

**DEPARTMENT OF VETERANS  
AFFAIRS**

**38 CFR Part 21**

**RIN 2900-AQ88**

**Post-9/11 Improvements, Fry  
Scholarship, and Interval Payments  
Amendments**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend the Veteran Readiness and Employment and Education regulations to implement the provisions of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, which modified the manner in which payments of educational assistance are determined and expanded the types of programs students may pursue under the Post-9/11 GI Bill. VA is also proposing to implement section 1002 of the Supplemental Appropriations Act, 2009, which authorized the “Marine Gunnery Sergeant John David Fry Scholarship,” and a select number of provisions of the Harry W. Colmery Veterans Educational Assistance Act of 2017. This proposed rule would include the rules necessary to implement provisions of other legislative enactments that affect the provision of educational assistance to veterans and their eligible dependents and beneficiaries.

**DATES:** Comments must be received on or before July 24, 2023.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. VA will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period’s closing date is considered late and will not be considered in the final rulemaking.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Post-9/11 GI Bill Improvements**

*a. General*

On January 4, 2011, the President signed into law the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, Public Law 111-377, amending mainly chapter 33 of title 38, United States Code (U.S.C.); however, a few amendments in the law have an impact on other VA educational assistance programs and title 38 chapters.

*b. Effective Dates of Amendments Contained in Public Law 111-377*

In most instances, the changes made by Public Law 111-377 had an effective date of August 1, 2011, although some became effective on the date of enactment, some became effective after an interval of time after the signing of the Act (*e.g.*, effective 60 days after the date of the enactment of this Act, *see* section 103(c)), some became effective on October 1, 2011, and some became effective on a retroactive basis. In this proposed rule, we propose to clarify the effective dates of each provision in existing and new VA regulations. For instance, existing 38 CFR 21.9505, 21.9560, 21.9570, 21.9590, 21.9600, 21.9625, 21.9635, 21.9640, 21.9675, 21.9680, 21.9690 and 21.9720 would be amended to include language explaining that the rules contained in those existing sections describe the standards in effect before August 1, 2011, unless otherwise noted, whereas §§ 21.9506, 21.9561, 21.9571, 21.9591, 21.9601, 21.9626, 21.9636, 21.9641, 21.9667, 21.9668, 21.9676, 21.9681, 21.9691 and 21.9721 would be added with rules comparable to rules in existing provisions, but applicable after July 31, 2011, unless otherwise noted.

*c. Section 101—Modification of Entitlement to Educational Assistance*

Section 101(a)(1) of Public Law 111-377 amended 38 U.S.C. 3301(1) by adding a paragraph that expands the definition of active duty to include full-time service in the National Guard for certain purposes. We propose to implement section 101(a)(1) in proposed §§ 21.9505 and 21.9506. Under the expanded definition of active duty,

these National Guard members are eligible for Post-9/11 GI Bill benefits. Section 101(d)(1) prohibits VA from paying benefits because of the amendment to section 3301(1) before October 1, 2011, but provides for an effective date of August 1, 2009, for the section 101(a)(1) amendment. Therefore, although a National Guard member may be entitled to Post-9/11 GI Bill benefits for the period between August 1, 2009, and September 30, 2011, we could not pay these benefits until October 1, 2011. Presently, under current 38 CFR 21.9625(a)(1), if an award is the first award of educational assistance for the program of education the eligible person is pursuing under the Post-9/11 GI Bill, the commencing date of the award of educational assistance is the latest of: (a) August 1, 2009, the earliest possible beginning date as provided in § 21.9625; (b) the date the educational institution certifies; (c) one year before the date of claim as determined by § 21.1029(b); (d) the effective date of the approval of the course, or (e) one year before the date VA receives the approval notice.

For example, if a National Guard member applied for chapter 33 benefits on October 12, 2011, and it is determined that the member was eligible for educational assistance beginning August 1, 2009, under current § 21.9625(a)(1)(B) benefits could not be paid for any period earlier than October 12, 2010, *i.e.*, one year prior to the date of application. Although the National Guard member was eligible for benefits from August 1, 2009, because this member did not apply until October 12, 2011, under our current regulations the furthest back that VA could pay benefits is October 12, 2010. This is problematic because National Guard members would not have applied for benefits until after January 4, 2011, when they first became eligible for benefits under the change in law. However, if National Guard members applied for benefits on January 4, 2011, because of current law they would only be paid from January 4, 2010, the latest of the specified beginning dates, instead of August 1, 2009, the earliest possible beginning date, thereby losing out on retroactive benefits. To remedy this problem, we propose to add § 21.9626(n) to provide special rules for determining the beginning dates of awards for National Guard members made eligible by Public Law 111-377. With these changes VA could pay retroactive benefits to newly eligible National Guard members beyond the one-year limit required by current regulations.

Additionally, while the statute is silent as to a time limit for retroactive claims, for the reasons discussed below,

VA is proposing to adopt a time limit for newly eligible National Guard members to file a claim for retroactive benefits. Our concern is that without a limited window for claims for retroactive payment, we will continue to see claims far into the future, which could result in increased unforeseen burdens and costs for VA. Therefore, in § 21.9626(n), VA proposes to specify that the special beginning-date rules are only available to a newly eligible National Guard member if he or she applied for retroactive benefits by September 30, 2012 (*i.e.*, one year from the first day on which VA was statutorily allowed to make payments to the National Guard members for the expanded benefits). After the expiration of the one-year period, the beginning-date rules under § 21.9625 for determining a beginning date would apply.

Under 38 U.S.C. 5110(g) and 5113(a), benefits based on a new, liberalizing statute generally may be paid for periods no earlier than one year before the date of application therefor. The purpose of that one-year retroactive period is to provide claimants a reasonable grace period in which to learn of the new law and file their claims for the newly authorized benefit. *See McCay v. Brown*, 9 Vet. App. 183, 187–88 (1996). As noted above, however, imposing a one-year retroactive limit to benefits authorized by section 101(a)(1) of Public Law 111–377 would defeat the clear purpose of section 101(a)(1) and (d)(1) to authorize payments for periods extending back to August 1, 2009, more than a year before the statute’s enactment. We believe proposed § 21.9626(n) appropriately gives effect to all applicable statutes by providing a one-year grace period for applying for the new benefits and ensuring that those who applied within that period potentially may receive the full extent of retroactive benefits authorized by section 101(a)(1) and (d)(1).

