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received a nonpunitive grade in the absence of mitigating circumstances (see § 21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in § 21.4252(1);

(5) Except as provided in § 21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

(6) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance or monthly certifications of pursuit, an owner of the school, or an operator of the school;

(7) Except as provided in § 21.7120(d), an enrollment in a nonaccredited independent study course;

(8) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m); or

(9) Taking a licensing or certification test after the date the State approving agency suspends approval of the test.

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680(g), 3689(d))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 56 FR 20135, May 2, 1991; 61 FR 6788, Feb. 22, 1996; 65 FR 81742, Dec. 27, 2000; 72 FR 16981, Apr. 5, 2007]

§ 21.7124 Overcharges.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an educational institution for further enrollments when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges that the educational institution requires from similarly circumstanced nonveterans enrolled in the same course.

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

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certifi-

cation test when the organization or entity offering the test charges or receives from a veteran or servicemember fees that exceed the established fees that the organization or entity requires from similarly circumstanced nonveterans taking the same test.

(Authority: 38 U.S.C. 3689(d), 3690(a))

[72 FR 16981, Apr. 5, 2007]

PAYMENTS—EDUCATIONAL ASSISTANCE

§ 21.7130 Educational assistance.

VA will pay educational assistance to an eligible veteran or servicemember while he or she is pursuing approved courses in a program of education at the rates specified in §§ 21.7136, 21.7137 and 21.7139 of this part.

(Authority: 38 U.S.C. 3015, 3022, 3032; Pub. L. 98-525)

§ 21.7131 Commencing dates.

VA will determine under this section the commencing date of an award or increased award of educational assistance. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

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

(1) *For other than licensing or certification tests.* (i) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is 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 course;

(D) One year before the date VA receives approval notice for the course; or

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(E) November 1, 2000, if paragraph (p) of this section applies to the individual.

(ii) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

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

(B) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

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

(ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 3689, 5110, 5113)

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) When a student enrolls in a resident course or subject, the commencing 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 student is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing

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 or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that—

(i) The published standards of the school require the student to register before reporting, and

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

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

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98-525)

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.*

(1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.

(2) When a veteran or servicemember enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance.

(3) When a veteran enrolls in a program of apprenticeship or other on-the-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98-525, Pub. L. 99-576)

(d) *Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer.* If a veteran served

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in the Armed Forces both as an enlisted member or warrant officer and as a commissioned officer, and that service was such that he or she is eligible only through application of §21.7020(b)(6)(v), the commencing date of the award of educational assistance will be no earlier than November 30, 1999.

(Authority: Sec. 702(c), Pub. L. 106-117, 113 Stat. 1583).

(e) *Increase for a dependent.* A veteran who was eligible for educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989, is entitled to additional educational assistance for dependents. No other veteran or servicemember is eligible for additional educational assistance. The effective date for the additional educational assistance is determined as follows.

(1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply.

(i) The effective date of the increase will be the date of entrance or reentrance if—

(A) VA receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) VA receives necessary evidence within 1 year of its request, or the veteran shows that good cause exists for VA's not receiving the necessary evidence within 1 year of its request. See §21.7032.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if—

(A) VA receives the claim for the increase more than 1 year after the date of entrance or reentrance, and

(B) VA receives notice of the dependent's existence if evidence is received either within 1 year of VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(iii) The effective date will be the date VA receives all necessary evidence, if that evidence is received more than 1 year from the date VA requests it, unless the veteran is able to show that there is good cause to extend the

one-year time limit to the date on which VA received notice of the dependent's existence. If the veteran shows good cause, the provisions of paragraph (e)(1)(ii)(B) of this section will apply.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(ii) Date notice is received of the dependent's existence if evidence is received either within 1 year of the VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(iii) The date VA receives evidence if this date is more than 1 year after the VA request, and the veteran is not able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(Authority: 38 U.S.C. 5110(n))

(See §3.667 of this chapter as to effective dates with regard to children age 18 and older who are attending school)

(f) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a veteran's or servicemember's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.

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

(g) *Correction of military records (§21.7050(b)).* 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 commencing date of educational assistance will be in accordance with facts found, but not

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earlier than the date the nature of the discharge or release was changed.

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

(h) *Individuals in a penal institution.* If a veteran or a servicemember is paid a reduced rate of educational assistance under §21.7139 (c) and (d) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail.

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

(i) *Commitment to service in the Selected Reserve.* If a veteran has established eligibility to educational assistance through two years' active duty service, and he or she establishes entitlement to an increased monthly rate through commitment to serve four years in the Selected Reserve, the effective date of the increase is the date on which he or she—

(1) Is committed to serve four years in the Selective Reserve, and

(2) Is attached to a unit of the Selected Reserve.

