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and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance.

(Authority: Sec. 102(e), Pub. L. 106-419, 114 Stat. 1825)

(2) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(Authority: Sec. 103(e), Pub. L. 106-419, 114 Stat. 1826-27)

(3) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance.

(Authority: Sec. 103(e), Pub. L. 106-419, 114 Stat. 1826-27)

(4) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility, the veteran must before January 1, 1990, meet the

requirements for a secondary school diploma (or equivalency certificate).

(Authority: Sec. 103(e), Pub. L. 106-419, 114 Stat. 1826-27)

(The Office of Management and Budget has approved information collection requirements in this section under control number 2900-0607.)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 56 FR 11672, Mar. 20, 1991; 57 FR 40615, Sept. 4, 1992; 61 FR 6788, Feb. 22, 1996; 62 FR 55519, Oct. 27, 1997; 63 FR 34132, June 23, 1998; 64 FR 23773, May 4, 1999; 65 FR 5788, Feb. 7, 2000; 66 FR 38939, July 26, 2001; 66 FR 39280, July 30, 2001; 66 FR 42586, Aug. 13, 2001; 68 FR 34331, June 9, 2003]

§ 21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

[63 FR 35837, July 1, 1998]

§ 21.7135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. Reference to reduction of educational assistance due to the loss of a dependent only applies to veterans who were eligible to receive educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989. No other veteran or servicemember will have his or her educational assistance reduced due to a loss of a dependent. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or servicemember.*

(1) If the veteran or servicemember receives an advance payment pursuant to 38 U.S.C. 3680(d) 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.

(2) In all other cases if the veteran or servicemember dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 3014, 3023, 3680)

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(b) *Death of dependent.* When a veteran's dependent dies, and the veteran has been receiving additional educational assistance based on the dependent, the effective date of reduction of the veteran's educational assistance shall be the last day of the month in which the death occurs.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(c) *Divorce.* If the veteran becomes divorced, the effective date of reduction of his or her educational assistance is the last day of the month in which the divorce occurs.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(d) *Dependent child.* If the veteran's award of educational assistance must be reduced because his or her dependent child ceases to be dependent, the effective date of reduction will be as follows.

(1) If the veteran's child marries, the effective date of reduction will be the last day of the month in which the marriage occurs.

(2) If the veteran's child reaches age 18, the effective date of reduction will be the day preceding the dependent child's 18th birthday.

(3) If the veteran is receiving additional educational assistance based on a child's school attendance between the child's 18th and 23rd birthdays, the effective date of reduction of the veteran's educational assistance will be the last day of the month in which the dependent child stops attending school, or the day before the dependent child's 23rd birthday, whichever is earlier.

(4) If the veteran is receiving additional educational assistance because his or her child is helpless, the effective date of reduction will be the last day of the month following 60 days after VA notifies the veteran that the dependent child's helplessness has ceased.

(Authority: 38 U.S.C. 5112(b) 5113; Pub. L. 98-525)

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from.*

(1) If the veteran or servicemember, for reasons other than being called or or-

dered to active duty, withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances, VA will terminate or reduce educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which non-punitive grades are assigned.

(Authority: 38 U.S.C. 3680(a); Pub. L. 102-127)(Aug. 1, 1990)

(2) If the veteran or servicemember withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses or the veteran withdraws from all courses because he or she is ordered to active duty, VA will terminate educational assistance for—

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

(ii) Independent study: official date of change in status under the practices of the educational institution.

(3) When a veteran or servicemember withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a veteran or servicemember withdraws from an apprenticeship or other on-the-job training, VA will terminate educational assistance effective the date of last training.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525, Pub. L. 99-576)

(5) When a veteran or servicemember withdraws from a flight course, VA will terminate educational assistance effective the date of last instruction.

(Authority: 38 U.S.C. 3034(f))

(f) *Reduction in the rate of pursuit of the course.* If the veteran or servicemember reduces the rate of training by withdrawing from part of a course, but continues training in part of the course, the provisions of this paragraph apply.

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the veteran's or servicemember's educational assistance effective the date

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on which the withdrawal occurs when either:

(i) A nonpunitive grade is assigned for the part of the course from which he or she withdraws; and

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

(B) The withdrawal occurs with mitigating circumstances; or

(ii) A punitive grade is assigned for the part of the course from which the reservist 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) The veteran or servicemember—

(A) Receives a nonpunitive grade for the part of the course from which he or she withdraws; and

(B) Withdraws without mitigating circumstances; and

(C) Does not withdraw because he or she is ordered to active duty.