Section 101(a)(2) of Public Law 111–377 amended 38 U.S.C. 3301(2)(A) by adding “One Station Unit Training” to the definition of “entry level and skill training” for members of the Army (effective January 4, 2011), and section 101(a)(3) amended 38 U.S.C. 3301(2)(E) by adding “Skill Training (or so-called ‘A’ School)” to the definition of “entry level and skill training” for members of the Coast Guard (effective January 4, 2011, and applicable to individuals entering service on or after that date). We propose to add “One Station Unit Training” for Army members and “Skill Training (or so-called ‘A’ School)” for Coast Guard members to the definition of “entry level and skill training” in 38

CFR 21.9505 (definitions applicable prior to August 1, 2011, to the administration of the chapter 33 program). We propose to note that the inclusion of “One Station Unit Training” for Army members and “Skill Training (or so-called ‘A’ School)” for Coast Guard members in the definition of “entry level and skill training” applies effective January 4, 2011.

Section 101(b) of Public Law 111–377 amended 38 U.S.C. 3311(c)(4) (effective January 4, 2011, with respect to discharges or releases that occur on or after that date) to clarify that a discharge or release from active duty for a preexisting, non-service-connected condition, hardship, or a condition that interfered with duty must be honorable for the individual to establish eligibility for educational assistance. We propose to include this honorable discharge requirement in § 21.9520(a)(5). Additionally, in § 21.9520(a) we propose to amend the chapter 33 eligibility criteria to clarify the need for an honorable discharge with respect to these types of discharges on or after January 4, 2011.

Section 101(c) of Public Law 111–377 amended 38 U.S.C. 3311(d)(2) to prohibit service pursuant to an agreement in connection with attendance at the Coast Guard Academy from being considered active duty for purposes of establishing entitlement to educational assistance under chapter 33 (effective January 4, 2011, with respect to individuals entering into agreements on or after that date). We propose to implement this change in the definition of “active duty” in 38 CFR 21.9505 and 21.9506, specifically in paragraph (3)(ii)(B)(2) of the definition of “active duty” in both sections. Although section 101(c) referred to 14 U.S.C. 182 as the statute governing Coast Guard Academy service agreements, Congress later replaced section 182 with 14 U.S.C. 1925. We propose to refer to the current statute.

*d. Section 102—Amounts of Assistance for Programs of Education Leading to a Degree Pursued at Public, Non-Public, and Foreign Institutions of Higher Learning (IHL)*

Section 102(a) of Public Law 111–377 amended 38 U.S.C. 3313(c) to specify the amount of assistance to be paid for pursuit of a program of education leading to a degree on more than a half-time basis at a public, non-public, or foreign IHL. The amended law provides that, effective August 1, 2011, the amount of educational assistance for payment of tuition and fees for an individual’s pursuit of an approved program of education leading to a

degree on more than a half-time basis at a public IHL is the actual net cost for in-State tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees. For pursuit of an approved program of education leading to a degree on more than a half-time basis at a non-public or foreign IHL, effective August 1, 2011, the amount of educational assistance for tuition and fees is the lesser of (i) the actual net cost for tuition and fees assessed by the institution after application of the same waivers, reductions, scholarships, and assistance described above and (ii) \$17,500 (the cap) for the academic year beginning on August 1, 2011, or the cap, as adjusted annually, for any subsequent academic year beginning on August 1 (the amount of the cap will be increased for each subsequent academic year by the percentage increase equal to the most recent percentage increase determined under 38 U.S.C. 3015(h) for the Montgomery GI Bill-Active Duty program (chapter 30)).

We would implement these changes effective August 1, 2011, in a new section, specifically 38 CFR 21.9641(b)(1) and (b)(2). The lump sum payment of educational assistance for tuition and fees is issued directly to the IHL for the entire term, quarter, or semester that the individual is pursuing the program of education, as provided in 38 CFR 21.9640(b)(1)(i). Rather than defining terms such as “Net cost” and “Non-public institution” in § 21.9641, we propose to define those terms in § 21.9506, because they would also be applicable to other provisions that are effective after July 31, 2011.

In § 21.9506, we propose to define “net cost” based on how it is described in Public Law 111–377, section 102, which specifies “net cost” as tuition and fees “after the application of any . . . [w]aiver of, or reduction in, tuition and fees” and any “[s]cholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965).” We propose to also define “non-public institution” in § 21.9506, because we use this term often throughout the proposed regulations in this rulemaking to explain the different set of provisions

which apply to private institutions. We propose to define “Non-public institution” as a proprietary institution, as that term is defined in 38 CFR 21.4200(z), which refers to an educational institution that is not a public educational institution, that is located in a State, and that is legally authorized to offer a program of education in the State where the educational institution is physically located. Additionally, because section 3313(c), as amended by section 102(a) of Public Law 111–377, requires VA to pay the net cost for tuition and fees rather than established charges, we would use the phrase “tuition and fees” throughout the proposed rules.

Section 102(b) of Public Law 111–377 amended 38 U.S.C. 3313(c)(1)(B) effective August 1, 2011, to provide for rates of monthly housing stipends (or the “monthly housing allowance”) under the Post-9/11 GI Bill that are proportional to an individual’s rate of pursuit of a program of education, as long as the rate of pursuit is more than half-time. For individuals pursuing a program of education leading to a degree (or program of education at a non-college degree institution, as provided by the changes in section 105(b)(3) of Pub. L. 111–377) on more than a half-time basis, under the amended law, the monthly housing stipend must be determined by multiplying the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 (for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the IHL at which the individual is enrolled) by the lesser of 1.0 or the number of course hours borne by the individual in pursuit of the program of education, divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest tenth. For example, if a student is enrolled in 18 course hours and the minimum number of course hours required for full-time pursuit of the program of education is 12 course hours, the applicable multiplier would be 1.0. If the student is enrolled in 9 course hours under the same full-time criteria in this example, the applicable multiplier would be 0.80 (0.75 rounded to the nearest tenth). We note that section 3313(c)(1)(B)(i)(I) was further amended by Public Law 115–48, section 107, so that the monthly housing allowance calculation would use the ZIP code area in which is located the campus of the IHL where the individual

physically participates in a majority of classes rather than the ZIP code area in which is located the IHL at which the individual is enrolled. In § 21.9641(c)(1)(ii), we refer to “ZIP code” or “location code.”

