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Veterans Affairs shall pay the amount of his or her unused contributions to the fund to the living person or persons in the order listed in this paragraph.

(1) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance policy;

(2) The surviving spouse of the individual;

(3) The surviving child or children of the individual, in equal shares;

(4) The surviving parent or parents of the individual in equal shares.

(b) *Payments to the individual's estate.* If none of the persons listed in paragraph (a) of this section is living, the Department of Veterans Affairs shall pay the amount of the individual's unused contributions to the fund to the individual's estate.

(Authority: 38 U.S.C. 3224)

(c) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the veteran's death is payable under the provisions of § 3.1000 of this chapter. For this purpose accrued benefits include the portion of the benefit represented by the individual's contribution as well as the portion included by the Department of Veterans Affairs and the Department of Defense.

(Authority: 38 U.S.C. 5121)

[47 FR 51745, Nov. 17, 1982]

**ENTITLEMENT**

**§ 21.5070 Entitlement.**

A participant is entitled to a monthly benefit for periods of time during which the individual is enrolled in, and satisfactorily pursuing, an approved program of education. The amount of the benefit will vary from individual to individual and, in some instances, from month to month as provided in § 21.5138.

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

**§ 21.5071 Months of entitlement allowed.**

(a) *Entitlement based on monthly contributions.* The Department of Veterans Affairs will credit an individual with 1 month of entitlement for each month he or she contributes to the fund up to

a maximum of 36 months or its equivalent in part-time training.

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

(b) *Entitlement based on lump-sum contributions.* If an individual elects to make a lump-sum contribution, the Department of Veterans Affairs will credit an individual with 1 month of entitlement for:

(1) Every \$100 included in the lump sum, or

(2) Every amount included in the lump sum which:

(i) Is at least \$25 but no more than \$100,

(ii) Is evenly divisible by five, and

(iii) Is specifically designated by the individual at the time he or she makes the contribution.

(Authority: 38 U.S.C. 3222(d))

(c) *Entitlement based on both monthly and lump-sum contributions.* (1) If the individual makes both monthly and lump-sum contributions, the Department of Veterans Affairs will:

(i) Compute the entitlement due to each type of contribution separately under paragraphs (a) and (b) of this section, and

(ii) Will combine the results of the computations to determine the individual's total entitlement.

(2) In no event will an individual's entitlement exceed 36 months or its equivalent in part-time training.

(Authority: 38 U.S.C. 3222(d), 3231)

[47 FR 51745, Nov. 17, 1982, as amended at 48 FR 50530, Nov. 2, 1983]

**§ 21.5072 Entitlement charge.**

The Department of Veterans Affairs shall determine the entitlement charge for each payment in the same manner for all individuals regardless of whether they are on active duty. Unless the circumstances described in paragraph (i) of this section apply to a servicemember or veteran, VA will use paragraphs (a) through (h) of this section to determine an entitlement charge.

(a) *General.* (1) Except as provided in paragraphs (b) through (i) of this section, VA will make a charge against entitlement as follows:

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(i) The Department of Veterans Affairs will charge an individual who is a full-time student 1 month's entitlement for each monthly benefit paid to him or her.

(ii) The Department of Veterans Affairs will charge an individual who is other than a full-time student 1 month's entitlement for each sum of money paid equivalent to what the individual would have been paid had he or she been a full-time student for 1 month.

(2) When the computation results in a period of time other than a full month, the entitlement charge will be prorated.

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

(b) *Secondary school program.* (1) The Department of Veterans Affairs will make no charge against the entitlement of an individual:

(i) Who is pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate, and

(ii) Whose educational assistance allowance is the monthly rate of the tuition and fees being charged to him or her for the course.

(2) The Department of Veterans Affairs will make a charge (in the same manner as for any other residence training) against the entitlement of an individual who:

(i) Is pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate, and

(ii) Elects to receive educational assistance allowance calculated according to § 21.5136.

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

(c) *Correspondence training courses.* (1) A charge against the period of entitlement for a program consisting exclusively of correspondence training will be made on the basis of 1 month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(2)(viii), which is paid to the individual as an educational assistance allowance for this training. When computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at by applying the formula is determined to be \$150 at the time a benefit program for correspondence training is computed, the individual will be charged 1 month of entitlement for each \$150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

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

(d) *Apprenticeship or other on-job training.* (1) The VA will determine the entitlement charge for a veteran in apprenticeship or other on-job training as stated in this paragraph.

(2) The entitlement charge will be—

(i) 75 percent of a month for those months for which the veteran's monthly payment is based upon 75 percent of the monthly benefit otherwise payable to him or her;

(ii) 55 percent of a month for those months for which the veteran's monthly payment is based upon 55 percent of the monthly benefit otherwise payable to him or her; and

(iii) 35 percent of a month for those months for which the veteran's monthly payment is based upon 35 percent of the monthly benefit otherwise payable to him or her.

