursement.
- Description of likely respondents: Individuals
- Estimated total number of respondents: 4,210.
- Estimated total number of responses: 12,630.
- Estimated frequency of responses: On occasion. (3 responses per year).
- Estimated average burden per response: 15 minutes.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 3,158 burden hours. Using the annual number of responses 12,630, VA estimates a total annual reporting and recordkeeping burden of 3,158 hours for respondents.

- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$99,398 (12,630 responses per year x 15 minutes per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Title: Monthly Certification for Flight Training

OMB Control No: 2900-0162

CFR Provision: 38 CFR 21.9641(b)(5)

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9641(b)(5) would require students pursuing flight training programs at non-IHLs to submit monthly certifications to receive payment for such pursuit.
- Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used to determine whether the individual’s educational assistance should be continued without change, amended, or terminated, and to determine the effective date of such continuance, amendment, or termination.
- Description of likely respondents: Individuals
- Estimated total number of respondents: 3,900.
- Estimated total number of responses: 23,400.
- Estimated frequency of responses: On occasion. (6 responses annually).
- Estimated average burden per response: 30 minutes.

- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 11,700 burden hours. Using the annual number of responses 23,400, VA estimates a total annual reporting and recordkeeping burden of 11,700 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$368,316(23,400 responses per year x 30 minutes per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Title: Certification of Lessons Completed

OMB Control No: 2900-0353

CFR Provision: 38 CFR 21.9641(b)(6)

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9641(b)(6) would require students pursuing correspondence training programs at non-IHLs to submit certification of lessons completed to receive payment for such pursuit.
- Description of need for information and proposed use of information: The collection of information is necessary to pay benefits, which in the case of correspondence training, are based on the number of lessons completed. The information collected will be used by VA to determine the amount of educational assistance to be paid.
- Description of likely respondents: Individuals
- Estimated total number of respondents: 154.
- Estimated total number of responses: 616.

- Estimated frequency of responses: Quarterly.
- Estimated average burden per response: 10 minutes.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 103 burden hours. Using the annual number of responses 616, VA estimates a total annual reporting and recordkeeping burden of 103 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$3,232 (616 responses per year x 10 minutes per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Title: Certification of Affirmation of Enrollment Agreement Correspondence Course

OMB Control No: 2900-0576

CFR Provision: 38 CFR 21.9641(b)(6)

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9641(b)(6) would require students pursuing correspondence training programs at non-IHLs to submit an affirmation of enrollment in a correspondence course to receive payment for such pursuit.
- Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to ensure an individual is enrolled in a correspondence course following the signing of a contract.
- Description of likely respondents: Individuals
- Estimated total number of respondents: 75.

- Estimated frequency of responses: Annually.
- Estimated average burden per response: 3 minutes.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 4 burden hours. Using the annual number of responses 75VA estimates a total annual reporting and recordkeeping burden of 4 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$118 (75 responses per year x 3 minutes per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Title: VA Enrollment Certification.

OMB Control No: 2900-0073

CFR Provision: 38 CFR 21.9681(b)(1) and 21.9721

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9681(b)(1) and 21.9721 would require an educational institution to certify a student’s enrollment in an approved program of education (other than a student seeking reimbursement for taking an approved licensure or certification test or a national test).
- Description of need for information and proposed use of information: The collection of information is necessary to ensure a student is properly enrolled in an approved program of education before making any payments of educational assistance benefits. VA will use the information collected on VA

Form 22-1999 to determine the amount of educational benefits payable to an individual during a period of enrollment or training.

- Description of likely respondents: Individuals
- Estimated total number of respondents: 1,266,616.
- Estimated total number of responses: 3,799,847.
- Estimated frequency of responses: On occasion. (3 responses per year).
- Estimated average burden per response: 10 minutes.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 633,307 burden hours. Using the annual number of responses 3,799,847, VA estimates a total annual reporting and recordkeeping burden of 633,307 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$19,936,530 (3,799,847 responses per year x 10 minutes per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Title: Yellow Ribbon Program Agreement

OMB Control No: 2900-0718

CFR Provision: 38 CFR 21.9700(b)

- Summary of collection of information: The new collection of information in proposed 38 CFR 21.9700(b) would include individuals who establish eligibility for the Fry Scholarship to receive benefits under the Yellow Ribbon Program.
- Description of need for information and proposed use of information: The collection of information is necessary to provide IHLs with the opportunity to

indicate their participation in the Yellow Ribbon Program and to allow IHLs to indicate the maximum number of students that will receive benefits under the program. VA will use the information collected to determine which IHLs will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, and the maximum dollar amount of outstanding established charges that will be waived for each student based on student status (i.e., undergraduate, graduate, doctoral) or sub-element (i.e., college or professional school).

- Description of likely respondents: Institutions of higher learning.
- Estimated total number of respondents: 5,600.
- Estimated frequency of responses: Once
- Estimated average burden per response: 14 hours.
- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 78,400 burden hours. Using the annual number of responses 5,600, VA estimates a total annual reporting and recordkeeping burden of 78,400 hours for respondents.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$2,468,032 (5,600 responses per year x 14 hours per application x \$31.48*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$31.48 per hour. This information is available at:

https://www.bls.gov/oes/current/oes_nat.htm

Severability

The purpose of this section is to clarify the agencies’ intent with respect to the severability of provisions of this final rule. Each provision that the agency is

promulgating is capable of operating independently. If any provision of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, the agencies intend that the rule remain applicable to all other circumstances.

Congressional Review Act

Under the Congressional Review Act, this regulatory action may result in “an annual effect on the economy of \$100,000,000 or more,” 5 U.S.C. 804(2), and so is subject to the 60-day delay in effective date under 5 U.S.C. 801(a)(3). In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis (RIA) associated with the Regulation.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Veteran readiness.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on December 12, 2024, 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.

Luvenia Potts,

Regulations Development Coordinator,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

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

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

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

Chapter 35

1. The authority citation for 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 § 21.3022 by:

- a. In paragraph (i), removing “and”;
- b. In paragraph (j), removing the period and adding “; and” in its place; and
- c. Adding paragraph (k).

The addition reads as follows:

§ 21.3022 Nonduplication—programs administered by VA.

* * * * *

(k) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

Subpart D—Administration of Educational Assistance Programs

3. The authority citation for subpart D continues to read as follows:

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

§ 21.4002 [Amended]

4. Amend § 21.4002, in paragraph (a), by removing “(See §§ 19.192 and 19.183 of this chapter.)”.

5. Amend § 21.4022 by:

- a. In paragraph (d), adding a semicolon at the end of the paragraph;
- b. In paragraph (k), removing the period and adding “; and” in its place; and

c. Adding paragraph (l).

The addition reads as follows:

§ 21.4022 Nonduplication—programs administered by VA.

* * * * *

(l) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

6. Amend § 21.4138 by:

a. Removing the parenthetical authority citation at the end of paragraphs (a), (b), and (e);

b. Revising the heading for paragraph (f) introductory text;

c. Removing the parenthetical authority citation at the end of paragraphs (f)(4)(ii), (f)(5)(ii), and (f)(6)(ii)(B); and

d. Adding paragraphs (g) and (h).

The revision and additions read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(f) *Payment for intervals and temporary school closings before August 1, 2011.* *

* *

* * * * *

(g) *Payment for temporary school closings after July 31, 2011.* (1) Subject to paragraph (g)(2) of this section, VA may authorize payment for a temporary school closing that occurs during a certified period of enrollment if the closing is due to an emergency (including a strike) or established policy based on an Executive order of the President.

(2) An individual may not receive more than 4 weeks of payment for temporary school closings in any 12-month period.

(3) The decision as to whether a school closing is permanent or temporary will be made by—

- (i) The director of the VA regional processing office of jurisdiction; or
- (ii) The Director, Education Service, if the emergency or established policy based on an Executive Order of the President results in the closing of schools in the jurisdiction of more than one VA regional processing office.

(4) A school that disagrees with a decision made under paragraph (g)(3) 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, or the Director, Education Service, whoever made the decision under paragraph (g)(3) of this section, 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—

(i) Director, Education Service, if the director of the VA regional processing office of jurisdiction made the initial decision to continue or discontinue payments.

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

(h) *Authority.* (1) Paragraph (a) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034, 3680(d);

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(c), 3680(f);

(3) Paragraph (e) of this section issued under the authority of 38 U.S.C. 5113, 3680(b), 3680(c), 3680(g);

(4) Paragraph (f) of this section issued under the authority of 38 U.S.C. 3680;

(5) Paragraph (f)(5) of this section issued under the authority of 38 U.S.C.

3680(a);

(6) Paragraph (f)(6) of this section issued under the authority of 38 U.S.C. 512,
3680(a); and

(7) Paragraph (g) of this section issued under the authority of 38 U.S.C. 512,
3680(a).

* * * * *

7. Amend § 21.4150 by:

a. Revising paragraph (c)(2) and removing the parenthetical authority citation at
the end of the paragraph;

b. Removing the parenthetical authority citation at the end of paragraphs (d) and
(e);

c. Revising paragraph (f) and removing the parenthetical authority citation at the
end of the paragraph;

d. Removing the parenthetical authority citation at the end of paragraph (g); and

e. Adding paragraph (h).

The revisions and addition read as follows:

§ 21.4150 Designation.

* * * * *

(c) * * *

(2) When VA has approval, disapproval, or suspension authority.

* * * * *

(f)(1) The Secretary is responsible for approving programs of education offered
by any agency or instrumentality of the Federal Government.

(2)(i) Effective August 1, 2011, subject to §§ 21.4201, 21.4203, 21.4251, 21.4252, and 21.4253(d)(2) and (3), the following programs of education are deemed approved—

(A) An accredited standard college degree program offered at a public or not-for-profit proprietary institution of higher learning that is accredited by a national or regional agency or organization recognized for that purpose by the Department of Education.

(B) A flight training course approved by the Federal Aviation Administration that is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141.

(C) An apprenticeship program registered with the Office of Apprenticeship of the Employment Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship under 29 U.S.C. 50, et seq.

(D) A program of education leading to a secondary school diploma offered by a secondary school approved in the State in which it is operating.

(E) A licensure test offered by a Federal, State, or local government.

(ii) [Reserved]

(h)(1) Paragraph (c)(2) of this section issued under the authority of 38 U.S.C. 3671(b)(1);

(2) Paragraph (d) of this section issued under the authority of 38 U.S.C. 512(a), 3561(b);

(3) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3672(c);

(4) Paragraph (f) of this section issued under the authority of 38 U.S.C. 3672(b);
and

(5) Paragraph (g) of this section issued under the authority of 38 U.S.C. 3689.

* * * * *

8. Amend § 21.4151 by:

- a. Removing the parenthetical authority citation at the end of paragraphs (a) and (b);
- b. In paragraph (b)(5), removing “and” at the end of the paragraph;
- c. Redesignating paragraph (b)(6) as paragraph (b)(7);
- d. Adding new paragraph (b)(6);
- e. Removing the parenthetical authority citation at the end of paragraph (c); and
- f. Adding paragraph (d).

The additions read as follows:

§ 21.4151 Cooperation.

* * * * *

(b) * * *

(6) Effective August 1, 2011, performing compliance and risk-based surveys and oversight (in accordance with the provisions in the State approving agency contract) without regard to whether the Secretary or the State approving agency approved the courses offered at the educational institution or the courses were deemed approved; and

* * * * *

(d)(1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3673(a);

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3672, 3673, 3674, 3689; and

(3) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3673(b).

9. Amend § 21.4200 by adding paragraphs (mm) through (oo) following the parenthetical authority citation at the end of the section to read as follows:

§ 21.4200 Definitions.

* * * * *

(mm) *National test for admission.* (1) A *national test for admission* is a test used for admission to an institution of higher learning or graduate school (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)). A list of national tests approved by VA can be found at:

<https://inquiry.vba.va.gov/weamspub/buildSearchNE.do>.

(2) This paragraph (mm) issued under the authority of 38 U.S.C. 3452(b), 3315A, 3501(a)(5).

(nn) *National test for credit.* (1) A *national test for credit* is a test that provides an opportunity for course credit at an institution of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)). A list of national tests approved by VA can be found at:

<https://inquiry.vba.va.gov/weamspub/buildSearchNE.do>.

(2) This paragraph (nn) issued under the authority of 38 U.S.C. 3452(b), 3315A, 3501(a)(5).

(oo) *We, us, our.* When we use the terms *we*, *us*, or *our*, we mean the United States Department of Veterans Affairs.

10. Amend § 21.4206 by:

- a. Revising the introductory text;
- b. Removing the parenthetical authority citation at the end of paragraph (a);
- c. Revising paragraph (b) and removing the parenthetical authority citation at the end of the paragraph;
- d. Removing the parenthetical authority citation at the end of paragraphs (c) and (d);

- e. Revising paragraph (e) and removing the parenthetical authority citation at the end of the paragraph; and
- f. Adding paragraph (f).