(Authority: 38 U.S.C. 3680(a))

(3) A veteran or servicemember, who enrolls in several subjects and reduces his or her rate of pursuits by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of §21.7140(d) are met. If those requirements are not met, VA will reduce the individual's educational assistance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 3034, 3680(a), 5113(b))

(g) *End of course or period of enrollment.* If a veteran's or servicemember's course or period of enrollment ends, the effective date of reduction or discontinuance of his or her award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution.

(Authority: 38 U.S.C. 3034(b), 3680; Pub. L. 98-525)

(h) *Nonpunitive grade.* (1) If the veteran or servicemember does not withdraw, but nevertheless receives a non-

punitive grade in a particular course, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies, when no mitigating circumstances are found.

(2) If an individual does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, VA will reduce his or her educational assistance effective the last date of attendance when mitigating circumstances are found.

(3) If an individual receives a nonpunitive grade through nonattendance in a particular course, VA will reduce the individual's educational assistance effective the last date of attendance when mitigating circumstances are found.

(4) If an individual receives a nonpunitive grade through nonattendance in a particular course, VA will reduce the individual's educational assistance effective the first date of enrollment in which the grade applies, when no mitigating circumstances are found.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)

(i) *Discontinued by VA.* If VA discontinues payment to a veteran or servicemember following the procedures stated in §21.4211(d) and (g), the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the Director of a VA facility as provided in §21.4210, if the discontinuance was preceded by such a suspension.

(2) End of the month in which the decision to discontinue, made by VA under §21.7133 or §21.4211(d) and (g), is effective, if the Director of a VA facility did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)

(j) *Disapproval by State approving agency.* If a State approving agency disapproves a course in which a veteran or servicemember is enrolled, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the director of a VA

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facility as provided in §21.4210, if disapproval was preceded by such a suspension.

(2) End of the month in which disapproval is effective or VA receives notice of the disapproval, whichever is later, provided that the Director of a VA facility did not suspend payments before the disapproval

(Authority: 38 U.S.C. 3034, 3672(a), 3690; Pub. L. 98-525)

(k) *Disapproval by VA.* If VA disapproves a course in which a veteran or servicemember is enrolled, the effective date of discontinuance of payment of educational assistance will be—

(1) The date on which the Director of a VA facility first suspended payments, as provided in §21.4210, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA facility did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034, 3671(b), 3672(a), 3690; Pub. L. 98-525)

(l) *Unsatisfactory progress, conduct or attendance.* If a veteran's or servicemember's progress, conduct or attendance is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the veteran's or servicemember's enrollment, or

(2) The date on which the veteran's or servicemember's progress, conduct or attendance becomes unsatisfactory according to the educational institution's regularly established standards of progress, conduct or attendance.

(Authority: 38 U.S.C. 3034, 3474)

(m) *Required certifications not received after certification of enrollment.* If VA does not timely receive the veteran's or servicemember's certification of attendance or does not timely receive the educational institution's endorsement of the certification or the educational institution's certification of attendance or pursuit, VA will assume that the veteran or servicemember has withdrawn. VA will apply the provisions of paragraph (e) of this section.

VA considers the receipt of a certificate of attendance to be timely if it is received within 60 days of the last day of the month for which attendance is to be certified.

(Authority: 38 U.S.C. 3034(b); Pub. L. 98-525)

(n) *False or misleading statements.* If educational assistance is paid as the result of false or misleading statements, see §21.7158:

(Authority: 38 U.S.C. 3034, 3690; Pub. L. 98-525)

(o) *Conflicting interests (not waived).* If an educational institution and VA have conflicting interests as provided in §21.4005 and §21.7305, and VA does not grant the veteran a waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the veteran.

(Authority: 38 U.S.C. 3034, 3683, Pub. L. 98-525)

(p) *Incarceration in prison or penal institution for conviction of a felony.* (1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under §21.7139 (c), (d), (e), (f), or (g).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or servicemember's tuition and fees were paid by a Federal, State or local program.

(ii) The date the veteran or servicemember is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by §21.7131.