Section 5003 of Public Law 110–252 authorized VA to pay a monthly housing allowance equal to the monthly amount of the Basic Allowance for Housing (BAH) payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution of higher education at which the individual is enrolled. Public Law 110–252 did not address payment of the monthly housing allowance in areas for which there is no ZIP code. For areas without a ZIP code and U.S. Territories, the Department of Defense (DoD) pays an Overseas Housing Allowance (OHA) based on a location code. Therefore, for those individuals attending residence courses at locations that are not identified with a ZIP code, but that DoD identifies with a locality code, as provided in proposed § 21.9641(c)(1)(ii), we would pay the monthly housing stipend at the same rate as the amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 residing within the locality code identified by DoD. This payment change would be effective on August 1, 2011, which is the date that VA changed its interpretation of the statute.

We note that, under section 105(b) of Public Law 111–377, as discussed below, for individuals pursuing a certificate or other non-college degree at an educational institution other than an IHL on more than a half-time basis, the monthly housing stipends are calculated similar to the monthly housing stipends for individuals pursuing a program of education leading to a degree, discussed above, and are limited to the same proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed.

For individuals pursuing residence training at a foreign IHL on more than a half-time basis, under section 3313(c)(1)(B)(ii), the monthly housing stipend must be determined by multiplying the national average of the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 by the lesser of 1.0 or the number of course hours borne by the individual in pursuit of the program of

education, divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest tenth.

For individuals pursuing training solely via distance learning on more than a half-time basis, under 38 U.S.C. 3313(c)(1)(B)(iii), effective October 1, 2011 (*see* section 102(c)(2) of Pub. L. 111–377), the monthly housing stipend is 50 percent of the rate paid to individuals pursuing residence training at a foreign IHL on more than a half-time basis. However, for individuals pursuing hybrid training that combines distance learning with residence training, effective October 1, 2011, the monthly housing stipend would be the residence training housing stipend without regard to the percentage of the training that is conducted through distance learning as compared to residence training (*i.e.*, as long as he/she is enrolled in at least one residence training class, the individual will receive a monthly housing allowance as if all classes in the term are residence training classes. The statute does not specifically define how VA should pay monthly housing for hybrid training. Because hybrid training contains at least some element of residential training, VA proposes to consider hybrid training to be in-residence for the purposes of determining the appropriate monthly housing stipend rate. This is necessary because 38 U.S.C. 3313(c)(1)(B)(iii) merely distinguishes between training that is pursued solely through distance learning and training that is not pursued solely through distance learning. As a result of this requirement, an individual pursuing training through a hybrid course is not pursuing training solely through distance learning and, therefore, is not subject to a housing stipend restricted to 50% of the housing stipend payable to an individual pursuing a program of education at a foreign IHL on more than a half-time basis.

Section 3313(c)(1)(B) requires payment of the monthly housing stipend in a certain amount equivalent to the DoD amount specified in 37 U.S.C. 403. Thus, when the DoD rate decreases under section 403(b)(3), the VA rate should similarly decrease. However, when specifying the amount of the monthly housing stipend, section 3313(c)(1)(B) refers to the monthly amount of the basic allowance for housing payable under section 403 without specifying the particular paragraph in section 403 on which to rely. While section 403(b)(3), in particular, specifies the amount of the monthly housing stipend DoD pays servicemembers, and other provisions in

section 403(b) generally pertain to DoD's establishment of housing rates, section 403(b)(6) establishes an exception to those general rates applicable to specific servicemembers. The lack of specificity in section 3313(c)(1)(B) with respect to a particular paragraph in section 403 on which to rely when setting the VA monthly housing rate reflects some ambiguity that we believe is best resolved by applying "rate protection" to chapter 33 just as DoD "grandfathers" the basic allowance for housing for servicemembers who retain uninterrupted eligibility under section 403(b)(6). Our longstanding interpretation of section 3313(c)(1)(B) has been that all provisions of section 403 are potentially applicable in determining the chapter 33 monthly housing stipend for VA claimants. And we view section 403(b)(6) as a component of the housing-rate structure incorporated by reference in section 3313(c)(1)(B). Our interpretation of section 3313(c)(1)(B) to apply rate protection would result in the best outcome for veterans because it would allow them to retain a higher rate of the monthly housing stipend. Furthermore, we believe it would be unfair to penalize a veteran student by lowering the monthly housing stipend as a result of a change that was not initiated by the student and was beyond his or her control. Thus, we propose to implement rate protection in § 21.9641(c)(8) for chapter 33 beneficiaries if they previously received the monthly housing stipend for the same type of training at the same educational institution and if they have not had more than a six-month break in training at the same educational institution.

We propose to implement these new monthly housing stipend payment rates in new § 21.9641(c) because most changes are effective on August 1, 2011. In § 21.9641(c), we propose to specify the monthly housing allowance payable and the respective effective dates of payments for individuals pursuing programs of education at domestic and foreign IHLs and non-college degree institutions and for individuals pursuing on-the-job or apprenticeship training. However, given that the change to the housing amount for distance learning did not take effect until October 1, 2011, we propose to specify the different effective date for pursuit of training solely via distance learning in paragraph (c)(4), by indicating that, after September 30, 2011, an individual who is not on active duty and who is pursuing a program of education solely through distance learning at a rate of pursuit of greater than 50 percent, can

receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to 50 percent of the housing stipend payable to an individual pursuing a program of education at a foreign IHL on more than a half-time basis.

*e. Section 103—Amounts of Assistance for Programs of Education Leading to a Degree Pursued on Active Duty*

Section 103 of Public Law 111–377 amended 38 U.S.C. 3313(e) to provide that, effective on or after March 5, 2011, the amount of educational assistance payable for pursuit of a program of education leading to a degree on more than a half-time basis at a public IHL by an individual while the individual is serving on active duty in the Armed Forces is the lesser of: (1) the actual net cost for in-State tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees, and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees, as stated in 38 U.S.C. 3313(e)(2)(A)(i), or (2) that portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has informed VA that he or she wishes to receive payment (tuition assistance Top-Up), as stated in 38 U.S.C. 3313(e)(2)(A)(iii). For pursuit of a program of education leading to a degree on more than a half-time basis at a non-public or foreign IHL by an individual while the individual is serving on active duty, the amount of educational assistance, as provided in 38 U.S.C. 3313(e)(2)(A)(ii) and (iii), is the lesser of: (1) the actual net cost for tuition and fees assessed by the institution after application of the same waivers, reductions, scholarships, and assistance described above, (2) \$17,500 (the cap) for the academic year beginning on August 1, 2011, or the cap, as adjusted annually, for any subsequent academic year beginning on August 1 (the amount of the cap will be increased for each subsequent academic year by the percentage increase equal to the most recent percentage increase determined under 38 U.S.C. 3015(h) for the Montgomery GI Bill-Active Duty program (chapter 30)), or (3) tuition assistance Top-Up. These rates specified in amended section 3313(e) are the same as the rates for similarly situated individuals not serving on active duty.