The revisions and addition read as follows:

§ 21.4206 Reporting fee.

VA will pay annually to each educational institution furnishing education or to each joint apprenticeship training committee acting as a training facility under 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

* * * * *

(b) In computing the reporting fee, VA will not count an eligible individual whose only receipt of educational assistance during a calendar year was tuition assistance Top-Up under 38 U.S.C. chapter 30, a rural relocation payment, or reimbursement for a national test for admission, national test for credit, or a licensing or certification test.

* * * * *

(e) Before VA will pay a reporting fee, an educational institution must certify that—

(1) It has exercised reasonable diligence in determining whether it or any courses approved for VA education benefits offered by it meet all the applicable requirements of 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36;

(2) It will, without delay, report any failure to meet any requirement to VA; and

(3) The reporting fees received after January 4, 2011, will be used solely for the purpose of making certifications for VA educational assistance under 10 U.S.C. 510,

chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36 or for supporting programs for veterans.

(f)(1) Paragraph (a) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c);

(2) Paragraph (b) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c);

(3) Paragraph (c) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c);

(4) Paragraph (d) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c); and

(5) Paragraph (e) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c).

* * * * *

11. Revise § 21.4235 to read as follows:

§ 21.4235 Programs of education that include flight training.

VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See § 21.4263 for approval of flight courses for VA training.

(a) *Eligibility.* An individual who is otherwise eligible to receive educational assistance under 38 U.S.C. chapters 30, 32, or 33, or a reservist eligible for educational assistance under 10 U.S.C. chapters 1606 or 1607, may receive educational assistance for flight training in an approved program of education provided that the individual meets the requirements of this paragraph (a). Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (e) of this section, the individual must—

(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) If enrolled in a course other than an Airline Transport Pilot (ATP) course, hold a second-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training.

(b) *Pursuit of flight courses.* (1) VA will pay educational assistance to an eligible individual for an enrollment in a commercial pilot certification course leading to Federal Aviation Administration certification for a particular category even if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for a different category, since each category represents a different vocational objective.

(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the Federal Aviation Administration for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since that rating equally may be applied to an individual's private pilot certificate, only evidencing an intent to pursue a non-vocational objective.

(3) VA will pay educational assistance to an eligible individual for an enrollment in a flight course other than an instrument rating course or a ground instructor course, including courses leading to an aircraft type rating, only if the individual has a

commercial pilot certificate issued by the Federal Aviation Administration for the category to which the particular course applies.

(4) VA will pay educational assistance to an eligible individual for an enrollment in a ground instructor certificate course, even though the individual does not have any other flight certificate issued by the Federal Aviation Administration, since the Federal Aviation Administration does not require a flight certificate as a prerequisite to ground instructor certification and ground instructor is a recognized vocational objective.

(5) VA will not pay an eligible individual for simultaneous enrollment in more than one flight course, except as provided in paragraph (b)(2) of this section.

(c) *Some individuals are already qualified for a flight course objective.* (1) The provisions of §§ 21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty.

(d) *Some flight courses are refresher training.* The provisions of §§ 21.5230(c), 21.7020(b)(26), 21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation

Administration may have canceled it. The individual may receive the equivalent of the number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.

(2) A reservist is not eligible for refresher training unless he or she has had prior active duty.

(e) *Flight training at an institution of higher learning.* (1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 1607 or 38 U.S.C. chapter 30, 32, 33, or 35 is exempt from the provisions of paragraphs (a)(2) through (c) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.

(2) An individual described in paragraph (e)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree.

(f) *Authority.* (1) Paragraph (a) of this section issued under the authority of 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b);

(2) Paragraph (b) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3);

(3) Paragraph (c) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4);

(4) Paragraph (d) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b)); and

(5) Paragraph (e) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b).

12. Amend § 21.4253 by:

- a. Removing the parenthetical authority citation at the end of paragraph (a);
- b. Revising paragraph (a) introductory text;
- c. Removing the parenthetical authority citation at the end of paragraphs (d)(1)(iv), (d)(3), (5), and (8), (d)(10)(ii), and (e)(1); and
- c. Adding paragraph (g).

The revision and addition read as follows:

§ 21.4253 Accredited courses.

(a) *General.* All standard college degree courses offered at proprietary for-profit institutions and non-college degree courses offered at proprietary for-profit institutions and public or proprietary not-for-profit institutions may be approved as accredited courses if they meet one of the following criteria:

* * * * *

(g) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3675(a);

(2) Paragraphs (b) through (d)(1) of this section issued under the authority of 38 U.S.C. 3675(a), 3676(b);

(3) Paragraphs (d)(2) and (3) of this section issued under the authority of 38 U.S.C. 3675(b);

(4) Paragraphs (d)(4) and (5) of this section issued under the authority of 38 U.S.C. 3474, 3675);

(5) Paragraphs (d)(6) through (8) of this section issued under the authority of 38 U.S.C. 3675(b), 3676(c)(1), (2), (3);

(6) Paragraph (d)(9) of this section issued under the authority of 38 U.S.C. 3675(b)(3), 3676(c), (f); and

(7) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3675.

* * * * *

13. Amend § 21.4259 by:

a. Revising paragraphs (a) and (b);

b. Removing the parenthetical authority citation at the end of paragraph (e);

c. Adding paragraph (f); and

d. Removing the parenthetical authority citation under parenthetical “(*The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051*)”.

The revision and addition read as follows:

§ 21.4259 Suspension or disapproval.

(a) The appropriate State approving agency or the Secretary (whichever entity approved the program), after approving a program of education or licensing or certification test—

(1) May suspend the approval of a program of education for new enrollments or for a licensing or certification test for a period not to exceed 60 days to allow the institution to correct any deficiencies if the evidence of record establishes that the program of education or licensing or certification test fails to meet any of the requirements for approval.

(2) Will immediately disapprove the program of education or licensing or certification test if any of the requirements for approval are not being met and the deficiency cannot be corrected within a period of 60 days.

(b)(1) Upon suspension or disapproval, the State approving agency or the Secretary, whichever suspended or disapproved the program of education, will notify the educational institution by certified or registered letter with a return receipt secured. It is incumbent upon the State approving agency or the Secretary to determine the conduct of the program of education and to take immediate appropriate action in each

case in which it is found that the conduct of the program of education in any manner fails to comply with the requirements for approval.

(2)(i) Each State approving agency will immediately notify VA of each program of education or licensing and certification test that it has suspended or disapproved.

(ii) The Secretary will immediately notify the appropriate State approving agency of each program of education or licensing and certification test that it has suspended or disapproved.

* * * * *

(f) Paragraphs (a) through (e) of this section issued under the authority of 38 U.S.C. 3679(d).

14. Amend § 21.4263 by revising paragraph (a) and removing the parenthetical authority citation at the end of the paragraph to read as follows:

§ 21.4263 Approval of flight training courses.

(a)(1) A flight program may be approved if—

(i)(A) For 38 U.S.C. chapters 32 and 35 and 10 U.S.C. chapters 1606 and 1607, the flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; or

(B) For 38 U.S.C. chapters 30 and 33, effective August 1, 2011, the flight program is deemed approved (A flight program will be deemed approved if it is approved by the Federal Aviation Administration and is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141. Flight programs offered at flight schools listed in paragraphs (b)(2) and (3) of this section will not be approved for VA training under 38 U.S.C. chapters 30 and 33); and

(ii)(A) The flight training offered by a flight school is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(B) The flight training is offered by an institution of higher learning for credit towards a standard college degree program.

(2) A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it.

(3) This paragraph (a) issued under the authority of 10 U.S.C. 16136(c), 16166(c), 38 U.S.C. 3032(e), 3241(b), 3672, 3676, 3680A.

* * * * *

15. Amend § 21.4268 by:

a. Revising paragraph (a) and removing the parenthetical authority citation at the end of the paragraph;

b. Removing the parenthetical authority citation at the end of paragraphs (b) through (e);

c. Adding paragraph (g); and

d. Removing the parenthetical authority citation below the parenthetical “(*The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051*)”; and

The revision and addition read as follows:

§ 21.4268 Approval of licensing and certification tests.

(a) *Authority to approve licensing and certification tests—*(1) *Tests deemed approved.* Effective August 1, 2011, a licensure test offered by a Federal, State, or local government is deemed approved in accordance with § 21.4150(f).

(2) *VA approval.* The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve licensing and certification tests and the organizations and entities offering the tests as provided in § 21.4250(c)(2)(vi).

(3) *State approving agency approval.* Except for the licensing and certification tests and organizations or entities offering these tests that are approved under paragraphs (a)(1) and (2) of this section, the Secretary of Veterans Affairs delegates to each State approving agency the authority to approve licensing and certification tests and the organizations and entities offering these tests located within the State approving agency's jurisdiction as provided in § 21.4250(a).

* * * * *

(g) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 512(a), 3689(a)(2);

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3689;

(3) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3689(c);

(4) Paragraph (d) of this section issued under the authority of 38 U.S.C. 3689(c);

(5) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3689(d);

(6) Paragraph (f) of this section issued under the authority of 38 U.S.C. 3689.

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

Chapter 32

16. The authority citation for subpart G continues to read as follows:

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

17. Amend § 21.5022 by:

- a. Removing the parenthetical authority citation at the end of paragraph (a)(1);
- b. In paragraph (a)(1)(ix), removing "or";

- c. In paragraph (a)(1)(x), removing the period and adding “; or” in its place;
- d. Adding paragraph (a)(1)(xi);
- e. Removing the parenthetical authority citation at the end of paragraphs (a)(2)

and (b); and

- f. Adding paragraph (c).

The additions read as follows:

§ 21.5022 Eligibility under more than one program.

(a) * * *

(1) * * *

(xi) Effective August 1, 2011, 10 U.S.C 510 (National Call to Service).

* * * * *

(c) *Authority.* (1) Paragraph (a)(1) of this section issued under the authority of 38 U.S.C. 3322(a), 3681(b), 3695;

(2) Paragraph (a)(2) of this section issued under the authority of 38 U.S.C. 3033(a), 3322(a); and

(3) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(a), 3231, 3323(a).

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

18. The authority citation for subpart K continues to read as follows:

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

19. Amend § 21.7143 by:

- a. In paragraph (a)(1)(ix), removing “or”;
- b. In paragraph (a)(1)(x), removing the period and adding “; and” in its place;
- c. Adding paragraph (a)(1)(xi);
- d. Adding reserved paragraph (a)(2);

- e. Removing the parenthetical authority citation at the end of paragraphs (b) and (c); and
- f. Adding paragraph (d).

The additions read as follows:

§ 21.7143 Nonduplication of educational assistance.

(a) * * *

(1) * * *

(xi) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

(2) [Reserved]

* * * * *

(d) *Authority.* (1) Paragraphs (a) and (b) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b); and

(2) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3034, 3681.

Subpart L—Educational Assistance for Members of the Selected Reserve

20. The authority citation for 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.

21. Amend § 21.7642 by:

- a. Removing the parenthetical authority citation at the end of paragraph (a);
- b. In paragraph (a)(9), removing “or”;
- c. In paragraph (a)(10), removing the period and adding “; and” in its place;
- d. Adding paragraph (a)(11);
- e. Removing the parenthetical authority citation at the end of paragraphs (c) through (e); and
- e. Adding paragraph (f).

The additions read as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) * * *

(11) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

(f) *Authority.* (1) Paragraph (a) of this section issued under the authority of 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681);

(2) Paragraphs (b) and (c) of this section issued under the authority of 10 U.S.C. 16134; Pub. L. 98-525);

(3) Paragraph (d) of this section issued under the authority of 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98-525; and

(4) Paragraph (e) of this section issued under the authority of Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766.

Subpart P—Post-9/11 GI Bill

22. The authority citation for subpart P continues to read as follows:

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

23. Amend § 21.9505 by:

- a. Revising the section heading;
- b. In the introductory text, removing “apply.” and adding in its place “apply to provisions effective before August 1, 2011, unless otherwise noted.”;
- c. Revising the definition for “Active duty” and removing the parenthetical authority citation at the end of the definition;
- d. Adding in alphabetical order the definition for “Educational institution”;
- e. Revising the definition for “Entry level and skill training” and removing the parenthetical authority citation at the end of the definition;
- f. Adding in alphabetical order the definition for “Fugitive felon”;

g. Adding a parenthetical with the OMB control number for the approval of the information collection immediately following the parenthetical authority citation at the end of the section.

The revisions and additions read as follows:

§ 21.9505 Definitions—for provisions effective before August 1, 2011.

* * * * *

Active duty means—

(1) Full-time duty:

(i) In the regular components of the Armed Forces; or

(ii) Under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304.

(2) In the case of a member of the Army National Guard of the United States or the Air National Guard of the United States, in addition to service described in paragraph (1)(ii) of this definition, full-time service—

(i) In the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) In the National Guard under 32 U.S.C. 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(3) Active duty does not include—

(i) Any period during which the individual—

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

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

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

(ii) A period of service—

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

(B)(1) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348; or

(2) Effective for individuals entering into agreements after January 3, 2011, required by an officer pursuant to an agreement under 14 U.S.C. 1925.

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

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

(iii) A period of service after July 31, 2011, used to establish eligibility under 38 U.S.C. chapter 30 or 32, or 10 U.S.C. chapter 1606 or 1607.

(3) This definition issued under the authority of 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b), (c); Pub. L. 111-377, 124 Stat. 4107-4108.

* * * * *

Educational institution has the same meaning as the term *institution of higher learning* as defined in § 21.4200(h) for training pursued prior to August 1, 2011.

(1) This definition issued under the authority of 38. U.S.C. 3323(a).

(2) [Reserved]

* * * * *

Entry level and skill training means—

(1) Basic Combat Training, Advanced Individual Training, and, effective January 4, 2011, One Station Unit Training for members of the Army;

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

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

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

(5) Basic Training and, for individuals entering service on or after January 4, 2011, Skill Training (or so-called "A" School) for members of the Coast Guard.

(6) This definition issued under the authority of 38 U.S.C. 3301(2).

* * * * *

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.

(4) This definition issued under the authority of 38 U.S.C. 3323(c), 5313B.

* * * * *

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

24. Add § 21.9506 to read as follows:

§ 21.9506 Definitions – for provisions effective after July 31, 2011.

(a) For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33), effective after July 31, 2011, unless otherwise noted, the following definitions apply. (See *also* additional definitions in §§ 21.1029 and 21.4200.)

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

Active duty means—

(i) Full-time duty:

(B) In the regular components of the Armed Forces; or

(C) Under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304.

(ii) In the case of a member of the Army National Guard of the United States or the Air National Guard of the United States, in addition to service described in paragraph (i)(B) of this definition, full time service—

(A) In the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(B) In the National Guard under 32 U.S.C. 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(iii) Active duty does not include—

(A) Any period during which the individual—

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

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

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

(B) A period of service—

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

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

(ii) Effective for individuals entering into agreements after January 3, 2011, required by an officer pursuant to an agreement under 14 U.S.C. 1925.

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

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

Advance payment means an amount of educational assistance payable under § 21.9641(c) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

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

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

Educational assistance means all monetary benefits (including but not limited to tuition, fees, and monthly housing allowances) payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33

Educational institution has the same meaning as the term institution of higher learning as defined in § 21.4200(h).

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

Entry level and skill training means—

- (i) For members of the Army—
 - (A) Basic Combat Training,
 - (B) Advanced Individual Training, and
 - (C) Effective January 4, 2011, One Station Unit Training.
- (ii) For members of the Navy, Recruit Training (Boot Camp) and Skill Training (“A” School).
- (iii) For members of the Air Force, Basic Military Training and Technical Training.
- (iv) For members of the Marine Corps, Recruit Training and Marine Corps Training (School of Infantry Training).
- (v) For members of the Coast Guard—
 - (A) Basic Training; and
 - (B) For individuals entering service on or after January 4, 2011, Skill Training (or so-called “A” School).

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

Fugitive felon means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

- (i) 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;
- (ii) 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
- (iii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

Institution of higher learning (IHL) means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the Secretary of Education (or comparable official) of the country or other jurisdiction in which the institution is located.

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

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

- (i) An illness or mental illness of the individual;
- (ii) An illness or death in the individual's family;
- (iii) An unavoidable change in the individual's conditions of employment;
- (iv) An unavoidable geographical transfer resulting from the individual's employment;
- (v) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;
- (vi) Discontinuance of the course by the educational institution;
- (vii) Unanticipated active duty for training; or
- (viii) Unanticipated difficulties in caring for the individual's child or children.

Net cost means the amount of in-State tuition and fees the individual enrolled in a program of education is responsible for paying after the application of any—

- (i) Waiver of, or reduction in, tuition and fees; and
- (ii) Scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution specifically designated for the sole purpose of reducing the individual's tuition and fee charges.

Non-public institution means a proprietary institution as defined in § 21.4200(z).

Program of education means a curriculum or combination of courses pursued at an educational institution that is accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an educational institution that is accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single

career field. The curriculum or combination of courses pursued must be listed in the educational institution's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv).

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

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

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

(b)(1) The *Academic year* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(a);

(2) The *Active Duty* definition in this section issued under the authority of 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b), (c); Pub. L. 111-377, 124 Stat. 4107-4108;

(3) The *Advance payment* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(d);

(4) The *Course* definition in this section issued under the authority of 38 U.S.C. 3323(c);

(5) The *Distance learning* definition in this section issued under the authority of 20 U.S.C. 1003(7); 38 U.S.C. 3323(c);

(6) The *Educational assistance* definition in this section issued under the authority of 38 U.S.C. 3313;

(7) The *Educational institution* definition in this section issued under the authority of 38 U.S.C. 3323(a);

(8) The *Enrollment period* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(g);

(9) The *Entry level and skill training* definition in this section issued under the authority of 38 U.S.C. 3301(2);

(10) The *Fees* definition in this section issued under the authority of 38 U.S.C. 501(a), 3323(c);

(11) The *Fugitive felon* definition in this section issued under the authority of 38 U.S.C. 3323(c), 5313B;

(12) The *Institution of higher learning (IHL)* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f);

(13) The *Lump sum payment* definition in this section issued under the authority of 38 U.S.C. 3323(c);

(14) The *Mitigating circumstances* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(a)(1);

(15) The *Net cost* definition in this section issued under the authority of 38 U.S.C. 3313, 3323(c);

(16) The *Non-public institution* definition in this section issued under the authority of 38 U.S.C. 3323(c);

(17) The *Program of education* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b);

(18) The *Pursuit* definition in this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(g);

(19) The *Rate of pursuit* definition in this section issued under the authority of 38 U.S.C. 3323, 3680;

(20) The *Transferor* definition in this section issued under the authority of 38 U.S.C. 3319.

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

25. Revise § 21.9520 to read as follows:

§ 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33, if he or she—

(a) Serves on active duty after September 10, 2001, for a minimum of 90 aggregate days, excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, see § 21.9640(a) or § 21.9641(a), whichever is applicable) and, after completion of such service—

(1) Continues on active duty;

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

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

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

(5)(i) Before January 4, 2011, is discharged or released from service for:

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

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

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

(ii) On or after January 4, 2011, is discharged or released from service with an honorable discharge for:

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

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

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

(b) Serves on active duty after September 10, 2001, for a minimum of 30 continuous days and, after completion of such service, is discharged from active duty under other than dishonorable conditions due to a service-connected disability; or

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

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

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

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

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

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

(ii) If applicable, an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under one of the applicable chapters listed in paragraph (c)(1)(i) of this section (e.g., “I elect to receive benefits under the Post-9/11-GI Bill in lieu of benefits under the Montgomery GI Bill – Active Duty (chapter 30) program.”);

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

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

(d) Is the child of a person who, after September 10, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces. For purposes of this paragraph (d), the term “child” means an individual who meets the requirements of

§ 3.57 of this chapter, except as to age and marital status. With regard to age and marital status, the term includes individuals who are—

(1) Married; or

(2) Over the age of 23.

(e) Paragraphs (a) through (d) of this section issued under the authority of 38 U.S.C. 3311; Pub. L. 110-252, 111-32, Stat. 1859, 2375-2376.

(The Office of Management and Budget has approved the information collection provision in this section under control numbers 2900-0154 and 2900-0098.)

§ 21.9525 [Amended]

26. Amend § 21.9525 by removing “under § 21.9640(b)(1)(ii) or (b)(2)(ii)” wherever it appears and adding in its place “under § 21.9640(b)(1)(ii) or (b)(2)(ii) or § 21.9641(c)”.

27. Amend § 21.9530 by:

- a. In paragraph (a), removing “through (e)” and adding in its place “through (f)”;
- b. Removing the parenthetical authority citation at the end of paragraphs (c) through (e);
- c. Adding paragraphs (f) and (g); and
- d. Adding at the end of the section a parenthetical with the OMB control number for the approval of the information collection.

The additions read as follows:

§ 21.9530 Eligibility time limit.

* * * * *

(f) *Time limit for child eligible under § 21.9520(d) (Marine Gunnery Sergeant John David Fry Scholarship).* (1) In the case of a child who first becomes entitled to educational assistance under § 21.9520(d) before January 1, 2013, the period during which the child may use his or her entitlement expires the day the child turns 33; or

(2) In the case of a child who first becomes entitled to educational assistance under § 21.9520(d) on or after January 1, 2013, the period during which the child may use his or her entitlement never expires.

(g) *Authority.* (1) Paragraphs (a) through (c) of this section issued under the authority of 38 U.S.C. 3311(c), 3321;

(2) Paragraph (d) of this section issued under the authority of 38 U.S.C. 3319;

(3) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3319;
and

(4) Paragraph (f) of this section issued under the authority of 38 U.S.C. 3321(b).
(The Office of Management and Budget has approved the information collection provision in this section under control number 2900-0098.)

28. Revise § 21.9550 to read as follows:

§ 21.9550 Entitlement.

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

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

(2) An individual who has not used any entitlement under 38 U.S.C. chapter 30 or has not revoked any months of chapter 30 entitlement by transferring to a dependent

and who makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30 will be entitled to 36 months of educational assistance under chapter 33.

(c) Except as provided in §§ 21.9560(d), 21.9561(g), 21.9570(m), 21.9571(m), 21.9635(o), and 21.9636(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33.

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

29. Amend § 21.9560 by revising the section heading and adding introductory text to read as follows:

§ 21.9560 Entitlement charges—for provisions effective before August 1, 2011.

For training that occurs before August 1, 2011—

* * * * *

30. Add § 21.9561 to read as follows:

§ 21.9561 Entitlement charges—for provisions effective after July 31, 2011.

For training that begins after July 31, 2011—

(a) *Training pursued at an IHL.* The entitlement charge for an individual pursuing training at an IHL will be one of the following:

(1) During any period for which VA pays net costs or a Yellow Ribbon Program payment to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period;

(2) During any period for which VA does not pay net costs or a Yellow Ribbon Program payment to the institution of higher learning on the individual's behalf but pays a monthly housing allowance or an increase ("kicker") to the individual, the individual will

be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period for each day the individual received a monthly housing allowance or an increase ("kicker"); and

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

(b) *Training pursued at a non-college degree institution.* The entitlement charge for an individual pursuing a certificate or other non-college degree at a non-college degree institution will be one of the following:

(1) During any period for which VA pays tuition and fees to the non-college degree institution on the individual's behalf, the individual will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by the amount equal to $1/12^{\text{th}}$ of the amount applicable in the academic year in which payment is made under § 21.9641(b)(3)(ii) or (iii).

(2) During any period for which VA does not pay net costs to the non-college degree institution on the individual's behalf but pays a monthly housing allowance or an increase ("kicker") to the individual, the individual will be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period for each day the individual received a monthly housing allowance or an increase ("kicker").

(3) During any period for which VA does not pay net costs to the non-college degree institution on the individual's behalf or a monthly housing allowance or an increase ("kicker") to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement

charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

(c) *Apprenticeship or other on-the-job training.* For each month an individual is paid educational assistance while pursuing an approved apprenticeship or other on-the-job training program, VA will make a charge against entitlement of—

(1) During the first 6-month period of the program, 1 month for each month of training pursued.

(2) During the second 6-month period of the program, .80 of a month for each month of training pursued.

(3) During the third 6-month period of the program, .60 of a month for each month of training pursued.

(4) During the fourth 6-month period of the program, .40 of a month for each month of training pursued.

(5) After the first 24 months of the program, .20 of a month for each month of training pursued.

(d) *Flight training.* An individual pursuing a non-college degree program consisting of flight training will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(5)(ii) or (iii).

(e) *Correspondence training.* An individual pursuing a program of education by correspondence will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(6)(ii) or (iii).

(f) *Licensing or certification tests and national tests.* When an individual receives educational assistance for taking an approved licensing or certification test, national test for admission, or national test for credit, VA will make a charge against entitlement for each payment made to him or her. The charge will be determined by—

(1) Dividing the total amount of the payment by—

(i) For the academic year beginning August 1, 2011, \$1460; or

(ii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h) (but for a licensing or certification test the amount will not be greater than \$2,000); and

(2)(i) For tests taken prior to August 1, 2018, rounding the result of paragraph (f)(1) of this section to the nearest whole month. The charge must be at least one month.

