

Department of Veterans Affairs

§ 21.7635

(2) When a reservist 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 in accordance with 38 U.S.C. 3686.

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

(Authority: 10 U.S.C. 16136(b))

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a reservist'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)

(e) *Individuals in a penal institution.* If a reservist is paid a reduced rate of educational assistance under § 21.7639 (d), (e), (f), (g) and (h) of this section, 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: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98-525)

(f) [Reserved]

(g) *Increase ("kicker") in amount payable.* If a reservist is entitled to an increase ("kicker") in the monthly rate of educational assistance because he or she has met the requirements of § 21.7636(b), the effective date of that increase ("kicker") will be the latest of the following dates:

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

(2) The first date on which the reservist 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)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 11311, Mar. 20, 1996; 61 FR 29304, June 10, 1996; 62 FR 55520, Oct. 27, 1997; 64 FR 23773, May 4, 1999; 66 FR 38939, July 26, 2001]

§ 21.7633 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: 10 U.S.C. 16136(b); 38 U.S.C. 3690)

[63 FR 35837, July 1, 1998]

§ 21.7635 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of reservist.* (1) If the reservist receives an advance payment and dies before the end of the period covered by the advance payment, 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 reservist dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680(e))

(b) *Course discontinued—course interrupted—course terminated—course not satisfactorily completed or withdrawn from.* (1) If the reservist, for reasons other than being called or ordered 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 grades are assigned.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 102-127) (Aug. 1, 1990)

§ 21.7635

38 CFR Ch. I (7-1-08 Edition)

(2) If the reservist 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 reservist 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 institution of higher learning.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98-525, Pub. L. 102-127) (Aug. 1, 1990)

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

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

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(5) When a reservist withdraws from flight training, VA will terminate educational assistance effective the date of last instruction.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(c) *Reduction in the rate of pursuit of the course.* If the reservist 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 reservist's educational assistance effective on the date the reduction occurred when—

- (i) A nonpunitive grade is assigned for the part of the course from which he or she withdraws, and
- (A) The reservist 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 reservist—

(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: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 102-127) (Aug. 1, 1990)

(3) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit 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 § 21.4138(f) are met. If those requirements are not met, VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98-525, Pub. L. 100-689)

(d) *Nonpunitive grade.* (1) If the reservist receives a nonpunitive grade in a particular course, for any reason other than a withdrawal from it, 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 the reservist receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the reservist's educational assistance effective the last date of attendance when mitigating circumstances are found.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98-525, Pub. L. 100-689)(Nov. 18, 1988)

(e) *Discontinued by VA.* If VA discontinues payment to a reservist following the procedures stated in § 21.4211(d) and

Department of Veterans Affairs

§ 21.7635

(g), the date of discontinuance of payment of educational assistance will be—

(1) The 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 suspension.

(2) The end of the month in which the decision to discontinue, made by VA under § 21.7633 or § 21.4211(d) and (g), is effective, if the Director of a VA facility did not suspend payments before the discontinuance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98-525)

(f) *Disapproved by State approving agency.* If a State approving agency disapproves a course in which a reservist is enrolled, the date of discontinuance of payment of educational assistance will be—

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

(2) The 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: 10 U.S.C. 16131(b), 38 U.S.C. 3672(a), 3690; Pub. L. 98-525)

(g) *Disapproval by VA.* If VA disapproves a course in which a reservist 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 of this part, 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: 10 U.S.C. 16131(b), 38 U.S.C. 3671(b), 3672(a), 3690; Pub. L. 98-525)

(h) *Unsatisfactory progress.* If a reservist's progress is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

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

(2) The date on which the reservist's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3474; Pub. L. 98-525)

(i) *False or misleading statements.* If educational assistance is paid as the result of false or misleading statements, see § 21.7658 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98-525)

(j) *Conflicting interests (not waived).* If an institution of higher learning and VA have conflicting interests as provided in § 21.4005 and § 21.7805 of this part, and VA does not grant the waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the reservist.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3683; Pub. L. 98-525)

(k) *Incarceration in prison or penal institution for conviction of a felony.* (1) The provisions of this paragraph apply to a reservist whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7639(d) of this part.

