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education leading to a secondary school diploma or an equivalency certificate will receive one of two monthly rates.

(1) Unless the individual notifies the Department of Veterans Affairs to the contrary, the monthly rate of his or her educational assistance allowance will be based upon his or her tuition and fees. The Department of Veterans Affairs will make no charge against the entitlement of the individual who is receiving benefits at this monthly rate. The monthly rate will be the rate of tuition and fees being charged to the individual for the course, not to exceed:

- (i) \$376 for full-time training.
- (ii) \$283 for three-quarter time training.
- (iii) \$188 for half-time training.
- (iv) \$94 for quarter-time training.

(2) The individual may elect to receive educational assistance allowance at the monthly rate provided in §21.5138. The Department of Veterans Affairs will make an appropriate charge against the individual's entitlement if such an election is made.

(Authority: 38 U.S.C. 3241, 3491)

(c) *Method of payment.* (1) If the individual's educational assistance allowance is based upon the rate as determined in paragraph (b)(1) of this section, payment shall be made in a lump sum for the term, quarter or semester at the beginning of the month in which training begins.

(2) If the individual elects to have his or her educational assistance allowance computed as provided in §21.5138, payment will be made in the same manner as for any other residence training.

(Authority: 38 U.S.C. 3241)

[47 FR 51746, Nov. 17, 1982, as amended at 50 FR 19933, May 13, 1985]

§21.5138 Computation of benefit payments and monthly rates.

The Department of Veterans Affairs will compute all monthly rates and benefit payments as stated in this section except for those individuals to whom §21.5136(b)(1) applies.

(a) *Computation of entitlement factor.* In computing monthly rates and ben-

efit payments the Department of Veterans Affairs will compute an entitlement factor in all cases except for individuals in a secondary school program whose benefits are computed as provided in §21.5136(b)(1).

(1) For residence training the entitlement factor will be computed as follows:

- (i) Enter the number of full months in the applicable benefit period. (1) _____
 - (ii) Enter the number of full days in excess of the number of full months. (a) _____
 - (iii) Divide line a by 30. Enter the quotient. (2) _____
 - (iv) Total (lines 1 and 2) (3) _____
 - (v) Multiply line 3 by 1 for a full-time student; by .75 for a three-quarter time student; by .5 for a half-time student; or by .25 for a one-quarter time student. Enter the result. (4) _____
- (This is the entitlement factor.)

(2) For correspondence training the entitlement factor will be computed as follows:

- (i) Enter the amount of the individual's contributions remaining in the fund. (b) _____
 - (ii) Enter the individual's remaining months of entitlement. (c) _____
 - (iii) Divide line b by line c. Enter the quotient. (5) _____
 - (iv) Enter two times the amount in line 5 (6) _____
 - (v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (d) _____
 - (vi) Enter the individual's remaining months of entitlement. (e) _____
 - (vii) Divide line d by line e. Enter the quotient. (7) _____
 - (viii) Total (lines 5, 6 and 7) (8) _____
 - (ix) Enter the correspondence charges certified by the school. (9) _____
 - (x) Divide line 9 by line 8. Enter the quotient. (10) _____
- (This is the entitlement factor.)

(3) For apprenticeship and other on-job training VA will compute the entitlement factor as follows:

- (i) Enter the number of full days in the applicable benefit period. (Enter 30 if the benefit period is a full month.) (1) _____
- (ii) Divide line 1 by 30. Enter the quotient. (2) _____

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(iii) Multiply line 2 by .75 if the veteran is in the first six months of training; by .55 if the veteran is in the second six months of training; by .35 if the veteran is in a subsequent month of training; and by a pro-rated fraction if one of the veteran's first two six-month periods of training ends during the benefit period. Enter the result. (3) _____
 (This is the entitlement factor.)

(Authority: 38 U.S.C. 3231, 3233; Pub. L. 96-466, Pub. L. 97-306, Pub. L. 99-576)

(4) For cooperative training VA will compute the entitlement factor as follows:

- (i) Enter the number of full months in the applicable benefit period. (1) _____
 - (ii) Enter the number of full days in excess of the number of full months. (a) _____
 - (iii) Divide line a by 30. Enter the quotient. (2) _____
 - (iv) Total lines 1 and 2 (3) _____
 - (v) Multiply line 3 by .80. Enter the result. (4) _____
- (This is the entitlement factor.)