(ii) For test taken on or after August 1, 2018, multiplying the result of paragraph (f)(1) of this section by 30, rounding to the nearest whole day. The charge must be at least one day.

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

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

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

(3) For receipt of a work-study allowance as provided under § 21.4145.

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

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

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

(B) While on active duty service, ordered to a new duty location or assignment or to perform an increased amount of work; and

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

(h) *Interruption to conserve entitlement.* An individual 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 individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment for the entire certified period of enrollment; or

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

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

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed

period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

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

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

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

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

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

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

(j) *Authority.* (1) Paragraphs (a) through (f) of this section issued under the authority of 38 U.S.C. 3315, 3315A;

(2) Paragraph (g)(1) of this section issued under the authority of 38 U.S.C. 3314;

(3) Paragraph (g)(2) of this section issued under the authority of 38 U.S.C. 3318;

(4) Paragraph (g)(3) of this section issued under the authority of 38 U.S.C. 3485;

(5) Paragraph (g)(4) of this section issued under the authority of 38 U.S.C.

3312(c);

(6) Paragraph (h) of this section issued under the authority of 38 U.S.C. 3323(c);

and

(7) Paragraph (i) of this section issued under the authority of 38 U.S.C. 3034(a),
38 U.S.C. 3323(a), 3685.

31. Amend § 21.9570 by:

a. Revising the section heading;

b. In the introductory text, removing “An individual” and adding in its place “For training that occurs before August 1, 2011, an individual”;

c. Adding a parenthetical with the OMB control number for the approval of the information collection at the end of the section.

The revision and addition read as follows:

§ 21.9570 Transfer of entitlement—for provisions effective before August 1, 2011.

* * * * *

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

32. Add § 21.9571 to read as follows:

§ 21.9571 Transfer of Entitlement—for provisions effective after July 31, 2011.

For training that occurs after July 31, 2011, an individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own service as a member of the Uniformed Services, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

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

(1) *Definitions.* Section 21.9506—Definitions—for provisions effective after July 31, 2011.

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

(3) *Eligibility.* (i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) of this section only; and

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

(4) *Entitlement.* (i) Section 21.9550—Entitlement;

(ii) Section 21.9561—Entitlement charges – for provisions effective after July 31, 2011.

(5) *Counseling.* (i) Section 21.9580—Counseling;

(ii) Section 21.9585—Travel expenses.

(6) *Approved programs of education and courses.* (i) Section 21.9591—Approved programs of education and courses—for provisions effective after July 31, 2011;

(ii) Section 21.9601—Overcharges—for provisions effective after July 31, 2011.

(7) *Payments—Educational assistance.* (i) Section 21.9620—Educational assistance;

(ii) Section 21.9626—Beginning dates—for provisions effective after July 31, 2011, except for paragraphs (e), (g), (h), (k), or (l) of this section;

- (iii) Section 21.9630—Suspension or discontinuance of payments;
 - (iv) Section 21.9636—Discontinuance dates—for provisions effective after July 31, 2011, except for paragraphs (o) and (v) of this section;
 - (v) Section 21.9660—Rural relocation benefit;
 - (vi) Section 21.9667—Reimbursement for licensing or certification tests – for provisions effective after July 31, 2011;
 - (vii) Section 21.9668—Reimbursement for national tests;
 - (viii) Section 21.9670—Work-study allowance;
 - (ix) Section 21.9676—Conditions that result in reduced rates or no payment—for provisions effective after July 31, 2011;
 - (x) Section 21.9681—Certifications and release of payments—for provisions effective after July 31, 2011;
 - (xi) Section 21.9685—Tutorial assistance;
 - (xii) Section 21.9691—Nonduplication of educational assistance—for provisions effective after July 31, 2011;
 - (xiii) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and
 - (xiv) Section 21.9700—Yellow Ribbon Program.
- (8) *Pursuit of courses.* (i) Section 21.9710—Pursuit;
- (ii) Section 21.9715—Advance payment certification;
 - (iii) Section 21.9721—Certification of enrollment—for provisions effective after July 31, 2011;
 - (iv) Section 21.9725—Progress and conduct;
 - (v) Section 21.9735—Other required reports;
 - (vi) Section 21.9740—False, late, or missing reports; and

(vii) Section 21.9745—Reporting fee.

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

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

(b) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to:

(i) The individual's spouse;

(ii) One or more of the individual's children; or

(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.

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

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

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

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

(d) *Designating dependents; designating the amount to transfer; and period of transfer.* (1) An individual transferring entitlement under this section must:

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

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

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent. The designated beginning date may not be earlier than the date the individual requests approval from his or her service department.

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

(e) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of:

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

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

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

(f) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement (transferred entitlement is "used" in the amount of the entire enrollment period on the first day of the enrollment period; therefore, a transferor cannot revoke the entitlement used for an enrollment period after the enrollment period has begun) at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the department concerned that

initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the Secretary of the department concerned as sufficient written notification to VA.

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

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

(g) *Modifying a transfer of entitlement.* (1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time, except that a modification of a beginning date under paragraph (d)(1)(iii) of this section must be effective on or after the date the modification is submitted. Any modification made will apply only with respect to unused transferred entitlement (transferred entitlement is “used” in the amount of the entire enrollment period on the first day of the enrollment period; therefore, a transferor cannot revoke the entitlement used for an enrollment period after the enrollment period has begun). The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the department as sufficient written notification to VA.

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

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

(h) *Prohibition on treatment of transferred entitlement as marital property.*

Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

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

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

(k) *Rate of payment of educational assistance*. VA will apply the rules in § 21.9641 (and §§ 21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in § 21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

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

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

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under § 21.9641 if the dependent's months of entitlement will exhaust during the certified enrollment period, by—

(i) Determining the amount of payment for the net cost of tuition and fees the dependent would otherwise be eligible to receive for the entire enrollment period, then dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of payment for the net cost of tuition and fees to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under § 21.9571; and

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

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.* (1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the uniformed services in order to participate in the transferability program, unless—

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

(A) His or her death;

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

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

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

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

(A) A disability; or

(B) A reduction in force.

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

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service are not subject to the 48-month limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48-month limit on training will apply.

(n) *Authority.* (1) Paragraph (a)(1) through (a)(7)(xiii) of this section issued under the authority of 38 U.S.C. 3319;

(2) Paragraph (a)(7)(xiv) of this section issued under the authority of 38 U.S.C. 3317;

(3) Paragraph (a)(8) through (10) of this section issued under the authority of 38 U.S.C. 3319;

(4) Paragraphs (b) through (k) of this section issued under the authority of 38 U.S.C. 3319;

(5) Paragraph (l) of this section issued under the authority of 38 U.S.C. 3034(a), 3311(c)(4), 3319); and

(6) Paragraph (m) of this section issued under the authority of 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695).

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

33. Amend § 21.9590 by revising the section heading and adding introductory text to read as follows:

§ 21.9590 Approved programs of education and courses—for provisions effective before August 1, 2011.

For training that occurs prior to August 1, 2011—

* * * * *

34. Add § 21.9591 to read as follows:

§ 21.9591 Approved programs of education and courses—for provisions effective after July 31, 2011.

For training that begins on or after August 1, 2011—

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

- (1) Be pursuing an approved *program* of education;
- (2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in § 21.7020(b);
- (3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;
- (4) Have taken an approved licensing or certification test, national test for admission, or national test for credit for which he or she is requesting reimbursement; or
- (5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of tuition and fees not covered by military tuition assistance.

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

(1) The program meets the definition of a program of education in § 21.9506;

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

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

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

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

(d) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3313, 3315, 3315A, 3323(a), 3689; and

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3471, 3689.

35. Amend § 21.9600 by revising the section heading and adding introductory text to read as follows:

§ 21.9600 Overcharges—for provisions effective before August 1, 2011.

The provisions of this section apply to enrollment periods that begin before August 1, 2011.

* * * * *

36. Add § 21.9601 to read as follows:

§ 21.9601 Overcharges—for provisions effective after July 31, 2011.

The provisions of this section apply to enrollment periods that begin after July 31, 2011.

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

(b) *Overcharges by organizations or entities offering licensing or certification tests, national test for admission, or national tests for credit may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test, national test for admission, or national test for credit, when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(c) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3690(a); and

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a).

37. Revise § 21.9620 to read as follows:

§ 21.9620 Educational assistance.

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's

educational institution will receive payment amounts in accordance with the formulas listed in §§ 21.9640 and 21.9641.

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

38. Amend § 21.9625 by:

- a. Revising the section heading;
- b. In the introductory text, removing “VA will determine” and adding in its place “For a claim submitted during the period beginning August 1, 2009, and ending July 31, 2011, VA will determine”; and.
- c. Adding paragraph (m).

The revision and addition read as follows:

§ 21.9625 Beginning dates—for provisions effective before August 1, 2011.

* * * * *

(m) *Fugitive felons.* An award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon, as shown by evidence, which may include evidence that a warrant for an offense involving flight is resolved by—

- (1) Arrest;
- (2) Surrendering to the issuing authority;
- (3) Dismissal; or
- (4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(5) This paragraph (m) issued under the authority of 38 U.S.C. 3323(c), 5313B.

39. Add § 21.9626 to read as follows:

§ 21.9626 Beginning dates—for provisions effective after July 31, 2011.

For a claim submitted after July 31, 2011, VA will determine the beginning date of an award or increased award of educational assistance under this section. In no case

will the beginning date be earlier than August 1, 2009, or for training pursued at non-degree institutions before October 1, 2011. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) When the claim for reimbursement for the cost of the test is submitted within 1 year of the date the test is taken.

(3) *For a national test for admission or a national test for credit.* VA will award educational assistance for the cost of a national test for admission or a national test for credit only when the eligible individual takes such test after July 31, 2011—

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

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

(iii) When claim for reimbursement for the cost of the test is submitted within 1 year of the date the test is taken.

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

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

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

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

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

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

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

(c) *Certification for program of education offered by a non-college degree educational institution.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, when an eligible individual enrolls at a non-college degree educational institution, the beginning date of the award of educational assistance will be the later of—

(i) The date determined in paragraph (b) of this section; or

(ii) October 1, 2011.

(2) When an eligible individual enrolls at a non-degree educational institution for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

(i) The date the first lesson was sent;

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

(iii) October 1, 2011.

(3) When an individual enrolls in a program of apprenticeship or other on-the-job training, the beginning date of the award of educational assistance will be the later of—

(i) The first date of employment in the training position; or

(ii) October 1, 2011.

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

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

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

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

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

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

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

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

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

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

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

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9571, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

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

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

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

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

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9571, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

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

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

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

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

or

(5) Either—

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

(ii) The date the child attains age 18.

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified period of enrollment, VA will begin paying the monthly housing allowance:

(1) If released or discharged before August 1, 2018, beginning the 1st day of the month following the date the individual was discharged; or

(2) If released or discharged on or after August 1, 2018, beginning the day following the date the individual was discharged.

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

(i) August 1, 2009;

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

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

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

(2) If an individual is in receipt of benefits under 38 U.S.C. chapter 31 during a term, quarter, or semester, and requests to begin receiving benefits under 38 U.S.C. chapter 33 during that term, quarter, or semester, VA will begin paying—

(i) The monthly housing allowance under 38 U.S.C. chapter 33 effective the 1st of the month following the date of the request.

(ii) Net cost of tuition and fees, and the books and supplies stipend, the first day of the following term, quarter, or semester.

(m) *Fugitive felons.* An award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon, as shown by evidence, which may include evidence that a warrant for an offense involving flight is resolved by—

(1) Arrest;

(2) Surrendering to the issuing authority;

(3) Dismissal; or

(4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(n) *National Guard members' retroactive beginning dates for claims submitted through September 30, 2012.* For any claim received up until September 30, 2012, for retroactive benefits based on service in the National Guard, the beginning date of the award will be the later of either:

(1) the date the National Guard member satisfied the eligibility requirements in § 21.9520 of this title; or

(2) August 1, 2009.

(o) *Child eligible for the Marine Gunnery Sergeant John David Fry Scholarship.*

If a child is eligible for entitlement under § 21.9520(d), the beginning date of the award of educational assistance will be no earlier than the earlier of the following dates—

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

(2) The date the child attains age 18.