(3) The charge against the veteran's entitlement will be prorated if—

(i) The veteran's enrollment period ends in the middle of a month,

(ii) The veteran's monthly rate is reduced in the middle of a month, or

(iii) The veteran's monthly payment is reduced because he or she worked less than 120 hours during the month. In this instance the number of hours worked will be rounded to the nearest multiple of eight, and the entitlement charge will be reduced proportionately.

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

(e) *Cooperative training.* VA will make a charge against entitlement of 80 percent of a month for each month for

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which a veteran is paid educational assistance allowance at the cooperative training rate as provided in § 21.5138(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

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

(f) *Training while the veteran is incarcerated.* If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in § 21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in § 21.5138 of this part for the appropriate type of training pursued.

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

(g) *Tutorial assistance.* If an individual is paid tutorial assistance as provided in § 21.5141 of this part, the following provisions will apply.

(1) There will be no charge to entitlement for the first \$600 of tutorial assistance paid to an individual.

(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of \$600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of \$600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3234; Pub. L. 100–689)

(h) *Flight training courses.* (1) A charge against the period of entitlement for pursuit of a flight training course will be one month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(5)(viii). When this computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at under § 21.5138(a)(5)(viii) is \$150 at the time educational assistance allowance is paid for a period of flight training, the individual will be charged one month of entitlement for each \$150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

(Authority: 38 U.S.C. 3231(f); Pub. L. 102–16)(Apr. 1, 1991)

(i) *Entitlement charge may be omitted for course discontinuance due to orders to, or changing, active duty in certain instances.* VA will make no charge against the entitlement of a servicemember or veteran for a payment of educational assistance when—

(1)(i) A veteran not serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War by orders dated before September 11, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, or former 10 U.S.C. 672(a), 672(d), 672(g), 673, or 673b (redesignated effective December 1, 1994, as 10 U.S.C. 12301(a), 12301(d), 12301(g), 12302, and 12304, respectively); or

(ii) A veteran not serving on active duty had to discontinue course pursuit as a result of being ordered, by orders dated after September 10, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(iii) A servicemember serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War by orders dated before September 11, 2001, to a new duty location or assignment or to perform an increased amount of work; or

(iv) A servicemember serving on active duty had to discontinue course pursuit as a result of being ordered, by orders dated after September 10, 2001,

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to a new duty location or assignment or to perform an increased amount of work; and

(2) The veteran or servicemember failed to receive credit or lost training time toward completion of his or her educational, professional, or vocational objective as a result of having to discontinue course pursuit as described in paragraph (i)(1) of this section.

(Authority: 38 U.S.C. 3231(a)(5)(B)(i); sec. 2, Pub. L. 102-127, 105 Stat. 619-620; sec. 103, Pub. L. 107-103, 115 Stat. 979-980)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51745, Nov. 17, 1982; 48 FR 50530, Nov. 2, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34497, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 58 FR 31910, June 7, 1993; 58 FR 34369, June 25, 1993; 58 FR 34526, June 28, 1993; 73 FR 2426, Jan. 15, 2008]

### § 21.5076 Entitlement charge—overpayment cases.

(a) *Overpayment cases.* VA will make a charge against an individual's entitlement of an overpayment of educational assistance allowance only if:

(1) The overpayment is discharged in bankruptcy; or

(2) VA waives the overpayment and does not recover it; or

(3) The overpayment is compromised.

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

(b) *Debt discharged in bankruptcy or is waived.* If the overpayment is discharged in bankruptcy or is waived and is not recovered, the entitlement charge 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).

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

(c) *Overpayment is compromised.* (1) 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).

(2) If the overpayment is compromised and compromise offer is equal to or greater than the amount of inter-

est, 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 determined in paragraph (c)(2)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(iii) Dividing the result obtained in paragraph (c)(2)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(2)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

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

[45 FR 31, Jan. 2, 1980, as amended at 52 FR 45181, Nov. 25, 1987]

### § 21.5078 Interruption to conserve entitlement.

(a) *Interruption to conserve entitlement generally prohibited.* No one may interrupt a certified period of enrollment for the purpose of conserving entitlement. A school may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the individual actually is enrolled and is pursuing his or her program of education for the entire term, quarter or semester.

(b) *Exceptions.* The Department of Veterans Affairs will charge entitlement for the entire period of enrollment certified if the individual otherwise is eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment actually is terminated.

(2) Enrollment is canceled and the individual has not negotiated an educational benefits check for any part of the certified period of enrollment.

(3) The individual: