38 CFR Part 21

RIN 2900-AS36

Waiver or Recovery of Overpayments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Veteran Readiness and Employment and Education regulations to implement section 1019 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Isakson Roe Act), which was effective January 5, 2021. These proposed amendments would update regulations governing the waiver or recovery of overpayments to address the assignment of financial responsibility for benefits paid directly to an educational institution on behalf of the student.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments through www.regulations.gov under RIN 2900-AS36. That website includes a plain-language summary of this rulemaking. Instructions for accessing agency documents, submitting comments, and viewing the rulemaking docket are available on www.regulations.gov under “FAQ.”

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Veterans Benefits Administration, (202) 461-9800.

SUPPLEMENTARY INFORMATION: When an educational institution (also referred to as a school) voluntarily applies and is approved to participate in GI Bill programs, that institution assumes responsibility to provide accurate and timely enrollment information to VA for benefit processing. See 38 U.S.C. 3684(a). Prior to the enactment of section 1019 of the Isakson Roe Act (Pub. L. 116-315) on January 5, 2021, 38 U.S.C. 3685(a)

and (b) technically indicated that, in cases in which an overpayment is made to a veteran or eligible person but is a result of willful or negligent conduct by the school, the overpayment could be considered a liability of both the school and the veteran or eligible person. In 38 CFR 21.9695(b)(3), VA interpreted 38 U.S.C. 3685(b) as referring to both an overpayment made to a veteran or eligible person and an overpayment made to a school on behalf of a veteran or eligible person. When a school failed to provide accurate and timely information regarding a student's enrollment, VA's implementing regulations provided for, and continue to provide for, an administrative review at the regional office level of the circumstances surrounding any overpayment (known as the School Liability Process) to determine if the school was liable for such overpayment, i.e., to determine if the overpayment resulted from the school's own willful or negligent failure to report accurate or timely enrollment information or from willful or negligent false certifications. 38 CFR 21.9695(b)(3), 21.4009. When VA determined school liability existed, the amount of the school liability equaled the amount of debt that resulted from the school's willful or negligent reporting failure or false certification. Further, pursuant to § 21.4009(h), the school had the right to appeal findings of school liability to a dedicated School Liability Appeals Board located in VA's Central Office. Additionally, § 21.9695(b)(2) states that an overpayment made to the school would be a liability of the school in cases where the student never attended the school term. Section 21.9695 of Title 38 U.S.C., however, does not clearly state whether the student would be liable for the debt as well.

With the enactment of section 1019 of Pub. L. 116-315 and new 38 U.S.C. 3685(b)(2), schools can be held liable for benefits paid directly to them for tuition and fees, Yellow Ribbon program matching contributions, and other advance payments of educational assistance to veteran students, without consideration of whether the overpayment was the result of willful or negligent conduct. Amended section 3685(b)(2)

states simply that payments made to a school on behalf of an eligible veteran pursuant to specified provisions (38 U.S.C. 3313(h), 3317, 3680(d), 3320(d)) shall constitute a liability of the school. The statute does not require any VA findings, specifically findings of willful or negligent conduct, before considering the listed payments (tuition and fees, Yellow Ribbon program matching contributions, other advance payments) as liabilities of the school.

To be consistent with 38 U.S.C. 3685(b)(2), VA proposes to remove the current regulatory provision in 38 CFR 21.9695(b)(3) that requires VA to provide the School Liability Process under § 21.4009 to determine whether an overpayment is the result of willful or negligent conduct before holding a school liable for an overpayment *paid directly to the school* on behalf of an eligible individual. We also propose to add language in revised § 21.9695(b)(2) to make clear that a school would be held liable, without going through the School Liability Process, for certain chapter 33 benefits *paid directly to the school* on behalf of an eligible individual. We would accordingly remove the language in current § 21.9695(b)(2) indicating that a school is liable for an overpayment made for a term, quarter, or semester if a student never attended that term, quarter, or semester because such scenario would be covered under revised § 21.9695(b)(2). In addition, we propose adding language in revised § 21.9695(b)(2) to make clear that VA would apply the procedures in 38 CFR 1.911a when collecting overpayments of chapter 33 benefits that were paid to the school on behalf of the eligible individual, which would be consistent with 38 U.S.C. 3685(c). VA also proposes to amend 38 U.S.C. 21.9695(b)(1) to be consistent with 38 U.S.C. 3685(b)(1) and make it clear that a school would be held liable for overpayments *paid to an eligible individual* if VA determines through the School Liability Process that the school engaged in willful or negligent conduct.