(p) *Authority.* (1) The introductory text of this section issued under the authority of 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113;

(2) Paragraphs (a) through (a)(1)(ii)(C) of this section issued under the authority of 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103;

(3) Paragraphs (a)(2) and (a)(3) of this section issued under the authority of 38 U.S.C. 3034(a), 3315A, 3323(a), 3452(b);

(4) Paragraphs (b) and (c) of this section issued under the authority of 38 U.S.C. 3313, 3316, 3323);

(5) Paragraph (d) of this section issued under the authority of 38 U.S.C. 3323(c), 5113);

(6) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3323(c);

(7) Paragraph (f) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3482(g);

(8) Paragraph (g) of this section issued under the authority of 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a);

(9) Paragraph (h) of this section issued under the authority of 38 U.S.C. 3311, 3313;

(10) Paragraphs (i) and (j) of this section issued under the authority of 38 U.S.C. 3319;

(11) Paragraph (m) of this section issued under the authority of 38 U.S.C. 3323(c), 5313B; and

(12) Paragraph (o) of this section issued under the authority of Pub. L. 111-32, 123 Stat. 1859.

(The Office of Management and Budget has approved the information collection provision in paragraph (a) of this section under control number 2900-0706 and the information collection provisions in paragraphs (b) and (c) of this section under control numbers 2900-0154, 2900-0178, 2900-0162, 2900-0353, and 2900-0576.)

40. Amend § 21.9635 by:

- a. Revising the section heading;
- b. In the introductory text, removing “The effective date” and adding in its place “During the period beginning August 1, 2009, and ending July 31, 2011, the effective date”;
- c. Revising paragraph (c) and removing the parenthetical authority citation at the end of the paragraph;
- d. Revising paragraph (d) and removing the parenthetical authority citation at the end of the paragraph;
- e. Revising paragraph (w) and removing the parenthetical authority citation at the end of the paragraph;
- f. Removing the parenthetical authority citation at the end of paragraph (bb);
- g. Redesignating paragraph (bb) as paragraph (cc);
- h. Adding new paragraph (bb); and
- g. Revising newly-redesignated paragraph (cc).

The revisions and addition read as follows:

§ 21.9635 Discontinuance dates—for provisions effective before August 1, 2011.

* * * * *

(c) *Withdrawal or unsatisfactory completion of all courses.* If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades after the first day of the term, VA will terminate educational assistance as follows—

(1) If the eligible individual withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance effective the first day of the term from which the eligible individual withdrew.

(2) If the eligible individual withdraws from all courses with mitigating circumstances; withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

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

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

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

(4) This paragraph (c) issued under the authority of 38 U.S.C. 3323, 3680(a).

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

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

(i) The withdrawal from one or more courses occurs during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or

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

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

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

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

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

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

(B) The withdrawal occurs without mitigating circumstances.

(3) This paragraph (d) issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(a).

* * * * *

(w) *Receipt of educational assistance allowance under another educational assistance program.* (1) An individual in receipt of educational assistance under chapter 33 who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 38 U.S.C. chapter 30, 31, 32, or 35; the Hostage Relief Act of

1980; or, effective August 1, 2011, 10 U.S.C. 510, may choose to receive educational assistance under another program.

(2) This paragraph (w) issued under the authority of [38 U.S.C. 3322\(a\)](#).

* * * * *

(bb) *Fugitive felons.* (1) VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon. The date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

(2) This paragraph (bb) issued under the authority of 38 U.S.C. 3323(c), 5313B.

(cc) *Other reasons for discontinuance.* (1) If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (bb) of this section, VA will determine the ending date of educational assistance based on the facts found.

(2) This paragraph (cc) issued under the authority of 38 U.S.C. 3323(c), 5112(a), 5113.

41. Add § 21.9636 to read as follows:

§ 21.9636 Discontinuance dates—for provisions effective after July 31, 2011.

The effective date of a reduction or discontinuance of educational assistance that occurs after July 31, 2011, will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment for the books and supplies stipend under § 21.9641(d) and dies before the end

of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the educational institution receives a lump sum payment for tuition and fees under § 21.9641(b) on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The educational institution will be required to return to VA any portion of the tuition and fees paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the educational institution.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9681(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, e.g., monthly housing allowance under § 21.9641(c), if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the date of death.

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

to exist in accordance with this paragraph (b), VA will terminate or reduce educational assistance effective—

(1) For withdrawals occurring before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] the end of the month during which the withdrawal occurred;

(2) For withdrawals occurring on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the last date of attendance.

(c) *Withdrawal or unsatisfactory completion of all courses.* If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades after the first day of the term, VA will terminate educational assistance as follows—

(1) If the eligible individual withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance effective the first day of the term from which the eligible individual withdrew.

(2) If the eligible individual withdraws from all courses with mitigating circumstances; withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

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

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

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

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a

program of education but continues training in one or more courses, VA will apply the provisions of this paragraph (d).

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective either the end of the month during which the reduction occurred (in the case of reductions occurring before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]), or the last date of attendance (in the case of for reductions occurring on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]), when—

(i) The withdrawal from one or more courses occurs during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or

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

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

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

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

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

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

(B) The withdrawal occurs without mitigating circumstances.

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

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

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

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

(i) The last date permitted by the educational institution to complete the course;
(ii) The date the educational institution permanently assigns a nonpunitive grade; or (iii)
One year from the date the incomplete grade was assigned.

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

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under § 21.9630 or § 21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) For a program of education at an IHL or a non-college degree institution, the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval is effective; or

(2) For an apprenticeship or other on-the-job training program, the end of the program or the end of the academic year, whichever is earlier, in which the disapproval is effective or in which VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) For a program of education at an IHL or a non-college degree institution, the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval is effective; or

(2) For an apprenticeship or other on-the-job training program, the end of the program or the end of the academic year in which the disapproval occurred, whichever

is earlier, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the educational institution discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress, conduct, or attendance.

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of §§ 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an educational institution, or an officer or employee of a State approving agency and an educational institution, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(m) *Incarceration in prison or other penal institution due to conviction of a felony.*

(1) The provisions of this paragraph (m)(1) apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9676(c) (based on incarceration in

a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The discontinuance of any monthly payments will be the end of the month during which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility or the end date of the enrollment period as certified by the educational institution, whichever is earlier.

(n) *Change in active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10 of the U.S. Code, or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

- (i) For tuition and fees, the last date of the certified enrollment period;
- (ii) For monthly housing allowance, see paragraph (n)(2) of this section; and
- (iii) For the “book stipend,” the last date of the period covered by the book stipend payment.

(2) If an individual enters active duty during a certified period of enrollment, regardless of whether there is a reduction or termination of training, the discontinuance date for the monthly housing allowance will be—

(A) For entry occurring before August 1, 2018, the end of the month during which the individual entered active; and

(B) For entry occurring on or after August 1, 2018, the date of entry onto active duty.

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an educational institution that regularly operates on the quarter or semester basis exhausts his or her

entitlement under 38 U.S.C. chapter 33, the discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) The ending date for an individual enrolled in a course that is not scheduled on a quarter or semester basis, who exhausts his or her entitlement under 38 U.S.C. chapter 33 after he or she has completed more than half of the course, will be the earlier of the following—

- (i) The last day of the course; or
- (ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in a course that is not scheduled on a quarter or semester basis exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(p) *End of period of eligibility.* If an eligible individual is enrolled in an educational institution on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an educational institution in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible

individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

- (1) The effective date of the award; or
- (2) The day before the date of the fraudulent act.

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

- (1) The effective date of the award; or
- (2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the

provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(v) *Reduction following the loss of increase ("kicker") for Selected Reserve service.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase ("kicker").

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under chapter 33 who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 10 U.S.C. 510; 38 U.S.C. chapter 30, 31, 32, or 35; or the Hostage Relief Act of 1980 may choose to receive educational assistance under another program.

(1) VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 10 U.S.C. 510; 38 U.S.C. chapter 30, 32, or 35; or the Hostage Relief Act of 1980.

(2) For individuals in receipt of benefits under this chapter during a term, quarter, or semester who are requesting to receive benefits under 38 U.S.C. chapter 31, VA will terminate educational assistance under this chapter effective the first day of the subsequent enrollment period.

(3) An eligible individual may only request a change in receipt of benefits from 38 U.S.C chapter 33 to 38 U.S.C. chapter 31 once per term, quarter, or semester.

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its

accreditation), the date of reduction or discontinuance will be the end of the course or period of enrollment, as certified by the educational institution in which the withdrawal of accreditation occurred.

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9571.

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9571(l).

(bb) *Fugitive felons.* VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon. The date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

(cc) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs

(a) through (bb) of this section, VA will determine the ending date of educational assistance based on the facts found.

(dd) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e);

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(a)(1);

(3) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3323, 3680(a);

(4) Paragraphs (d) and (e) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(a);

(5) Paragraph (f) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680;

(6) Paragraph (g) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3690;

(7) Paragraph (h) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690;

(8) Paragraph (i) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(b)(1), 3690;

(9) Paragraph (j) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3474;

(10) Paragraph (k) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3690;

(11) Paragraph (l) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3683;

(12) Paragraph (m) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3482(g);

(13) Paragraph (n) of this section issued under the authority of 38 U.S.C.

3313(j);

(14) Paragraph (o) of this section issued under the authority of 38 U.S.C.

3031(f), 3312, 3321;

(15) Paragraph (p) of this section issued under the authority of 38 U.S.C. 3321;

(16) Paragraph (q) of this section issued under the authority of 38 U.S.C.

3034(a), 3323(a), 3680;

(17) Paragraph (r) of this section issued under the authority of 38 U.S.C.

3323(c), 5112(b), 5113;

(18) Paragraph (s) of this section issued under the authority of 38 U.S.C.

3323(c), 5112, 6103;

(19) Paragraph (t) of this section issued under the authority of 38 U.S.C.

3323(c), 6104, 6105;

(20) Paragraph (u) of this section issued under the authority of 38 U.S.C.

3323(c), 5112, 5113;

(21) Paragraph (v) of this section issued under the authority of 10 U.S.C. 16131;

38 U.S.C. 3316(a);

(22) Paragraph (w) of this section issued under the authority of 38 U.S.C.

3322(a);

(23) Paragraph (x) of this section issued under the authority of 38 U.S.C.

3034(a), 3323(a), 3676, 3680A(a);

(24) Paragraphs (y) through (aa) of this section issued under the authority of 38

U.S.C. 3319;

(25) Paragraph (bb) of this section issued under the authority of 38 U.S.C.

3323(c), 5313B; and

(26) Paragraph (cc) of this section issued under the authority of 38 U.S.C. 3323(c), 5112(a), 5113.

(The Office of Management and Budget has approved the information collection provision in § 21.9636, paragraph (w) under control number 2900-0154.)

42. Amend § 21.9640 by:

- a. Revising the section heading and introductory text;
- b. Revising paragraph (a) and removing the parenthetical authority citation at the end of the paragraph;
- c. Revising paragraph (d) and removing the parenthetical authority citation at the end of the paragraph.
- d. Removing the parenthetical citation at the end of paragraph (e); and
- e. Adding paragraph (f).

The revision and addition read as follows:

§ 21.9640 Rates of payment of educational assistance – for provisions effective before August 1, 2011.

For training that occurs before August 1, 2011, unless otherwise noted, VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* (1) Except as provided in paragraphs (a)(2) and (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with table 1 to paragraph (a).

Table 1 to paragraph (a)

Aggregate length of creditable active duty service after 09/10/01	Number of Days	Percentage of maximum amounts payable
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At least 36 months ¹	If aggregate service <i>(including</i> entry training) is 1095 days or more days	100
At least 30 continuous days (Must be discharged due to service-connected disability)		100
At least 30 months, but less than 36 months ¹	If aggregate service <i>(including</i> entry training) is from 910 to 1094 days	90
At least 24 months, but less than 30 months ^{1, 3}	If aggregate service <i>(including</i> entry training) is from 730 to 909 days	80 ³
At least 18 months, but less than 24 months ^{2, 3}	If aggregate service <i>(excluding</i> entry training) is from 545 to 729 days	70 ³
At least 12 months, but less than 18 months ²	If aggregate service <i>(excluding</i> entry training) is from 365 to 544 days	60
At least 6 months, but less than 12 months ²	If aggregate service <i>(excluding</i> entry training) is from 180 to 364 days	50
At least 90 days, but less than 6 months ²	If aggregate service <i>(excluding</i> entry training) is from 90 to 179 days	40

¹ Includes entry level and skill training.

² Excludes entry level and skill training.

³ The 70/80% rule: If the aggregate service **including training** is at least 24 months but less than 30 months (730-909 days) BUT the aggregate service **excluding training** is at least 18 but less than 24 months (545 to 729 days), the individual will be deemed eligible at the 70% benefit level. This limitation is explicitly mandated by 38 U.S.C. 3311(e).

(2) *Amounts payable for individuals eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* VA will apply 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for educational assistance under § 21.9520(d).