Although tuition assistance Top-Up is not taken into account when determining the rates for individuals not serving on active duty, consideration of tuition assistance Top-Up for individuals serving on active duty does not change the calculation. Because Federal aid (which includes military tuition assistance) is first deducted in the calculation of the net cost of tuition and fees, the amount of tuition assistance Top-Up (the institution's charges not covered by military tuition assistance) will always be the same as the institution's actual net cost for tuition and fees, so the lesser of these two amounts is the same amount (actual net cost). Therefore, we propose to state in § 21.9641(b)(1) and (2) that we would pay the same rate (either actual net cost or a capped rate) to individuals who are serving on active duty and individuals who are not serving on active duty for pursuit of programs of education leading to a degree at public or non-public or foreign IHLs.

Section 103(a)(2)(E) of Public Law 111–377 added section 3313(e)(2)(C), which requires consideration of an individual Servicemember's length of time in service on active duty when determining the amount of educational assistance payable to an individual serving on active duty for pursuit of a program of education at a public, non-public, or foreign IHL. Under section 3313(e)(2)(C), the amounts payable are limited to a proportionate percentage based on length of time in service, as specified in section 3313(c)(2) through (7), of the assistance that would otherwise be payable if a Servicemember had completed an aggregate of 36 months of active duty. For example, if a Servicemember served an aggregate of at least 12 months, but less than 18 months, the applicable percentage to be applied, as specified in section 3313(c)(5), is 60 percent.

In addition, section 103(a)(2)(E) adds section 3313(e)(2)(B), which provides for a lump sum for the first month of each quarter, semester, or term, as applicable, of the program of education pursued by an individual on active duty for books, supplies, equipment, and other educational costs in an amount equal to \$1,000, multiplied by the fraction of an academic year the quarter, semester or term represents and the applicable percentage as specified in section 3313(c)(2) through (7), depending on the individual's length of service.

We propose to implement the new provisions relating to payment of educational assistance for programs pursued while an individual is on active duty in new § 21.9640(d) and

§ 21.9641(a), (b), (c)(6) and (d) to make clear the particular effective dates that apply to individuals pursuing programs while on active duty. In § 21.9640(d)(1), we propose to specify the amounts payable for individuals on active duty for programs of education beginning on August 1, 2009, and ending on March 4, 2011, before the section 103 changes took effect. Consistent with current § 21.9640(d), we propose to provide that the amount payable will be the lowest of (1) the established charges that similarly circumstanced nonveterans would be required to pay who are enrolled in the individual's program of education; (2) that portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has informed VA that he or she wishes to receive payment; (3) an amount that is the lesser amount of (1) or (2) above, divided by the number of days in the individual's quarter, semester, or term to determine the individual's daily rate, which is then multiplied by the individual's remaining months and days of entitlement to educational assistance.

We propose to implement the section 103 requirements, requiring, beginning March 5, 2011, changes in the amount of educational assistance payable for pursuit of programs of education leading to a degree on more than a half-time basis at public, non-public and foreign IHLs in § 21.9640(d)(2). We propose to specify that the amounts payable for individuals on active duty pursuing a program of education leading to a degree on a more than half-time basis beginning after March 4, 2011, but before August 1, 2011, would be based on the net cost for in-State tuition and fees. We propose to implement section 103(a)(2)(E) relating to the book stipend for the pursuit of an educational program while on active duty specifically in § 21.9641(d)(1)(i)(B).

In § 21.9641(a)(1), we propose to provide the percentages of the maximum amounts payable for the pursuit of approved program of education under chapter 33, which is based on the aggregate active duty service after September 10, 2001, for training that begins after July 31, 2011. For clarity, we would include a column with the number of days of the aggregate active duty service upon which the applicable percentages of the maximum payment amounts are based. We propose to also add this column with the number of days to § 21.9640(a)(1). In addition, we propose to clarify footnote 3 in § 21.9640(a)(1) concerning the requirement in 38 U.S.C. 3311(e) that we pay at the 70 percent level if an

individual meets the service requirements at both the 80 and 70 percent level and add a reference to section 3311(e), the authority for this rule. We propose to include the same footnote in § 21.9641(a)(1).

In § 21.9641(b)(1), we propose to state that for individuals, whether on active duty or not on active duty, pursuing an approved program of education leading to a degree at a public institution of higher learning, effective after July 31, 2011, the lump sum payment of educational assistance is the applicable percentage of the net cost for in-state tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees.

In 38 CFR 21.9641(b)(2), we propose to state that for individuals, whether on active duty or not on active duty, pursuing an approved program of education leading to a degree at a non-public or foreign institution of higher learning, effective after July 31, 2011, the lump sum payment of educational assistance is the lesser of the actual net cost for tuition and fees assessed by the institution after application of the same waivers and reductions described above; \$17,500 (the cap) for the academic year beginning on August 1, 2011; or the cap, as adjusted annually, for any subsequent academic year beginning on August 1 (the amount of the cap will be increased for each subsequent academic year by the percentage increase equal to the most recent percentage increase determined under 38 U.S.C. 3015(h) for the Montgomery GI Bill-Active Duty program (chapter 30)). Under 38 U.S.C. 3313(h), VA is required to pay the amount of educational assistance for tuition and fees directly to the educational institution. We propose to implement this requirement in § 21.9641(b)(1) and (2) where we state that the lump sum payment of educational assistance for tuition and fees is issued directly to the IHL for the entire term, quarter, or semester that the individual is pursuing the program of education.

In § 21.9641(c)(6), we propose to state that no monthly housing allowance is payable for programs of education pursued for vocational flight training at institutions other than IHLs, pursued exclusively by correspondence, pursued on a half-time basis or less, and pursued

while on active duty. This would reflect that the statutory provisions applicable to those programs, including 38 U.S.C. 3313(e) with regard to programs pursued while on active duty, do not authorize a monthly housing allowance.