Furthermore, even after the enactment of section 1019 of Pub. L. 116-315, 38 U.S.C. 3685(a) and (b)(1) technically indicates that an overpayment made to a veteran that was the result of willful or negligent conduct by a school could be considered a liability of both the veteran and the school. While we can arguably hold both the school and the veteran liable under current 38 CFR 21.9695(b)(1) and (3) for an overpayment made to a veteran if we find it is the result of willful or negligent conduct by the school, we have never held the veteran liable in this circumstance. Consistent with our interpretation of current 38 U.S.C. 3685(a) and (b)(1) and our historical practice, and because we presume Congress did not intend to allow for potential double recovery of an overpayment, we are proposing to make it clear in our regulation at 38 CFR 21.9695(b)(1)(iii) that, if we determine that an overpayment made to a veteran is the result of a school's willful or negligent conduct, we would hold only the school and not the veteran liable for the overpayment.

Additionally, VA proposes to amend 38 CFR 21.4009(a)(2) to make clear that a school would be held liable for overpayments paid to an eligible veteran or person only if VA determines in the School Liability Process set out in this section that the school engaged in willful or negligent conduct. VA also proposes to amend § 21.4009(a)(1) to clarify that paragraph (a)(1) is subject to paragraph (a)(2) and amend § 21.4009(a)(2) to clarify that VA would make negligence determinations pursuant to the procedures in this section. Implementing these amendments would align VA's regulations governing school liability with current statutory requirements.

Finally, we would apply the changes proposed in this rulemaking to all debts established on or after January 5, 2021. As stated, these changes implement the statutory amendments in Pub. L. 116-315, sec. 1019, which added new subsection (b)(2) to 38 U.S.C. 3685, specifying scenarios that result in automatic school liability without requiring the School Liability Process. Congress enacted Pub. L. 116-315 on

January 5, 2021, and set no separate effective date or applicability date for section 1019. Accordingly, the amendment took effect on the date of enactment of the law, and we propose to apply the regulatory changes to all debts established on or after the effective date of the authorizing law.

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866. This proposed rule is expected to be a deregulatory action under Executive Order 14192. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612). This rulemaking would update existing regulations to include the requirement in 38 U.S.C. 3685(b)(2) that schools are liable for overpayments of benefits (tuition and fees, Yellow Ribbon program matching contributions, and other advance payments of educational assistance) paid directly to the schools on behalf of veteran students, without consideration of whether the overpayment was the result of the school's willful or negligent conduct. The rulemaking would also remove as inconsistent with statute the

current regulatory requirement in 38 CFR 21.9695(b)(3) that VA go through the School Liability Process (SLP) to determine whether a school should be held liable for overpayments of benefits paid directly to the school if the overpayments were the result of the school's willful or negligent conduct. The proposed revised regulations would, for the most part, simply explain the requirements of 38 U.S.C. 3685 and remind parties of their legal rights and responsibilities as set forth in statute, but they would also clarify the requirement in section 3685(c) that overpayments "may be recovered . . . in the same manner as any other debt due the United States" by specifying the procedures under 38 CFR 1.911a that VA uses to collect debts. The small entities 38 U.S.C. 3685(c) regulates are educational institutions that are approved for GI Bill benefits.

Although there are many educational institutions approved for GI Bill benefits that may be considered small entities under the RFA to which this rule would apply, this rule would not have an impact on a substantial number of these small entities. This rule would affect only institutions of higher learning (IHL) and non-college degree granting programs (NCD) (including vocational flight schools) that do not provide accurate and timely enrollment information or that provide false certifications to VA, resulting in an overpayment in the school's account. Prior to the enactment of Pub. L. 116-315, VA regulations provided for the SLP to determine if a school was liable for any overpayment created when a school failed to provide accurate and timely information regarding a student's enrollment or when it provided false certifications. During the three years prior to the enactment of Pub. L. 116-315, of the approximately 13,000 IHLs and NCDs that are approved for GI Bill benefits each year, only 17 schools in total, or less than six schools per year, were referred to the SLP for adjudication.