(Authority: 38 U.S.C. 3231; Pub. L. 100-689)

(5) For flight training the entitlement factor will be computed as follows:

- (i) Enter the amount of the individual's contributions remaining in the fund. (a) _____
- (ii) Enter the individual's remaining months of entitlement. (b) _____
- (iii) Divide line a by line b. Enter the quotient. (1) _____
- (iv) Enter two times the amount in line 1 (2) _____
- (v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (c) _____
- (vi) Enter the individual's remaining months of entitlement. (d) _____
- (vii) Divide line c by line d. Enter the quotient. (3) _____
- (viii) Total (lines 1, 2 and 3) (4) _____
- (ix) Enter the charges for flight training certified by the school. (e) _____
- (x) Multiply line e by .60 (5) _____
- (xi) Divide line 5 by line 4. Enter the quotient. (This is the entitlement factor.) (6) _____

(Authority 38 U.S.C. 3231(f))

(b) *Computation of benefit payment.* The Department of Veterans Affairs will compute benefit payments as follows: for all training except for those

individuals to whom §21.5136(b)(1) applies:

- (1) Enter the entitlement factor. (f) _____
- (2) Enter the amount of the individual's contributions remaining in the fund. (g) _____
- (3) Multiply line f by line g. Enter the result. (h) _____
- (4) Enter the remaining months of the individual's entitlement. (i) _____
- (5) Divide line h by line i. Enter the quotient. (11) _____
 (This is the individual's portion.)
- (6) Enter two times the amount in line 11 (12) _____
 (This is the Department of Veterans Affairs's portion of benefit payments for training completed before January 1, 1982. The Secretary of Defense will contribute this portion of the benefit payment for training that occurs after December 31, 1981.)
- (7) Enter the amount of the additional contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (j) _____
- (8) Multiply line f by line j. Enter the result. (k) _____
- (9) Enter the individual's remaining months of entitlement. (l) _____
- (10) Divide line k by line l. Enter the quotient. (13) _____
 (This is the Department of Defense's portion for training completed before January 1, 1982. For training completed after December 31, 1981, this is the second part of the Department of Defense's portion.) (38 U.S.C. 3231)
- (11) Total (add lines 11, 12 and 13) (14) _____
- (12) If the veteran is in an apprenticeship or other on-job training and fails to complete 120 hours of training in a month, reduce the amount on line 14 proportionately. In this computation round the number of hours worked to the nearest multiple of eight. Enter the result. (15) _____
- (13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result. (16) _____

(Authority: 38 U.S.C. 3233 (1989), 38 U.S.C. 3680(a)(2) (1974); Pub. L. 101-237)

- (14) The benefit payment is either—
 - (i) The amount shown on line 14 unless the veteran is in apprenticeship or other on-job training and has failed to complete 120 hours of training in a month during the benefit period in which case the benefit payment is the amount shown on line 15, or the veteran is pursuing certain courses which do not lead to a standard college degree in which case the benefit payment is the amount shown on line 16, or

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(Authority: 38 U.S.C. 3233; Pub. L. 99-576)

- (ii) The total amount of the remaining contributions in the fund made by the individual and the VA and the Secretary of Defense on behalf of the individual, whichever is less.

(Authority: 38 U.S.C. 3231; Pub. L. 94-502)

(c) *Monthly rates.* The Department of Veterans Affairs will compute the monthly rates of payment for individuals in residence training by repeating the calculations in paragraphs (b)(1) through (11) of this section except that instead of entering the entitlement factor on line f, paragraph (b)(1), the Department of Veterans Affairs will enter 1 for a full-time student, .75 for a three-quarter time student, .5 for a half-time student, or .25 for a one-quarter time student.

(Authority: 38 U.S.C. 3231)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981; 47 FR 51747, Nov. 17, 1982; 48 FR 3369, Jan. 25, 1983; 48 FR 50530, Nov. 2, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34498, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 57 FR 38615, Aug. 26, 1992; 58 FR 31911, June 7, 1993]

§21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of §21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.* VA will pay no educational assistance allowance to an individual who—

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

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

(3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 3231(e))

(b) *Reduced educational assistance allowance for some incarcerated individuals.* (1) VA will pay a reduced educational assistance allowance to a veteran who—

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

(ii) Is enrolled in a course—

(A) For which the individual pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:

(i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or

(ii) The monthly rate for the individual as determined by §21.5138(c) of this part.

(Authority: 38 U.S.C. 3231(e))

[55 FR 31583, Aug. 3, 1990]

§21.5141 Tutorial assistance.

An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans' Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of §21.4236.

(Authority: 38 U.S.C. 3234, 3492)

[61 FR 29030, June 7, 1996]

STATE APPROVING AGENCIES

§21.5150 State approving agencies.

In administering chapter 32, title 38, United States Code, VA will apply the provisions of the following sections:

(a) Section 21.4150 (except par. (e))—Designation;

(b) Section 21.4151—Cooperation;

(c) Section 21.4152—Control by agencies of the United States;