*f. Section 104—Educational Assistance for Programs of Education Pursued on a Half-Time Basis or Less*

Section 104 of Public Law 111–377 amended 38 U.S.C. 3313(f), effective August 1, 2011, to add a new provision for determining the amounts of educational assistance payable to individuals enrolled in training on a half-time basis or less and to provide that the new provision is applicable to all individuals, whether for educational pursuit while on active duty, pursuit of programs of education leading to degrees, or pursuit of programs of education other than programs leading to degrees (non-degree programs). The new provision provides that the amount of assistance payable is the lesser of: (1) the actual net cost for in-State tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or (2) the amount of such assistance after application of the proportionate-reduction provisions found in section 3313(c)(2) through (7).

We propose to implement section 104 in § 21.9641(b)(1) and (2), which would be applicable beginning August 1, 2011. Because section 104 requires payment for pursuit of programs of education leading to degrees and non-degree programs on a half-time basis or less in the same amount we are required to pay pursuant to section 102 for pursuit of programs of education leading to a degree on more than a half-time basis at a public, non-public, or foreign IHL, § 21.9641(b)(1) and (2) would be applicable to payments to individuals training in pursuit of programs of education leading to degrees at less than half time as well as individuals training at more than half time. Payments to individuals training in pursuit of non-degree programs at less than half time are also covered in § 21.9641(b)(1) and (2), as explained below discussing the section 105 amendments.

With regard to active duty members, although the net cost for in-State tuition and fees would be payable beginning after March 4, 2011, to active duty

members pursuing a program of education leading to a degree on a more than half-time basis pursuant to section 103, we would not pay active duty members pursuing a program of education on a half-time basis or less and active duty members pursuing a non-degree program this new net cost rate until August 1, 2011. Until August 1, 2011, we would continue to pay active duty members pursuing a program of education on a half-time basis or less and active duty members pursuing a non-degree program the rate we paid all active duty members prior to the change in law on August 1, 2011, when section 104 requires payment of the new rate for active duty members pursuing a program of education on a half-time basis or less and active duty members pursuing a non-degree program. We propose to specify the continuance of the rate we paid all active duty members for active duty members pursuing a program of education leading to a degree on a half-time basis or less for the period from March 5, 2011, through August 1, 2011, in § 21.9640(d)(3). We propose to specify the continuance of the rate we paid all active duty members for active duty members pursuing a non-degree program for the period from March 5, 2011 through August 1, 2011, in § 21.9640(d)(4).

*g. Section 105—Educational Assistance for Programs of Education Other Than Programs of Education Leading to a Degree*

Section 105 of Public Law 111–377 amended section 3313(b) to remove language that limited the provision of educational assistance under the Post-9/11 GI Bill to programs of education pursued at IHLs. This change allows pursuit of non-college degree programs “approved for purposes of chapter 30.” See 38 U.S.C. 3313(b). Section 105 also added a new 38 U.S.C. 3313(g) to allow payment of educational assistance for approved programs offered at educational institutions other than IHLs. In §§ 21.9715, 21.9735, 21.9740, 21.9750, and 21.9765, we propose to amend the existing regulations to authorize pursuit of non-college degree programs at non-IHLs and remove language that limits pursuit of non-college degree programs to only those offered by an IHL. In these sections, we propose to remove the term “institution of higher learning” and add, in its place, the term “educational institution.”

Prior to the passage of Public Law 111–377, students pursuing non-college degree programs at IHLs (on a greater-than-half-time basis) were entitled to payment of the established charges for

tuition and fees (not to exceed the maximum amount of the established charges for in-State students at public institutions), a monthly housing stipend, and a books and supplies stipend. Individuals who were entitled to the 100-percent level of such payments were also eligible to participate in the Yellow Ribbon program if the schools they attended participated in this program. With regard to the payment of educational assistance, prior to the passage of Public Law 111–377, there was no distinction between an individual pursuing a degree program at an IHL and an individual pursuing a non-college degree program at an IHL.

Neither section 3313(c) nor section 3313(g) addresses the level of payment of educational assistance for pursuit of a non-college degree program at an IHL on a greater than half-time basis. In general, we view the purpose of the amendments made by Public Law 111–377 as expanding the universe of programs for which educational assistance may be paid under the Post-9/11 GI Bill (as it did by permitting payment for on-the-job and flight training programs at non-IHL schools, for which payment was previously not permitted). Therefore, based on our interpretation that Public Law 111–377 is meant to expand the universe of programs available, we construe section 105 in a way that does not stop previously authorized payment of educational assistance to individuals who may have already made substantial investments, in terms of time and effort, in pursuit of non-college degrees at IHLs. Also, and again based on our view of Public Law 111–377 as expanding the availability of educational assistance, we construe section 105 in a manner that does not limit a student’s choice of the type of school he or she may wish to attend. Therefore, we conclude that VA retains the authority to pay educational assistance for the pursuit of non-college degree programs at IHLs in the same way we had been paying educational assistance for the pursuit of non-college degree programs at IHLs prior to the passage of Public Law 111–377. Because we had been paying educational assistance for the pursuit of non-college degree programs at IHLs in the same manner as we had been paying educational assistance for the pursuit of degree programs at IHLs prior to the passage of Public Law 111–377, we propose to continue to pay individuals pursuing a non-college degree program at an IHL in the same manner as we pay individuals pursuing a degree program at an IHL. Therefore, § 21.9641(b)(1) and

(b)(2), specifying the amounts of tuition and fees payable beginning August 1, 2011, would be applicable to payments for pursuit of all programs of education, whether degree or non-college degree.

New 38 U.S.C. 3313(g)(3)(A), as added by section 105 of Public Law 111–377, provides, effective October 1, 2011, that the amount of educational assistance to be paid to an individual enrolled in a certificate or other non-college degree program at an educational institution other than an IHL on more than a half-time basis is the lesser of the actual net cost of in-State tuition and fees (less any waiver of, or reduction in, tuition and fees and any amount provided directly to the institution on behalf of an eligible student for the sole purpose of defraying tuition and fees), or \$17,500 (the cap) for the academic year beginning on August 1, 2011 (or the cap as adjusted annually for any subsequent academic year beginning on August 1). We propose to implement this payment requirement in § 21.9641(b)(3) by providing that VA will make a lump sum payment directly to the institution in an amount of educational assistance payable for an individual enrolled at more than half-time, in a certificate or non-college degree program at an educational institution other than an IHL.