(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 reservist's tuition and fees were paid by a Federal, State or local program,

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

(iii) The commencing date of the award as determined by § 21.7631 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98-525)

(l) *Exhaustion of entitlement.* If a reservist exhausts his or her 36 months of entitlement, the discontinuance date

§ 21.7635

shall be the date the entitlement is exhausted.

(Authority: 10 U.S.C. 16131(c); Pub. L. 98-525)

(m) *End of eligibility period.* If the reservist's eligibility period ends while the reservist is receiving educational assistance, the date of discontinuance shall be the date on which eligibility ends as determined by §21.7550 and §21.7551 of this part.

(Authority: 10 U.S.C. 16133; Pub. L. 98-525)

(n) *Required certifications not received after certification of enrollment.* (1) If VA does not timely receive a required certification of attendance for a reservist enrolled in a course not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which a certification of the reservist's attendance was received. If VA later receives the certification, VA will make any adjustment on the basis of facts found.

(2) In the case of an advance payment, if VA does not receive verification of enrollment and certificate of delivery of the check within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the reservist failed to enroll, termination will be effective the beginning date of the enrollment period.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(d); Pub. L. 98-525)

(o) *Receipt of financial assistance under 10 U.S.C. 2107.* If the reservist receives financial assistance under 10 U.S.C. 2107, the effective date for discontinuance of payment of educational assistance shall be the first date for which the reservist receives such assistance.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(p) *Failure to participate satisfactorily in required training in Selected Reserve.* If the reservist fails to participate satisfactorily in required training in the Selected Reserve, VA will discontinue payment of educational assistance allowance effective the first date certified by the Department of Defense or the Department of Transportation as

38 CFR Ch. I (7-1-08 Edition)

the date on which the reservist fails to participate satisfactorily as a member of the Selected Reserve.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(q) *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 last date on which the reservist was entitled to payment of educational assistance.

(2) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Transportation is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

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

(r) *Completion of baccalaureate instruction.* If a reservist who is limited in the types of courses he or she may pursue, as provided in §21.7540 (b)(2) and (b)(3), completes a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study (see §21.7622(f)), VA will discontinue educational assistance effective the day after the date upon which the required course of instruction was completed.

(Authority: 10 U.S.C. 2131; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565; secs. 642 (a), (b), (d), 645(a), (b), Pub. L. 101-189, 103 Stat. 1456-1458)

(s) *Forfeiture for fraud.* If a reservist must forfeit his or her educational assistance due to fraud, the date of discontinuance of payment of educational assistance will 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)

(t) *Forfeiture for treasonable acts or subversive activities.* If a reservist must

Department of Veterans Affairs

§21.7636

forfeit his or her educational assistance due to treasonable acts or subversive activities, the date of discontinuance of payment of educational assistance will be the later of—

- (1) The effective date of the award, or
- (2) The day before the date the reservist 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)

(u) *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 reservist's educational assistance.

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

(v) *Independent study course loses accreditation.* If the reservist 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, unless the provisions of §21.7620 (c)(3) or (c)(4) apply.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680A(a)(4))

(w) [Reserved]

(x) *Reduction following loss of increase ("kicker").* If a reservist is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in §21.7636(b) 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 reservist is no longer entitled to the increase ("kicker").

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

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the re-

servist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in §21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in §21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330)

(z) *Except as otherwise provided.* If the reservist'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 discontinuance of payment of educational assistance on the basis of facts found.

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

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992; 58 FR 51783, Oct. 5, 1993; 61 FR 29304, June 10, 1996; 62 FR 55520, Oct. 27, 1997; 63 FR 35837, July 1, 1998; 65 FR 5788, Feb. 7, 2000; 65 FR 61101, Oct. 16, 2000; 66 FR 38939, July 26, 2001; 72 FR 39563, July 19, 2007]

§21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in §21.7639, basic educational assistance is payable at the following monthly rates.

(i) For training that occurs after September 30, 2004, and before October 1, 2005:

Training	Monthly rate
Full time	\$288.00
¾ time	216.00
½ time	143.00
¼ time	72.00

(ii) For training that occurs after September 30, 2005:

Training	Monthly rate
Full time	\$297.00
¾ time	222.00
½ time	147.00
¼ time	74.25