(Authority: 38 U.S.C. 3034, 3482(g); Pub. L. 98-525)

(q) *Active duty.* If a veteran reenters on active duty, the effective date of reduction of his or her award of educational assistance shall be the day before the veteran's entrance on active duty. (This reduction does not apply to brief periods of active duty for training if the educational institution permits absence for active duty for training

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without considering the veteran's pursuit of a program of education to be interrupted).

(Authority: 38 U.S.C. 3032)

(r) *Record-purpose charge against entitlement under 38 U.S.C. chapter 34 equals entitlement that remained on December 31, 1989.* A veteran who is receiving basic educational assistance at the rates stated in §21.7137(a), will have his or her award reduced to the rates found in §21.7136(a) effective the date the total of the veteran's record-purpose charges against his or her entitlement under 38 U.S.C. chapter 34 equals the entitlement to that benefit which the veteran had on December 31, 1989.

(Authority: 38 U.S.C. 3015(c); Pub. L. 98-525)

(s) *Exhaustion of entitlement under 38 U.S.C. chapter 30.* (1) If an individual who is enrolled in an educational institution regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30, the discontinuance date shall be the last day of the quarter or semester in which entitlement is exhausted.

(2) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30 after more than half of the course is completed, the discontinuance date shall 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 who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30 before completing the major portion of the course, the discontinuance date will be the date the entitlement is exhausted.

(Authority: 38 U.S.C. 3031(e); Pub. L. 98-525)

(t) *Eligibility expires.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under §21.7050 or §21.7051 VA will discontinue educational assistance effective the

day preceding the end of the eligibility period.

(Authority: 38 U.S.C. 3034(a); Pub. L. 98-525)

(u) *Veteran fails to participate satisfactorily in the Selected Reserve.* If a veteran is attempting to establish eligibility through service on active duty combined with service in the Selected Reserve, and he or she fails to participate satisfactorily in the Selected Reserve before completing the required service in the Selected Reserve, the effective date of reduction of the award of educational assistance will be the date the Secretary determines that he or she failed to participate satisfactorily.

(Authority: 38 U.S.C. 3012; Pub. L. 98-525)

(v) *Error-payee's or administrative.* (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, 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, but not before the date on which the award would have ended had the act not occurred.

(2) When VA, the Department of Defense, or the Department of Transportation makes an administrative error or an error in judgment that is the sole cause of an erroneous award, VA must reduce or terminate the award effective the date of last payment.

(Authority: 38 U.S.C. 5112(b), 5113)

(w) *Forfeiture for fraud.* If a veteran's or servicemember's educational assistance must be forfeited due to fraud, the effective date of discontinuance shall be the later of—

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

(Authority: 38 U.S.C. 6103; Pub. L. 98-525)

(x) *Forfeiture for treasonable acts or subversive activities.* If a veteran's or servicemember's educational assistance must be forfeited due to treasonable acts or subversive activities, the effective date of discontinuance shall be the later of—

- (1) The effective date of the award, or

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(2) The date before the date the veteran or servicemember committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 6104, 6105; Pub. L. 98-525)

(y) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue, VA will use the provisions of §3.114(b) of this chapter to determine the date of discontinuance of the veteran's or servicemember's educational assistance.

(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98-525)

(z) *Independent study course loses accreditation.* Except as otherwise provided in §21.7120(d), if the veteran or servicemember is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3014, 3034, 3676, 3680A(a))

(aa) [Reserved]

(bb) *Reduction following loss of increase ("kicker") for Selected Reserve service.* If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in §21.7136(g) or §21.7137(e), 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, as determined by the Secretary of the military department concerned, that the veteran is no longer entitled to the increase ("kicker").

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

(cc) *Except as otherwise provided.* If a veteran's or servicemember's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of

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discontinuance of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98-525)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 57 FR 15024, Apr. 24, 1992; 58 FR 26242, May 3, 1993; 61 FR 6788, Feb. 22, 1996; 61 FR 26116, May 24, 1996; 62 FR 55519, Oct. 27, 1997; 63 FR 35837, July 1, 1998; 64 FR 38577, July 19, 1999; 64 FR 51901, Sept. 27, 1999; 66 FR 38939, July 26, 2001; 66 FR 42586, Aug. 13, 2001]

§21.7136 Rates of payment of basic educational assistance.

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

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

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

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

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

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

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

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

(B) The veteran's continuous active duty service beginning on the date of the commencement of his or her qualifying obligated period of active duty is