New section 3313(g)(3)(A) also provides, effective October 1, 2011, that individuals enrolled in a certificate or other non-college degree program at an educational institution on more than a half-time basis are eligible for a monthly housing stipend and a monthly stipend for books, supplies, and equipment. The amount of the monthly housing stipend is calculated in the same fashion as it is for individuals pursuing programs of education leading to a degree at IHLs. We propose to implement this payment requirement in § 21.9641(c)(3). The amount of the monthly stipend for books, supplies, and equipment is \$83 each month, prorated for a partial month. We propose to implement this payment requirement in § 21.9641(d)(2). This amount for books, supplies, and equipment is further limited to a proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed. We proposed to implement this payment requirement in generally applicable § 21.9641(a), which provides the applicable percentage of the maximum amounts payable.

Section 3313(g)(3)(B), as added by Public Law 111–377, section 105(b), provides for a monthly housing stipend and a stipend for books, supplies and

equipment for individuals pursuing a full-time program of apprenticeship or other on-the-job training. Paragraph (B) requires, effective October 1, 2011, the amount of the monthly housing stipend to be 100 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the first six-month period of pursuit of the program, 80 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the second six-month period of pursuit, 60 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the third six-month period, 40 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the fourth six-month period, and 20 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of pursuit of the program for any subsequent months of training. Paragraph (B) requires, effective October 1, 2011, the amount of the monthly stipend for books, supplies, and equipment to be \$83 for each month of training, or a prorated amount for a partial month of training.

The amounts of the monthly housing stipend and stipend for books, supplies, and equipment for individuals entitled to educational assistance by reason of section 3311(b)(3) through (8) must be further limited to the same proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed. The amounts of these monthly stipends must be reduced even further if a individual fails to complete 120 hours of training in any month. Pursuant to new 38 U.S.C. 3313(g)(3)(B)(iv), the reduced amount must be determined by multiplying the otherwise payable amount for that month by the number of hours worked rounded to the nearest 8 hours, and then by dividing that amount by 120, and lastly rounding that final amount to the nearest hundred. For example, with regard to the monthly housing stipend, if a student completes 96 hours of training for a month in which he or she is eligible to otherwise receive a \$1,000 monthly housing stipend, the student must receive \$800 (which is \$1,000 multiplied by 96 hours, and divided by 120). We propose to implement the monthly housing allowance payment requirement for individuals pursuing a full-time program of apprenticeship or

other on-the-job training in § 21.9641(c)(5), and the book stipend payment requirement in § 21.9641(d)(2).

New 38 U.S.C. 3313(g) allows payment of educational assistance for approved programs other than programs leading to a degree offered at educational institutions other than IHLs, which would include apprenticeships and on-the-job training programs. Therefore, we propose to provide in newly added § 21.9626(c), the beginning dates of an award or increased award of educational assistance for approved programs, including apprenticeships and on-the-job training programs, but not for a licensing or certification test, a national test for admission, or a national test for credit.

Section 3313(g)(3)(C) and (D), as added by Public Law 111-377, section 105(b), provides, effective October 1, 2011, that the amount of educational assistance to be paid to an individual enrolled in a program of flight training or of training pursued exclusively by correspondence, respectively, at either an IHL or an institution other than an IHL on more than a half-time basis is the lesser of the actual net cost of tuition (in-State tuition for flight training) and fees (less any waiver of, or reduction in, tuition and fees and any amount provided directly to the institution on behalf of an eligible student for the sole purpose of defraying tuition and fees) or \$10,000 (the cap) for flight training, or \$8,500 (the cap) for training pursued exclusively by correspondence, for the academic year beginning August 1, 2011 (or the respective cap as adjusted annually for any subsequent academic year beginning on August 1). This amount is further limited to the same proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed.

We propose to specify in new § 21.9641(b)(5) that, effective after September 30, 2011, a lump sum of this amount of assistance would be paid directly to the institution on behalf of the individual enrolled in a flight training program at any institution, regardless of whether it is an IHL. We propose to require that an individual complete a certification for training before VA would issue payment for the flight training because section 3313(g)(4)(C)(ii) adds this requirement. We propose to specify in new § 21.9641(b)(6) that, effective after September 30, 2011, assistance would be paid quarterly on a pro rata basis for lessons completed directly to the educational institution on behalf of the

individual enrolled in a program of training pursued exclusively by correspondence at any institution, regardless of whether it is an IHL, since this frequency of payment is required by section 3313(g)(4)(D).

Section 3313(g)(5) requires that we charge entitlement for individuals pursuing non-college degree programs at institutions other than IHLs based on the amount paid as a percentage of the otherwise applicable annual rate. The rules regarding the charge to entitlement for individuals pursuing certificate or other non-degree programs at educational institutions would be located in § 21.9561(b). In § 21.9561(b)(1), we propose to provide that when VA pays tuition and fees to the non-college degree institution, the individual would be charged entitlement equal to the numbers of months and the corresponding fraction measured in days, determined by dividing the total amount paid by the amount equal to 1/12th of the applicable amount for the academic year, which is \$17,500 (the cap) for the academic year beginning on August 1, 2011 (or the cap as adjusted annually for any subsequent academic year beginning on August 1). In § 21.9561(b)(2), we propose to provide that for any period VA does not pay net costs to the non-college degree institution, but pays a monthly housing allowance or an increase (“kicker”) to the individual, that individual will be charged a percentage of a day equal to the individual’s rate of pursuit for each day of the certified enrollment period that the individual received a monthly housing allowance or an increase (“kicker”). In § 21.9561(b)(3), we propose to provide that for any period VA does not pay net costs to the non-college degree institution, or a monthly housing allowance or an increase (“kicker”) to the individual, but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

Although section 3313(g)(5) sets out the entitlement charges for individuals pursuing non-college degree programs at institutions other than IHLs, it omits the entitlement charges for apprenticeships and on-the-job training, flight training, and correspondence training. In the absence of guidance on how to charge entitlement for individuals pursuing flight and correspondence training, we propose to apply the same rules provided in section 3313(g)(5) because tuition is similarly charged for individuals pursuing certificate or other

non-degree programs at institutions other than IHLs and individuals pursuing flight and correspondence training. Specifically, in § 21.9561(d) and § 21.9561(e), we propose to provide that an individual will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made for flight training and correspondence training occurring after July 31, 2011.