Using a standard based on an educational institution's enrollment, the Department of Education (ED) recently determined that 61 percent of institutions of higher education (IHE) subject to regulations they proposed in July 2024 governing

participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), are small entities for purposes of an RFA analysis. Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs, 89 FR 60256, 60280 (July 24, 2024). While IHLs and IHEs are each defined to include similar entities, there are likely to be IHLs that participate in GI Bill programs that do not fall within ED's definition of IHEs, and there may be some IHEs that participate in ED's programs that do not fall within VA's definition of IHLs. *Compare* 38 U.S.C. 3452(f) (defining IHLs to include institutions offering post-secondary education, whether public, nonprofit, or private) *with* 20 U.S.C. 1001(a) (defining IHEs to include institutions offering post-secondary education, but only public or nonprofit institutions). Nonetheless, we believe IHLs and IHEs are sufficiently similar, and we can reasonably use ED's calculation of small entities for VA's purposes. And even though not all of the schools that are approved for GI Bill benefits are IHLs, with just over half being NCDs, we believe ED's standard for determining the percentage of schools that are small entities for its purposes can reasonably be applied here because it is likely there would be a similar or greater percentage of NCDs that would be considered small entities.

Comparing IHEs subject to ED's July 2024 proposed rule to educational institutions that would be subject to the regulations regarding school liability and the SLP that VA is proposing to amend in this rulemaking (i.e., all educational institutions approved for GI Bill benefits), we believe it is reasonable to estimate that approximately 61 percent of educational institutions subject to these VA regulations would be considered small entities. Sixty-one percent of the estimated 13,000 total schools that would be subject to these proposed VA regulations in a given year is 7,930 small entities. Thus, the estimated average of six schools that went through the SLP per year, even assuming they were all small entities, is only 0.08 percent (6/7930) of the

small entities that would be subject to the regulations. In other words, less than 1 percent of the small entities subject to the regulations would be impacted by this rulemaking. And regardless of the actual percentage of NCDs that may be considered small entities for GI Bill purposes, the number of small entities impacted by this rulemaking would remain insubstantial. Therefore, pursuant to 5 U.S.C. 603(a), 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 one year. This proposed rule would have no such effect on state, local, and tribal governments, or on the private sector.

Paperwork Reduction Act (PRA)

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

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.027, Post 9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed Forces, Claims, Colleges and universities, Education, Employment, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

SIGNING AUTHORITY

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on July 24, 2025, 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.

Taylor N. Mattson,

Alternate Federal Register Liaison Officer,
Department of Veterans Affairs.

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

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, 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.

2. Amend § 21.4009 by:

a. Revising paragraphs (a)(1) and ((2); and

b. Adding an authority citation at the end of paragraph (a)(6).

The revisions and addition read as follows:

§ 21.4009 Waiver or recovery of overpayments.

* * * * *

(a) * * *

(1) Subject to paragraph (2), the amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the educational institution if the Department of Veterans Affairs determines, pursuant to procedures in this section, that the overpayment was made as the result of willful or negligent:

* * * * *

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

Subpart P—Post-9/11 GI Bill

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

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

4. Amend § 21.9695 by:

a. Revising paragraphs (b)(1) and (b)(2);

b. Removing paragraph (b)(3); and

c. Redesignating paragraph (b)(4) as paragraph (b)(3).

The revisions read as follows:

§ 21.9695 Overpayments.

* * * * *

(b) Liability for overpayments.

(1) An overpayment of educational assistance paid to an eligible individual constitutes a liability of that individual unless—

(i) The overpayment was waived as provided in §§ 1.957 and 1.962 of this chapter,

(ii) The overpayment results from an administrative error or an error in judgment (see § 21.9635(r)), or

(iii) VA determines that the overpayment is the result of willful or negligent—

(A) False certification by the educational institution; or

(B) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(iv) In determining whether an overpayment resulting from the actions listed in paragraphs (b)(1)(iii)(A) and (B) 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.

(2) An overpayment of educational assistance paid to the educational institution on behalf of an eligible individual pursuant to the following authorities constitutes a liability of the educational institution and will be collected pursuant to the procedures in § 1.911a of this title:

(i) 38 U.S.C. 3313(h);

(ii) 38 U.S.C. 3317;

(iii) 38 U.S.C. 3680(d); or

(iv) 38 U.S.C. 3320(d).

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

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[FR Doc. 2025-14487 Filed: 7/30/2025 8:45 am; Publication Date: 7/31/2025]