* * * * *

(d) *Amounts payable for individuals on active duty—*(1) *Amounts payable for programs of education beginning on or after August 1, 2009, and on or before March 4, 2011.* Individuals on active duty who are pursuing a program of education during a quarter, semester, or term that starts during the period beginning August 1, 2009, and ending March 4, 2011, may receive a lump sum amount for established charges paid

directly to the institution of higher learning for the entire term, quarter, or semester, as applicable. The amount payable will be the lowest of—

(i) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;

(ii) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment;

(iii) The lesser amount of paragraph (d)(i) or (ii) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§ 21.4020 and 21.9635(o);

(2) *Amounts payable for a program of education, on more than half-time basis, leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* (i) VA may, on behalf of an individual on active duty who is pursuing a program of education leading to a degree on more than half-time basis at a public IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the net cost for in-State tuition and fees.

(ii) VA may, on behalf of an individual on active duty who is pursuing a program of education leading to a degree on more than half-time basis at a non-public or foreign IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the lesser of the applicable percentage (as listed in paragraph (a) of this section) of the net cost for tuition and fees assessed by the institution or—

(A) For the academic year beginning August 1, 2011, \$17,500; or

(B) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(3) *Amounts payable for a program of education, on a half-time basis or less, leading to a degree and beginning after March 4, 2011, but before August 1, 2011.*

Amounts payable for the individual will be calculated in accordance with paragraph (d)(1) of this section.

(4) *Amounts payable for a program of education not leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* Amounts payable for the individual will be calculated in accordance with paragraph (d)(1) of this section.

(f) *Authority.* (1) Paragraph (a)(1) of this section issued under the authority of 38 U.S.C. 3311, 3313;

(2) Paragraph (d)(2) of this section issued under the authority of 38 U.S.C. 501(a), 3313(e); and

(3) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3313, 3323(c).

43. Add § 21.9641 to read as follows:

§ 21.9641 Rates of payment of educational assistance—for provisions effective after July 31, 2011.

For training that begins after July 31, 2011, unless otherwise noted, VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* (1) Except as provided in paragraph (a)(2) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with table 1 to paragraph (a).

Table 1 to paragraph (a)

Aggregate length of creditable active duty service after 09/10/01	Number of Days	Percentage of maximum amounts payable
At least 36 months ¹	If aggregate service (<i>including</i> entry training) is 1095 days or more days	100
At least 30 continuous days (Must be discharged due to service-connected disability)		100
At least 30 months, but less than 36 months ¹	If aggregate service (<i>including</i> entry training) is from 910 to 1094 days	90
At least 24 months, but less than 30 months ^{1, 3}	If aggregate service (<i>including</i> entry training) is from 730 to 909 days	80 ³
At least 18 months, but less than 24 months ^{2, 3}	If aggregate service (<i>excluding</i> entry training) is from 545 to 729 days	70 ³
At least 12 months, but less than 18 months ²	If aggregate service (<i>excluding</i> entry training) is from 365 to 544 days	60
At least 6 months, but less than 12 months ²	If aggregate service (<i>excluding</i> entry training) is from 180 to 364 days	50
At least 90 days, but less than 6 months ²	If aggregate service (<i>excluding</i> entry training) is from 90 to 179 days	40

¹ Includes entry level and skill training.

² Excludes entry level and skill training.

³ The 70/80% rule: If the aggregate service **including training** is at least 24 months but less than 30 months (730-909 days) BUT the aggregate service **excluding training** is at least 18 but less than 24 months (545 to 729 days), the individual will be deemed eligible at the 70% benefit level. This limitation is explicitly mandated by 38 U.S.C. 3311(e).

(2) *Amounts payable for individuals eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* VA will apply 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for educational assistance under § 21.9520(d).

(b) *Tuition and fees payable.* (1) *Program of education leading to a degree at public IHLs.* After July 31, 2011, VA may, on behalf of an individual, who may be either on active duty or not on active duty and pursuing a program of education leading to a

degree at a public IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the net cost for in-State tuition and fees.

(2) Program of education leading to a degree at non-public IHLs or foreign IHLs.

(i) After July 31, 2011, VA may, on behalf of an individual, who may be either on active duty or not on active duty and pursuing a program of education leading to a degree at a non-public or foreign IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of —

(A) The actual net cost for tuition and fees assessed by the institution; or

(B) For the academic year beginning August 1, 2011, \$17,500; or

(C) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(3) Program of education in pursuit of a certificate or other non-college degree at institutions other than IHLs. On or after October 1, 2011, VA may, on behalf of an individual pursuing a program of education in pursuit of a certificate or other non-college degree at an institution other than an IHL, issue a lump sum payment for the term, quarter, or semester, directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The actual net cost for in-State tuition and fees assessed by the institution; or

(ii) For the academic year beginning August 1, 2011, \$17,500; or

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(4) Full-time program of apprenticeship or other on-the-job training at institutions other than IHLs. No tuition and fee amount is payable for this type of training.

(5) *Program of education for flight training (regardless of the institution providing such program of education).* After September 30, 2011, upon receipt of certification for training completed by the individual and serviced by the educational institution, on behalf of an individual pursuing a program of education consisting of flight training, VA may issue a lump sum payment directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

- (i) The actual net cost for in-State tuition and fees; or
- (ii) For the academic year beginning August 1, 2011, \$10,000; or
- (iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(6) *Program of education pursued exclusively by correspondence at an IHL or institution other than an IHL.* After September 30, 2011, on behalf of an individual pursuing program of education by correspondence at an IHL or institution other than an IHL, VA may issue a quarterly payment on a pro rata basis for the lessons completed by the individual and serviced by the educational institution during such quarter, directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

- (i) The net cost for tuition and fees; or
- (ii) For the academic year beginning August 1, 2011, \$8,500; or
- (iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(7) *No reduction in tuition and fee annual cap.* VA will not make a reduction in the tuition and fee maximum amount payable during the academic year equal to the amount of tuition and fees charged for a course or courses from which the individual withdrew when the individual—

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

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

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

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

(c) *Monthly housing allowance payable.* An individual who is pursuing a program of education leading to a degree at a domestic or foreign IHL, a program of education at a non-college degree institution, or an on-the-job or apprenticeship training can receive a monthly stipend (referred to as the “monthly housing allowance”), subject to the applicable percentage (as listed in paragraph (a) of this section), as follows—

(1) *Residence training at domestic IHLs on more than half-time basis.* An individual, other than one on active duty, who is pursuing a program of education with at least one in-residence course and who has a rate of pursuit of greater than 50 percent at an IHL located in a State, may receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to—

(i) During the period beginning August 1, 2011, and ending July 31, 2012, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E-5 using the ZIP code area in which all, or a majority, of the IHL in which the individual is enrolled is located multiplied by the lesser of—

(A) 1.0; or

(B) The individual's rate of pursuit, rounded to the nearest tenth.

(ii) On or after August 1, 2012, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E-5 using the ZIP code or location code, whichever is applicable, in which all, or a majority, of the institution in which the individual is enrolled is located multiplied by the lesser of—

(A) 1.0; or

(B) The individual's rate of pursuit, rounded to the nearest tenth.

(2) *Residence training at foreign IHLs on more than half-time basis.* On or after August 1, 2011, an individual, other than one on active duty, who is pursuing a program of education leading to a degree at a foreign IHL with at least one in-residence course and who has a rate of pursuit of greater than 50 percent, may receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to the national average of the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E-5, multiplied by the lesser of—

(i) 1.0; or

(ii) The individual's rate of pursuit, rounded to the nearest tenth.

(3) *Residence training at non-college degree institutions on more than half-time basis.* After October 1, 2011, an individual, other than one on active duty, who is pursuing a program of education at a non-college degree institution (other than those listed in paragraph (c)(6) of this section) with at least one in-residence course and who has a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or a prorated amount for a partial month) of training pursued. The amount will be calculated in accordance with paragraph (c)(1) of this section.

(4) *Training pursued solely via distance learning on more than half-time basis.* After September 30, 2011, an individual, other than one on active duty, who is pursuing

a program of education solely via distance learning at a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to 50 percent of the amount payable under paragraph (c)(2) of this section.

(5) *On-the-job and apprenticeship training on full-time basis.* After September 30, 2011, an individual, other than one on active duty, pursuing a full-time program of apprenticeship or other on-the-job training may receive a monthly housing allowance—

(i) During the first 6-month period of the program, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or a majority portion of the ZIP code area in which the employer is located.

(ii) During the second 6-month period of the program, 80 percent of the amount payable in paragraph (c)(5)(i) of this section.

(iii) During the third 6-month period of the program, 60 percent of the amount payable in paragraph (c)(5)(i) of this section.

(iv) During the fourth 6-month period of the program, 40 percent of the amount payable in paragraph (c)(5)(i) of this section.

(v) During any month after the first 24 months of training, 20 percent of the amount payable in paragraph (c)(5)(i) of this section.

(vi) In any month in which an individual pursuing training fails to complete 120 hours of training, the amount of the monthly housing stipend payable will be the amount determined by multiplying the applicable amount as determined by paragraphs (c)(5)(i) through (v) of this section by the figure determined as follows—

(A) The number of hours worked during the month, rounded to the nearest 8 hours; then

(B) Dividing the result by 120.

(C) Rounding the quotient to the nearest hundred.

(6) *Program of education for vocational flight training at institutions other than IHLs; Program of education pursued exclusively by correspondence; Program of education pursued on a half-time basis or less; Program of education pursued while on active duty.* No monthly housing allowance is payable for these types of training.

(7) *Rate payable during the academic year.* The monthly housing allowance payable during each academic year beginning on August 1 of a calendar year under paragraphs (c)(1) through (5) of this section will be determined using the basic allowance for housing rates payable under 37 U.S.C. 403 in effect as of January 1 of each such calendar year.

(8) *Rate protection.* The monthly housing allowance payable under paragraphs (c)(1) through (5) of this section will not decrease as long as the individual—

(i) Has not had a break in training that exceeds 6 months. An individual called to active duty (during an enrollment period or 6-month grace period) will not see a decrease as long as the individual resumes training at the educational institution within 6 months from the release from active duty; and

(ii) Previously received the monthly housing allowance based on the same type of training (residence, distance, foreign) at the same educational institution. A change in facility (transferring to a different school or a different branch of the same school) constitutes a change in educational institution.

(9) *Concurrent eligibility for more than one monthly housing stipend rate.* In the event that an individual is concurrently eligible for more than one monthly housing stipend rate, the housing stipend will be paid at the highest rate for which the individual qualifies.

(d) *Books, supplies, and equipment stipend payable.* An individual who is pursuing a program of education at an IHL, non-college degree institution, or an

individual pursuing on-the-job or apprenticeship training can receive an amount for books, supplies, equipment, and other educational costs (referred to as the “book stipend”), subject to the applicable percentage (as listed in paragraph (a) of this section), as follows—

(1) *Book stipend for training pursued at an IHL.* (i) The maximum amount payable to an individual pursuing training at an IHL is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). The lump sum payment for each term, quarter, or semester is equal to \$41.67 (\$1,000 divided by 24 credit hours) multiplied by the number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(A) Before October 1, 2011, an eligible individual, other than one on active duty, may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent credit hours if enrollment is reported in clock hours) in a single academic year.

(B) On or after October 1, 2011, an eligible individual, including an individual on active duty, may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent credit hours if enrollment is reported in clock hours) in a single academic year.

(ii) In no event may the amount paid during an academic year exceed \$1,000.

(2) *Book stipend for training pursued at a non-college-degree institution and on-the-job or apprenticeship training.* After September 30, 2011, an individual pursuing a program of education at a non-college degree institution (other than those listed in paragraph (d)(3) of this section) or full-time on-the-job or apprenticeship training can

receive a lump sum payment equal to \$83 for each month (or a prorated amount for a partial month) of training pursued.

(3) *Program of education for vocational flight training at institutions other than IHLs and program of education pursued exclusively by correspondence.* No book stipend is payable for these types of training.

(e) *Publication of educational assistance rates.* VA will publish the maximum amount of tuition and fees payable each academic year in the “Notices” section of the *Federal Register* and on the GI Bill website at <https://www.GIBill.va.gov>.

(f)(1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3311(f);

(2) Paragraph (b)(1) of this section issued under the authority of 38 U.S.C. 3313(c)(1)(A)(i);

(3) Paragraph (b)(2) of this section issued under the authority of 38 U.S.C. 3313(c)(1)(A)(ii);

(4) Paragraph (b)(3) of this section issued under the authority of 38 U.S.C. 3313(g)(3)(A);

(5) Paragraph (b)(4) of this section issued under the authority of 38 U.S.C. 3313(g)(3)(B);

(6) Paragraph (b)(5) of this section issued under the authority of 38 U.S.C. 3313(g)(3)(C);

(7) Paragraph (b)(6) of this section issued under the authority of 38 U.S.C. 3313(g)(3)(D);

(8) Paragraph (b)(7) of this section issued under the authority of 38 U.S.C. 501(a), 3323(c);

(9) Paragraph (c)(1) of this section issued under the authority of 38 U.S.C. 3313(c)(1)(B)(i);

(10) Paragraph (c)(2) of this section issued under the authority of 38 U.S.C.