However, because we do not pay tuition and fees for individuals pursuing apprenticeships and on-the-job training under chapter 33, we cannot apply the entitlement charges rules in section 3313(g)(5) to individuals pursuing apprenticeships and on-the-job training under chapter 33. Instead, we propose to charge entitlement for training assistance allowance under 38 U.S.C. 3687(e) for individuals pursuing apprenticeships and on-the-job training under chapter 33. We are aware that the applicable statutes might be understood to preclude charging entitlement under section 3687(e) for individuals pursuing apprenticeships and on-the-job training under chapter 33. Section 3323(a)(1) makes 38 U.S.C. 3034(a)(1) applicable to the provision of educational assistance under chapter 33, and 38 U.S.C. 3034(a)(1) makes most of the provisions of chapter 36 applicable to the provision of educational assistance under chapter 30, with an explicit exception of section 3687. It arguably follows from section 3034 that we may not apply section 3687 to the provision of educational assistance under chapter 33. However, VA believes that the relevant statutes are best understood to permit application of section 3687(e) to the provision of educational assistance under chapter 33. Congress has consistently either specified the methodology for computing charges against entitlement or expressly stated that there will be no charge to entitlement (*see, e.g.*, 38 U.S.C. 3314(d), 3318(e)). Its failure to do either section 3323 suggests that there is a gap in the statute VA must fill. We believe that the best interpretation of the statute is that there should be a charge against entitlement. Section 3312(a) of title 38, U.S.C., makes clear that educational assistance is limited to 36 months, and, absent an express provision that benefits are not charged against entitlement, providing benefits without any charge to entitlement would appear to be inconsistent with the overall statutory scheme. We believe it is more likely Congress intended that there be a charge

against entitlement, but failed to specify the methodology. Therefore, it is reasonable to apply the entitlement charges rules in section 3687(e) to individuals pursuing apprenticeships and on-the-job training under chapter 33.

According to section 3687(e), an individual is charged entitlement for each month an individual is paid a training assistance allowance at a rate equal to the ratio of the training assistance allowance for the month to the monthly educational assistance allowance payable for full-time enrollment in an educational institution. For the first six months of training, we propose to pay a monthly training assistance allowance to individuals pursuing apprenticeships and on-the-job training under 38 U.S.C. 3313(g)(3)(B) at the same rate as the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403, which is the same as the rate of the monthly educational assistance allowance payable for full-time enrollment in an educational institution; for the second six months of training, we propose to pay 80% of that amount; for the third six months of training we pay 60% of that amount; for the fourth six months of training, we propose to pay 40% of that amount; and for any month after the first 24 months of training, we propose to pay 20% of that amount. Accordingly, for the first six months of training, the ratio of the training assistance allowance to the educational assistance allowances would be one month, and for subsequent periods of training, the ratio would be the applicable portion of a month. We propose to provide these rules for entitlement charges for apprenticeships and on-the-job training occurring after July 31, 2011, in new § 21.9561(c).

In § 21.9641(e), we propose to provide notice that VA will publish the maximum amount of tuition and fees payable each academic year in the “Notices” section of the **Federal Register** and on the GI Bill website. We propose to add this notice provision to provide the public with efficient notification of the changes to the maximum amount of tuition and fees.

We propose to use the term “educational institution” in §§ 21.9601, 21.9626, 21.9636 and 21.9681. We propose to also define in § 21.9505 and § 21.9506 the term “educational institution” as having the same meaning as the term “institution of higher learning,” as that term is defined in § 21.4200(h). Prior to August 1, 2011, we referred to this type of institution solely as an institution of higher learning

whereas now we would use that term and “educational institution” interchangeably.

Prior to the passage of Public Law 111–377, payment of Post-9/11 GI Bill benefits for individuals to pursue training at non-college degree programs was not authorized, although payment of educational benefits may have been authorized under other benefit programs, such as the Montgomery GI Bill program. Therefore, in 38 CFR 21.9590(d), we decided to pay for non-college degree programs on behalf of individuals who had relinquished another benefit to receive Post-9/11 GI Bill benefits, at the rate payable under the relinquished benefit. Because Public Law 111–377 authorized payment of training pursued at non-college degree programs after July 31, 2011, a provision such as § 21.9590(d) is not necessary for training pursued after July 31, 2011. Therefore, we propose to omit a provision, similar to § 21.9590(d), permitting payment for pursuit of non-college degrees at other than IHLs on behalf of individuals who had relinquished another benefit to receive Post 9/11 GI Bill benefits, in new § 21.9591, which covers approval of programs of education for training that begins on or after August 1, 2011, similar to § 21.9590 for approval of programs for training that occurs prior to August 1, 2011.

#### *h. Section 106—Determination of Monthly Housing Stipend Payments for Academic Years*

Section 106 of Public Law 111–377 added 38 U.S.C. 3313(i), which requires, effective August 1, 2011, that any monthly housing stipend payable under section 3313 during the academic year beginning on August 1 of each calendar year must be determined using rates for basic allowances for housing payable under 37 U.S.C. 403, in effect as of January 1 of such calendar year. We propose to add this requirement in § 21.9641(c)(7).

VA has been paying the monthly housing stipend to individuals attending residence courses in locations not identified with a ZIP code as if they were attending foreign institutions. However, this has resulted in inequities in payment. For the reasons we provided in the discussion of section 102(b) above, we propose to state in § 21.9641(c)(1)(ii) that, on or after August 1, 2012, we will use the ZIP code or locality code, whichever may be applicable, for all, or a majority, of the area of the institution in which the individual is enrolled when determining the monthly housing



allowance payable for residence training at an IHL located in a state.

*i. Section 107—Availability of Assistance for Licensure and Certification Tests*

Section 107 of Public Law 111–377 amended 38 U.S.C. 3315, effective August 1, 2011, by removing the one-time limit on the use of Post-9/11 GI Bill benefits to pay for a single licensure or certification test. Under current section 3315, an individual can receive payment for an unlimited number of licensure and certification tests, however, the amount payable cannot exceed the least of: \$2,000; the amount charged for the test; or the amount of educational assistance corresponding to the remaining entitlement at the time of payment for the test. We propose to provide, in § 21.9667, for reimbursement for any number of licensure and certification tests taken after July 31, 2011, limited to the least of the licensing or certification test fee, \$2,000, or the amount equal to the amount of entitlement to educational assistance available at the time of payment for the test.