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

(j) *Increase due a servicemember due to monetary contributions.* (1) If a servicemember is contributing additional amounts as provided in §21.7136(h), and is enrolled in an educational institution operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the term, quarter, or semester following the term, quarter, or semester in which the servicemember made the contribution(s).

(2) If a servicemember is contributing additional amounts as provided in §21.7136(h), and is enrolled in an educational institution not operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the enrollment period following the enrollment period in which

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the servicemember made the contribution.

(Authority: 38 U.S.C. 3011(e), 3012(f))

(k) *Increase ("kicker") due to service in the Selected Reserve.* If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance because he or she has met the requirements of §21.7136(g) or §21.7137(e), the effective date of that increase ("kicker") will be the latest of the following dates:

(1) The commencing date of the veteran's award as determined by paragraphs (a) through (j) of this section;

(2) The first date on which the veteran is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or

(3) February 10, 1996.

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

(1) *Eligibility established under § 21.7042 (a)(7) or (b)(10).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either §21.7042 (a)(7) or (b)(10). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the \$1,200 reduction in basic pay required by §21.7042(g)(4) and the full \$1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran \$1,200 or the difference between \$1,200 and the amount collected through a reduction in the veteran's military pay, as provided in §21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran \$1,200 or the difference between \$1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year

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of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between \$1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (1)(2)(ii) or (1)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected \$1,200, if the provisions of paragraph (1)(2)(ii) or (1)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 5113; sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330)

(m) *Eligibility established under §21.7045(d)*. This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under §21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the \$1,200 reduction in basic pay required by §21.7045(d)(3) and the full \$1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran \$1,200 or the difference between \$1,200 and the amount collected through a reduction in the veteran's military pay, as provided in §21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran \$1,200 or the difference between \$1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between \$1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected \$1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 3018C(a), (b), 5113)

(n) *Eligibility established under §21.7045(c)*. The effective date of an award of educational assistance when the veteran has established eligibility under §21.7045(c) is as follows:

(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following.

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) October 23, 1992, provided that VA received the \$1,200 required to be collected pursuant to §21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) October 23, 1993; or

(B) One year from the date VA requested the \$1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the \$1,200 required to be collected pursuant to §21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(1)(ii) of this section are not met.

(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following:

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) The date on which the veteran made a valid election to receive educational assistance under 38 U.S.C. chapter 30 provided that VA received the \$1,200 required to be collected pursuant to §21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) One year from the date VA received the valid election; or

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(B) One year from the date VA requested the \$1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the \$1,200 required to be collected pursuant to §21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(2)(ii) of this section are not met.

(Authority: 38 U.S.C. 3018B)

(o) *Eligibility established under §21.7045(e).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under §21.7045(e). The commencing date of an award of educational assistance for such a veteran or servicemember is the later of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (k) of this section; or

(2) The date on which—

(i) The servicemember's basic pay is reduced by \$2,700;

(ii) The Secretary of the military department concerned collected the difference between \$2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the veteran's election under §21.7045(e), provided that this collection was accomplished through a method other than reducing the veteran's retired or retainer pay; or

(iii) The Secretary of the military department concerned first reduced the veteran's retired or retainer pay in order to collect the difference between \$2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the election under §21.7045(e).

(Authority: 38 U.S.C. 3018C(e))

(p) *Eligibility established due to changes to §§21.7042 and 21.7044.* The commencing date of educational assistance will be no earlier than November 1, 2000, if a veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (p)(1) through (p)(4) of this section and the veteran is enabled to establish eligibility due to the removal of the statutory bases for those requirements. (For

the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(1) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), 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,*

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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)

(q) *Fugitive felons.* (1) An award of educational assistance allowance to an otherwise eligible veteran may begin effective the date the warrant for the arrest of the felon is cleared by—

- (i) Arrest;
- (ii) Surrendering to the issuing authority;
- (iii) Dismissal; or
- (iv) Court documents (dated after the warrant) showing the veteran is no longer a fugitive.

(2) An award of educational assistance allowance to a dependent who is otherwise eligible to transferred entitlement may begin effective the date the warrant is cleared by—

- (i) Arrest;
- (ii) Surrendering to the issuing authority;
- (iii) Dismissal; or
- (iv) Court documents (dated after the warrant) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 5313B)

(r) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.7080, the commencing 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 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.

(Authority: 38 U.S.C. 3020)

(s) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.7080, the commencing 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 § 3.50(a) of this chapter;
- (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.

(Authority: 38 U.S.C. 3020)

[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; 70 FR 25787, May 16, 2005; 71 FR 75677, Dec. 18, 2006; 72 FR 16981, Apr. 5, 2007]

§ 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.