3313(c)(1)(B)(ii);

(11) Paragraph (c)(3) of this section issued under the authority of 38 U.S.C.

3313(g)(3)(A)(ii);

(12) Paragraph (c)(4) of this section issued under the authority of 38 U.S.C.

3313(c)(1)(B)(iii);

(13) Paragraph (c)(5) of this section issued under the authority of 38 U.S.C.

3313(g)(3)(B)(i);

(14) Paragraph (c)(6) of this section issued under the authority of 38 U.S.C.

3313(e), (f), (g)(3)(C), (g)(3)(D);

(15) Paragraph (c)(7) of this section issued under the authority of 38 U.S.C.

3313(i);

(16) Paragraphs (c)(8) and (c)(9) of this section issued under the authority of 38 U.S.C. 501(a), 3323(c);

(17) Paragraphs (d)(1) and (d)(2) of this section issued under the authority of 38 U.S.C. 3313(g)(3)(A), (B);

(18) Paragraph (d)(3) of this section issued under the authority of 38 U.S.C. 3313(c),(e),(f),(g)); and

(19) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3313, 3323(c).

(The Office of Management and Budget has approved the information collection provisions in paragraphs (a) through (b)(7) of this section under control numbers 2900-0154, 2900-0178, 2900-0162, 2900-0353, and 2900-0576.)

44. Amend § 21.9645 by revising paragraphs (a)(1)(iii), (b)(1)(ii), and (c) to read as follows:

§ 21.9645 Refund of basic contribution to chapter 30.

(a)(1) * * *

(iii) He or she is a member of the Armed Forces who is making contributions as provided in § 21.7042(g) towards educational assistance under 38 U.S.C. chapter 30.

* * * * *

(b) * * *

(1) * * *

(ii) 36 for individuals making contributions towards educational assistance under 38 U.S.C. chapter 30 in accordance with § 21.7042(g).

* * * * *

(c) *Timing of payment.* The amount payable under this section will only be issued to the individual who made the contribution when the individual is in receipt of the monthly housing allowance payable under § 21.9640(b) or § 21.9641(c) at the time his or her entitlement exhausts. No payment will be made if the individual who made the contributions is not in receipt of a monthly housing allowance when entitlement exhausts.

* * * * *

45. Amend § 21.9650 by:

- a. Revising paragraph (a)(2) and removing the parenthetical authority citation at the end of the paragraph;
- b. Revising paragraph (b)(2)(ii);
- c. Revising paragraph (b)(3) and removing the parenthetical authority citation at the end of the paragraph;
- d. Revising paragraph c)(2)(ii);
- e. Revision paragraph (c)(3) and removing the parenthetical authority citation at the end of the paragraph; and
- f. Adding paragraph (d).

The revisions read as follows:

§ 21.9650 Increase in educational assistance.

* * * *

(a) * * *

(2) The increase (“kicker”) amount payable under paragraph (a)(1) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance during the term, quarter, or semester—

(i) For the period beginning August 1, 2009, and ending July 31, 2011, under § 21.9640(b)(1)(ii) or (b)(2)(ii); or

(ii) For the period after July 31, 2011, under § 21.9641(c).

(b) * * *

(2) * * *

(ii)(A) For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, the full-time training amount under paragraph (b)(2)(i) of this section multiplied by the individual’s rate of pursuit.

(B) For training pursued after July 31, 2011, the full-time training amount under paragraph (b)(2)(i) of this section multiplied by the lesser of—

(1) 1.0; or

(2) The individual’s rate of pursuit, rounded to the nearest multiple of 10.

(3) The increase (“kicker”) amount payable under paragraph (b) of this section will be paid to the individual—

(i) As a lump sum for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33, if training is pursued during the period beginning August 1, 2009, and ending July 31, 2011; or

(ii) On a monthly basis, for training pursued after July 31, 2011.

(c) * * *

(2) * * *

(ii)(A) For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, the full-time training amount under paragraph (c)(2)(i) of this section multiplied by the individual's rate of pursuit.

(B) For training pursued after July 31, 2011, the full-time training amount under paragraph (c)(2)(i) multiplied by the lesser of—

(1) 1.0; or

(2) The individual's rate of pursuit, rounded to the nearest multiple of 10.

(3) The increase (“kicker”) amount payable under paragraph (c) of this section will be paid to the individual—

(i) As a lump sum for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33, if training is pursued during the period beginning August 1, 2009, and ending July 31, 2011; or

(ii) On a monthly basis, for training pursued after July 31, 2011.

(d) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3015(d)(1), 3313(c), 3316(a);

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3015(d), 3316; Pub. L. 110-252, 122 Stat. 2378, Pub. L. 111-377, 124 Stat. 4119; and

(3) Paragraph (c) of this section issued under the authority of 10 U.S.C. 16131(i); Pub. L. 110-252, Stat 2378).

§ 21.9655 [Amended]

46. Amend § 21.9655, in paragraph (a)(2), by removing “or (b)(2)(ii)” and adding in its place “, (b)(2)(ii), or § 21.9641(c)”.

47. Amend § 21.9665 by revising the section heading and introductory text to read as follows:

§ 21.9665 Reimbursement for licensing or certification tests – for provisions effective before August 1, 2011.

An eligible individual is entitled to receive reimbursement for taking one approved licensing or certification test during the period beginning August 1, 2009, and ending July 31, 2011. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test is the lesser of the following:

* * * * *

48. Add § 21.9667 to read as follows:

§ 21.9667 Reimbursement for licensing or certification tests—for provisions effective after July 31, 2011.

An individual eligible for benefits under the Post-9/11 GI Bill is entitled to receive reimbursement for taking any number of approved licensing or certification tests after July 31, 2011. The amount of reimbursement VA will pay for an approved licensing or certification test taken after July 31, 2011, is the least of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test;

(b) \$2,000; or

(c) The amount equal to the number of whole months of remaining entitlement available to the individual at the time of payment for the test multiplied by the rate for one month of payment for licensing and tests, as specified in § 21.9561(f)(1)(ii).

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

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

49. Add § 21.9668 to read as follows:

§ 21.9668 Reimbursement for national tests.

An eligible individual is entitled to receive reimbursement for taking a national test for admission or a national test for credit after July 31, 2011. The amount of reimbursement VA will pay for an approved national test for admission or a national test for credit taken after July 31, 2011, is the lesser of the following:

(a) The fee charged for the test, not including any optional costs not required for the testing process; or

(b) The amount equal to the number of whole months of remaining entitlement available to the individual at the time of payment for the test multiplied by the rate for one month of payment for national tests, as specified in § 21.9561(f)(1)(ii).

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

50. Amend § 21.9675 by:

- a. Revising the section heading and introductory text;
- b. Removing the parenthetical authority citation at the end of paragraph (a);
- c. Revising paragraph (c)(2) and removing the parenthetical citation at the end of the paragraph;
- d. Removing the parenthetical citation at the end of paragraph (d);
- e. In paragraph (d)(5), removing “veteran-nonveteran” and adding in its place “supported students versus nonsupported students”; and
- f. Adding paragraph (e).

The revisions and addition read as follows:

§ 21.9675 Conditions that result in reduced rates or no payment—for provisions effective before August 1, 2011.

During the period beginning August 1, 2009, and ending July 31, 2011, the payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

* * * * *

(c) * * *

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph (c), will be—

(i)(A) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program; plus

(B) The amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment not to exceed \$1,000 each academic year.

(ii) The amounts payable under paragraph (c)(2)(i) of this section will be prorated based on the individual's eligibility percentage as determined in § 21.9640(a).

* * * * *

(e) *Authority.* (1) Paragraph (a) of this section issued under the authority of (a) 38 U.S.C. 3034(a), 3323(a), 3680(a);

(2) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3482(g); and

(3) Paragraph (d) of this section issued under the authority of 38 U.S.C. 501(a), 3034(a), 3323(a).

51. Add § 21.9676 to read as follows:

§ 21.9676 Conditions that result in reduced rates or no payment—for provisions effective after July 31, 2011.

After July 31, 2011, the payment rates as established in §§ 21.9641 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph (a), VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances; and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(b) *No monthly housing allowance for some incarcerated individuals.* An individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction will not receive a monthly housing allowance.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) An individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction will receive—

(i) The net costs for tuition and fees not paid by any other form of financial assistance, not to exceed the amounts specified in § 21.9641(b); and

(ii) The amount of necessary books, supplies, and equipment not paid by any other form of financial assistance, not to exceed \$1,000 each academic year.

(2) The amounts payable under paragraph (c)(1) of this section will be prorated based on the individual's eligibility percentage as determined in § 21.9641(a).

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (see § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the supported students versus nonsupported students ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(e) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(a);

(2) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3482(g); and

(3) Paragraph (d) of this section issued under the authority of 38 U.S.C. 501(a), 3034(a), 3323(a).

52. Amend § 21.9680 by revising the section heading and adding introductory text to read as follows:

§ 21.9680 Certifications and release of payments—for provisions effective before August 1, 2011.

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011—

* * * * *

53. Add § 21.9681 to read as follows:

§ 21.9681 Certifications and release of payments—for provisions effective after July 31, 2011.

For training pursued after July 31, 2011—

(a) *Payee.* (1) VA will make payment of the appropriate amount of tuition and fees, as determined under § 21.9641, directly to the educational institution as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(b) *Payments.* (1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance Top-Up; one seeking reimbursement for taking an approved licensing or certification test; one seeking reimbursement for a national test for admission or a national test for credit; or one who qualifies for an advance payment of the monthly housing allowance) only after

the educational institution has certified the individual's enrollment as provided in § 21.9721 and provided its Taxpayer Identifying Number (TIN) and/or Automated Clearing House (ACH) information in accordance with 31 U.S.C 7701(c)(1).

(2) VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The educational institution at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's educational institution;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment is preceded by a period of nonpayment of 30 days or more.

(G) The educational institution or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the educational institution for delivery to the eligible individual. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

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

(A) The educational institution demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(3) VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To the educational institution, on behalf of an eligible individual, for the appropriate amount of tuition and fees;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the \$500 rural relocation benefit.

(4) [Reserved]

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(6) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved national test for admission or a national test for credit only after the eligible individual has submitted a claim for the test to VA that includes the following information:

(i) The name of the test;

(ii) The name of the organization offering the test;

(iii) The date the eligible individual took the test;

(iv) The cost of the test; and

(v) Such other information as the Secretary may require.

(7) VA may authorize payment of the monthly housing allowance (as increased under §§ 21.9650(a) and 21.9655(a), if applicable) for a temporary school closing in accordance with the provisions of § 21.4138(g) of this chapter.

(c) *Rural relocation benefit.* VA will make the \$500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9721;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

- (1) DD Form 214, Certification of Release or Discharge from Active Duty; or
- (2) The most recent Federal income tax return; or
- (3) The most recent State income tax return; or
- (4) Rental/lease agreement; or
- (5) Mortgage document; or
- (6) Current real property assessment; or
- (7) Voter registration card.

(B) An individual using entitlement granted under § 21.9571 who, because he or she resides with the transferor or, in the case of a child, a parent, who cannot provide any of the documents in paragraph (c)(2)(ii) of this section, may submit as proof of residence any document in paragraphs (c)(2)(ii)(A)(2) through (7) of this section bearing the name and current address of the transferor or, in the case of a child, a parent; and

(C) VA must determine that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation.

(iii) *Proof of relocation.* An individual must provide proof that he or she either:

(A) physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2)(ii) of this section as the beginning point and the address of the educational institution as the ending point; or

(B) traveled by air to physically attend an institution of higher learning for pursuit of such a program of education because the individual could not travel to the educational institution by land due to the absence of road or other infrastructure. An individual must provide airline receipts for travel with a departure and destination airport within reasonable distance from the home of residence and the educational institution.

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(f) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301;

(2) Paragraph (b)(1) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689; 31 U.S.C. 7701(c);

(3) Paragraph (b)(2) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3689;

(4) Paragraphs (b)(3) through (b)(5) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3689;

(5) Paragraph (b)(6) of this section issued under the authority of 38 U.S.C. 3315A;

(6) Paragraph (b)(7) of this section issued under the authority of 38 U.S.C. 3680(a);

(7) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3318;

(8) Paragraph (d) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3680); and

(9) Paragraph (e) of this section issued under the authority of 38 U.S.C. 5121.

