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(ii) The difference between the monthly rate of the cost of the course and the monthly rate of the veteran's or servicemember's basic educational assistance.

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

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136, May 2, 1991; 71 FR 75678, Dec. 18, 2006]

§ 21.7139 Conditions which result in reduced rates or no payment.

The monthly rates established in §§ 21.7136, 21.7137 and 21.7138 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Withdrawal from a course or receipt of a nonpunitive grade affects payments to a veteran or servicemember. VA will not pay benefits to a veteran or servicemember for pursuit of a course from which the veteran or servicemember withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.

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

(2) All of the following exist.

(i) There are mitigating circumstances; and

(ii) The veteran or servicemember submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the veteran or servicemember that he or she must submit a description of the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The veteran or servicemember submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the

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evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525, Pub. L. 102-127)(Aug. 1, 1990)

(b) *No educational assistance for some incarcerated veterans or servicemembers.* VA will pay no educational assistance to a veteran or servicemember, who—

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

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 38 U.S.C. 3034, 3482(g))

(c) *Reduced educational assistance for some incarcerated servicemembers.* (1) VA will pay reduced educational assistance to a servicemember who—

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

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

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance payable to a servicemember described in this paragraph shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of any charges to the servicemember for the cost of necessary supplies, books and equipment;

(ii) The monthly rate of the portion of the tuition and fees paid by the servicemember plus the monthly rate of the portion of tuition and fees paid by the Federal, State or local program; or

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(iii) The monthly rate found in §21.7136(e) or §21.7137(c), as appropriate.

(Authority: 38 U.S.C. 3034, 3482(g))

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

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

(ii) Is enrolled in a course for which the veteran pays some (but not all) of the charges for tuition and fees, or 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 veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a one-half time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(ii) If the veteran has remaining entitlement under 38 U.S.C. chapter 34, monthly rate stated in §21.7137(a) for a veteran with no dependents and the increase provided in §21.7137(d) or (e), if appropriate, plus the monthly rate stated in §21.7138 (a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance, or

(iii) If the veteran has no entitlement under 38 U.S.C. chapter 34, the monthly rate stated in §21.7136 (a) or (b), as appropriate, and the increase provided in §21.7136(d), (f), or (g), if appropriate, plus the monthly rate stated in §21.7138 (a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance.

(3) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a less than one-half time basis or on a one-quarter time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate determined by §21.7136(e) or §21.7137(b), as appropriate, plus the monthly rate stated in §21.7138(c) if the veteran is entitled to supplemental educational assistance.

(Authority: 38 U.S.C. 3034, 3482(g))

(e) *Payment for correspondence courses.* The amount of payment due a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course is 55 percent of the established charge which the educational institution requires non-veterans to pay for the lessons that the veteran or servicemember has had completed and serviced and for which payment is due.

(Authority: 38 U.S.C. 3034, 3686(a)(2))

(f) *Failure to work sufficient hours of apprenticeship and other on-job training.*

(1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in §§21.7136(b)(5) through (b)(8), (c)(5) through (c)(8), (d)(4) through (d)(6), (f)(4) and (h)(2) and 21.7137(a)(5) through (a)(8); and

(ii) Any increase (“kicker”) set by the Secretary of the service department concerned as described in §§21.7136(g) and 21.7137(d).

(2) In making the computations required by paragraph (g)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(3) For the purpose of this paragraph “hours worked” include only—

(i) The training hours the veteran worked, and

(ii) All hours of the veteran’s related training which occurred during the standard workweek and for which the veteran received wages. (See

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§ 21.4270(c), footnote 5, as to the requirements for full-time training.)

(Authority: 38 U.S.C. 3034, 3687(b)(3))

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§ 21.7140 Certifications and release of payments.

(a) *Advance payments and lump-sum payments.* VA will apply the provisions of § 21.4138(a) and (b) in making advance payments and lump-sum payments to veterans and servicemembers.

(Authority: 38 U.S.C. 3034 and 3680)

(b) *Accelerated payments.* VA will apply the provisions of §§ 21.7151(a), (c), and 21.7154(d) in making accelerated payments.

(Authority: 38 U.S.C. 3014A)

(c) *Other payments.* Except for an individual who is seeking tuition assistance top-up, an individual must be pursuing a program of education in order to receive payments of educational assistance under 38 U.S.C. chapter 30. To ensure that this is the case, the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking tuition assistance top-up; one seeking reimbursement for taking an approved licensing or certification test; one who qualifies for an advance payment; one who qualifies for an accelerated payment; or one who qualifies for a lump sum payment) only after:

(i) The educational institution has certified his or her enrollment as provided in § 21.7152; and

(ii) VA has received from the individual a verification of the enrollment.

(Authority: 38 U.S.C. 3680(g), 3689)

(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.7152; and

(ii) VA has received from the veteran and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.

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

(4) VA will pay educational assistance to a veteran or servicemember as reimbursement for taking an approved licensing or certification test only after the veteran or servicemember has submitted to VA a copy of the veteran's or servicemember's official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the veteran or servicemember took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3689)

(5) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. If the form(s) submitted did not contain the amount