(The Office of Management and Budget has approved the information collection provisions in paragraphs (a) through (b)(1) of this section under control number 2900-0073, the information collection provisions in paragraphs (b)(2) through (5) of this section under control numbers 2900-0695 and 2900-0706, and the information collection provisions in paragraph (b)(6) under control numbers 2900-0695, 2900-0698, and 2900-0706.)

54. Amend § 21.9690 by revising the section heading and adding introductory text to read as follows:

§ 21.9690 Nonduplication of educational assistance – for provisions effective before August 1, 2011.

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011—

* * * * *

55. Add § 21.9691 to read as follows:

§ 21.9691 Nonduplication of educational assistance—for provisions effective after July 31, 2011.

For training pursued after July 31, 2011—

(a) *Nonduplication—Concurrent benefits.* Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i),

(1) An eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

- (i) 10 U.S.C. 510 (National Call to Service);
 - (ii) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);
 - (iii) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);
 - (iv) 10 U.S.C. chapter 106a (Section 901, Educational Assistance Test Program);
 - (v) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);
 - (vi) 38 U.S.C. chapter 31 (Veteran Readiness and Employment Program);
 - (vii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);
 - (viii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);
- or
- (ix) Hostage Relief Act of 1980.

(2) An individual who is eligible for educational assistance under more than one program listed in paragraph (a)(1) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester.

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

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

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees Training Act.

(c) *Nonduplication—Transferred benefits and Fry Scholarship.* An individual entitled to educational assistance under § 21.9520(d) and because of a transfer of entitlement under § 21.9571—

(1) May not receive educational assistance under both provisions concurrently.

(2) Must specify in writing the provision under which he or she wishes to receive benefits. The individual may request to receive benefits under either provision at any time, but may not change the provision under which he or she will receive benefits more than once during a term, quarter, or semester. Except in cases when an individual exhausts entitlement under a provision during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(d) *Nonduplication—Transferred benefits.* An individual who is entitled to educational assistance based on a transfer of entitlement under § 21.9571 from more than one individual—

(i) May not receive assistance based on transfers from more than one individual concurrently.

(ii) Must specify in writing whose entitlement he or she wishes to use at any one time. The individual may request to use benefits transferred to him or her by any of the transferors at any time, but may not change whose entitlement he or she wishes to use from one individual to another more than once during a term, quarter, or semester. Except in cases when an individual exhausts his or her transferred entitlement during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(e) *Nonduplication—Fry Scholarship and compensation and pension.* The commencement of a program of education based on eligibility for educational assistance under § 21.9520(d) by an eligible individual is a bar to—

(1) Subsequent payments of dependency and indemnity compensation or pension based on the death of a parent to the eligible individual when the eligible individual attains 18 years of age.

(2) Increased rates, or additional amounts, of compensation, dependency and indemnity compensation, or pension paid on account of the eligible individual.

(f) *Nonduplication—Fry Scholarship.* (1) An individual who is entitled to educational assistance based on the death of more than one parent under § 21.9520(d) may not receive assistance under § 21.9520(d) for the same enrollment period based on the deaths of both parents.

(2) The individual must specify in writing on which parent's death to base his or her entitlement. The individual may request to base entitlement on either parent's death at any time, but may not change on whose death he or she chooses to base entitlement more than once during a term, quarter, or semester. Except in cases where an individual exhausts entitlement that is based on one parent's death during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(g) *Nonduplication—Entitlement based on individual's active duty service.* (1)

An individual who is entitled to educational assistance under § 21.9520(a) or (b) and who is entitled to educational assistance under § 21.9520(d) or § 21.9571 may not receive educational assistance based on his or her own period of service and educational assistance based on someone else's service concurrently.

(2) The individual must specify in writing the provision under which he or she wishes to receive benefits. The individual may request to receive benefits under either provision at any time, but may not change the provision under which he or she will receive benefits more than once during a term, quarter, or semester. Except in cases when an individual exhausts entitlement under one provision during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(h) *Nonduplication—Eligibility based on a single event or period of service—*(1)

Active duty service. (i) An individual with qualifying active duty service in the Armed Forces that may be used to establish eligibility for educational assistance under 38 U.S.C. chapter 30, 32, or 33, and 10 U.S.C. chapter 1606 or 1607, must make an irrevocable election in writing specifying under which program to establish eligibility and to which program to credit service.

(ii) An individual may not request that portions of a single period of service be credited to different benefit programs. VA considers a single period of service to be one from which the individual is discharged or released, including a discharge for immediate reenlistment.

(2) *Assistance based on parent's service.* A child eligible for educational assistance under § 21.9520(d) and 38 U.S.C. chapter 35, based on the parent's death must make an irrevocable election in writing specifying which benefit he or she wishes to receive.

(i) *Authority.* (1) Paragraph (a)(1) of this section issued under the authority of 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96-342;

(2) Paragraph (a)(2) of this section issued under the authority of 38 U.S.C. 3034(a), 3322, 3323(a), 3681;

(3) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3681;

(4) Paragraph (c) of this section issued under the authority of 38 U.S.C. 3322(e), 3323(c);

(5) Paragraph (d) of this section issued under the authority of 38 U.S.C. 3322(g), 3323(c);

(6) Paragraph (e) of this section issued under the authority of 38 U.S.C. 3322(f);

(7) Paragraph (f) of this section issued under the authority of 38 U.S.C. 501(a), 3323(c);

(8) Paragraph (g) of this section issued under the authority of 38 U.S.C. 501(a), 3323(c); and

(9) Paragraph (h) of this section issued under the authority of 38 U.S.C. 501(a), 3322(h);

(The Office of Management and Budget has approved the information collection provisions in paragraphs (a) through (e) of this section under control number 2900-0098, and the information collection provisions in paragraphs (f) through (h) of this section under control numbers 2900-0154 and 2900-0098.)

56. Amend § 21.9695 by:

- a. Removing the parenthetical authority citation at the end of paragraph (a);
- b. In paragraph (a), removing “institutions of higher learning” and adding in its place “educational institutions”;

c. In paragraph (b), removing “institution of higher learning” wherever it appears and adding in its place “educational institution”;

d. Revising paragraph (b)(3) and removing the parenthetical authority citation at the end of the paragraph;

f. In paragraph (b)(4)(ii)(A), removing “established charges” and adding in its place “tuition and fees”;

g. Removing the parenthetical authority citation at the end of paragraph (b)(4)(ii)(C); and

h. Adding paragraph (c).

The revision and addition read as follows:

§ 21.9695 Overpayments.

* * * * *

(b) * * *

(3)(i) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the educational institution on behalf of the individual, constitutes a liability of the educational institution if:

(A) VA determines that the overpayment is the result of willful or negligent false certification by the educational institution, or willful or negligent failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(B) The student never attends classes for which he or she was certified (regardless of the reason for non-attendance);

(C) The student completely withdraws from all courses on or before the first day of the certified period of enrollment;

(D) The student dies during the term (see §§ 21.9635(a)(2) and 21.9636(a)(2));

(E) The educational institution receives a payment for the wrong student;

(F) The educational institution receives a duplicate payment for a student;

(G) The educational institution receives a payment in excess of the amount certified to VA on the enrollment certification; or

(H) The educational institution submits an amended enrollment certification to correctly report a reduced amount of tuition and fee charges, reduced Yellow Ribbon Program contributions, or reduced amounts for both tuition and fees and Yellow Ribbon Program contributions.

(ii) In determining whether an overpayment resulting from the actions listed in paragraph (b)(3)(i) of this section should be recovered from an educational institution, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

* * * * *

(c) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3690(b);

(2) Paragraphs (b) through (b)(3)(ii) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3685; and

(3) Paragraphs (b)(3)(iii) through (b)(4) of this section issued under the authority of 38 U.S.C. 3034(a), 3323, 3685, 5302.

57. Amend § 21.9700 by:

a. Removing “established charges” wherever it appears and adding in its place “tuition and fees”;

b. Removing “38 U.S.C. chapter 3313(c)(1)(A)” wherever it appears and adding in its place “paragraphs (b) and (c) of § 21.9640 and paragraphs (b)(1) and (2) of § 21.9641”;

c. Revising paragraph (b);

- d. In paragraph (d)(6)(i), removing “undergraduate” and adding in its place “certificate, undergraduate”;
- e. In paragraph (f), removing “school” and adding in its place “IHL”;
- f. In paragraph (g), removing “school’s” and adding in its place “IHL’s”; and
- g. Adding at the end of the section a parenthetical with the OMB control number for the approval of the information collection.

The revision and addition read as follows:

§ 21.9700 Yellow Ribbon Program.

* * * * *

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100-percent educational assistance rate (based on service requirements as shown in § 21.9640(a) or § 21.9641(a), whichever is applicable) or to their designated dependents using entitlement transferred under § 21.9570 or § 21.9571, whichever is applicable, or effective August 1, 2018, to individuals using Fry Scholarship entitlement under § 21.9520(d) who are pursuing training at an eligible IHL.

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0154 and 2900-0718.)

58. Revise § 21.9710 to read as follows:

§ 21.9710 Pursuit.

Except for an eligible individual seeking tuition assistance Top-Up or reimbursement for taking an approved national test for admission, a national test for credit, or a licensing or certification test, the individual's educational assistance depends upon his or her pursuit of a program of education.

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

§ 21.9715 [Amended]

59. Amend § 21.9715 by:

- a. Removing “the institution of higher learning” wherever it appears and adding in its place “the educational institution”;
- b. In the introductory text, removing “§ 21.9640(b)(1)(ii) or (b)(2)(ii)” and adding in its place “§ 21.9640(b)(1)(ii), (b)(2)(ii), or § 21.9641(c), whichever is applicable”;
- c. In paragraph (b)(1), removing “an institution of higher learning” and adding in its place “the educational institution”; and
- d. In paragraph (b)(2), removing “§ 21.9730” and adding in its place “§ 21.9735”.

60. Amend § 21.9720 by revising the section heading and the introductory text to read as follows:

§ 21.9720 Certification of enrollment—for provisions effective before August 1, 2011.

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, an IHL must certify an eligible individual’s enrollment before he or she may receive educational assistance, except as stated in § 21.9680.

* * * * *

61. Add § 21.9721 to read as follows:

§ 21.9721 Certification of enrollment—for provisions effective after July 31, 2011.

For training pursued after July 31, 2011, an educational institution must certify an eligible individual’s enrollment before he or she may receive educational assistance, except as stated in § 21.9681.

(a) *Educational institutions must certify most enrollments.* VA does not, as a condition of advance payment, require educational institutions to certify the enrollments of eligible individuals who are seeking an advance payment (as described in § 21.9715). VA does not require organizations or entities offering a national test for admission, a national test for credit, or a licensing or certification test to certify that the eligible

individual took the test. In all other cases, the educational institution must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(b) *Length of the enrollment period covered by the enrollment certification.* (1)

Educational institutions that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report each term, quarter, or semester separately.

(2) Educational institutions organized on a year-round basis that do not offer courses on a term, quarter, or semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the educational institution has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(c) *Authority.* (1) Paragraph (a) of this section issued under the authority of 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a); and

(2) Paragraph (b) of this section issued under the authority of 38 U.S.C. 3034(a), 3323(a), 3684.

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

§ 21.9725 [Amended]

62. Amend § 21.9725 by:

a. Removing “institution of higher learning” wherever it appears and adding in its place “educational institution”; and

b. In paragraph (b), removing “institution of higher learning’s” and adding in its place “educational institution’s”.

§ 21.9735 [Amended]

63. Amend § 21.9735 by removing “individuals and institutions of higher learning” and adding in its place “eligible individuals and educational institutions”.

§ 21.9740 [Amended]

64. Amend § 21.9740 by:

a. Removing “institution of higher learning” wherever it appears and adding in its place “educational institution”; and

b. Removing “institution of higher learning’s” wherever it appears and adding in its place “educational institution’s”.

65. Amend § 21.9750 by:

a. In paragraph (a), removing “institution of higher learning” and adding in its place “educational institution”;

b. Revising the heading to paragraph (b);

c. Removing paragraph (b) introductory text; and

d. Revising paragraph (b)(1).

The revisions read as follows:

§ 21.9750 Course measurement.

* * * * *

(b) *Measurement of courses reported in clock hours at IHLs.* (1) If the courses pursued at an IHL are measured in clock hours, VA will convert the clock hours to equivalent credit hours by—

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(2) of this section rounded to the nearest 100th by—

(A) If the educational institution measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the educational institution by the number of clock hours considered full-time at the educational institution.

(B) If the educational institution only measures courses using clock hours, the decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the educational institution.

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§ 21.9765 [Amended]

66. Amend § 21.9765 by removing “institution of higher learning” and adding in its place “educational institution”.