In proposed § 21.9626(a)(2), we propose to include the same requirements included in § 21.9625—that VA will award educational assistance for the cost of a licensure or certification test only when the eligible individual takes such test on or after August 1, 2009, while the test is approved under 38 U.S.C. chapter 36, while the individual is eligible for such educational assistance, and if the claim for reimbursement of the cost of the test is received within 1 year of the test. We would include these same requirements in § 21.9626 because they continue to be applicable after July 31, 2011, but, because they are applicable beginning on or after August 1, 2009, we propose to include this beginning date requirement in § 21.9626(a)(2).

Section 107 also removed the prohibition on charging entitlement for payment for a test. It requires that the corresponding charge to entitlement for payment for each licensure or certification test taken on or after August 1, 2011, be made at the rate of one month (rounded to the nearest whole month) for each \$1,460 paid for the academic year beginning on August 1, 2011, as increased under 38 U.S.C. 3015(h) each academic year beginning on each subsequent August 1. To the extent the calculation results in a rate of less than one-half month, we interpret the statute as requiring an entitlement charge of one month, *i.e.*, a test payment always results in an entitlement charge under section 3315(c).

In § 21.9561(f)(1) and (f)(2)(i), we propose to explain that we would charge entitlement for each payment of educational assistance made for an approved licensure or certification test taken on or after August 1, 2011, and prior to August 1, 2018, by dividing the total amount of the payment by \$1,460 (or as increased under 38 U.S.C. 3015(h) for any subsequent academic year beginning on August 1) for the academic year beginning August 1, 2011, or the maximum amount of \$2,000 for a licensure or certification test, and rounding the result to the nearest whole month. The charge to entitlement would be at least one month. For example, if an individual receives educational assistance during the academic year beginning August 1, 2011, for taking an approved licensure or certification test that costs \$500, VA proposes to make a charge against the individual's entitlement of 1 month ( $\$500/\$1460 = 0.34$ ; because there is a minimum charge of one month, this would be rounded to one month).

In 2017, section 108 of Public Law 115–48 further changed the requirements for calculating entitlement charges for licensure and certification tests under the Post 9/11 GI Bill for tests taken on or after August 1, 2018. Section 3315, as amended by section 108 of Public Law 115–48, requires that, for tests taken on or after August 1, 2018, entitlement charges be pro-rated based on the actual amount of the fee charged for the test relative to the rate that is payable for one month. In order to pro-rate the fee charged relative to the rate payable for one month, VA will count each month as 30 days. We propose to calculate the pro-rated charge to entitlement for tests taken on or after August 1, 2018, in § 21.9561(f)(2)(ii) by dividing the total amount of the payment by \$1,460, as increased under 38 U.S.C. 3015(h) for the applicable academic years subsequent to August 1, 2011, beginning on August 1, multiplying by 30 and rounding the result to the nearest whole day, instead of to the nearest whole month. The minimum charge to entitlement would be at least one day, since it is the minimum part of a month.

*j. Section 108—National Tests*

Section 108 of Public Law 111–377 added 38 U.S.C. 3315A to permit individuals to use Post-9/11 GI Bill benefits to pay a limited amount for national tests for admission to IHLs and national tests providing an opportunity for course credit at IHLs taken on or after August 1, 2011. Section 3315A imposes a corresponding charge to entitlement for each test, similar to the

charge to entitlement imposed with respect to payment for licensure and certification tests. We propose to implement the requirements of this section in, among other regulations, §§ 21.9626(a)(3), 21.9668, and 21.9681.

In proposed § 21.9626(a)(3), we propose to provide that VA will award educational assistance for the cost of a national test for admission or a national test for credit for an individual who takes such test after July 31, 2011, under the same conditions under which we pay for the cost of licensure and certification tests. We propose to reword one of those conditions to more clearly state that VA will pay for the cost of a test only if a claim for reimbursement is submitted within 1 year of taking the test. In § 21.9668, we propose to specify that the reimbursement an individual could receive for taking a national test for admission or a national test for credit is the lesser of (a) the fee charged for the test or (b) the amount equal to the number of whole months of remaining entitlement available to the individual. We propose to also specify that of the fee charged for the test, we will not reimburse for any optional costs that are not required for the testing process. In § 21.9681(b)(1), we propose to provide that the certification requirements by educational institutions for release of payments do not apply to national tests for admission and national tests for credit.

Because section 108 of Public Law 111–377 amended 38 U.S.C. 3315A to add two additional test types, we propose to add new paragraphs (mm) and (nn) to § 21.4200, which defines terms that apply to subpart P of 38 CFR part 21, containing the regulations for the Post 9/11 GI Bill program, to define the terms “national test for admission” and “national test for credit.” As stated in proposed § 21.9626(a)(3), these tests must be specifically approved for the GI Bill under the provisions in 38 U.S.C. chapter 36, which is implemented by provisions currently found in § 21.4268. VA has a list of tests that have applied and been approved for reimbursement, and we would reference that list in proposed § 21.4200(mm) and (nn). The list is maintained and can be accessed by visiting the website: <http://inquiry.vba.va.gov/weamspub/buildSearchNE.do>. If the test has not yet been approved or is not contained on this list, the organization administering the test must contact VA about having it approved.

In § 21.9561(f), we propose to charge entitlement for each payment of educational assistance made for an approved national test taken on or after August 1, 2011, and prior to August 1,

2018, in the same manner as we charge entitlement for licensure and certification tests, except there would not be a \$2,000 limit per cost of test as there would be with respect to licensure and certification tests.

We propose to add new § 21.9591 to explain the types of programs or courses an individual can pursue on or after August 1, 2011, to be eligible for educational assistance under the Post 9/11 GI Bill. We propose to include in § 21.9591(a)(4) national tests for admission and national tests for credit as types of programs an individual can pursue on or after August 1, 2011, and receive educational assistance under the Post 9/11 GI Bill. We propose to state in § 21.9591(b)(4) that VA would approve a program of education under chapter 33, except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, or for a program consisting of a national test for admission or a national test for credit, only if the individual is not already qualified for the objective of the program.

In new § 21.9601(b), we propose to explain that overcharges or excessive fees by organizations or entities offering national tests may result in disapproval of tests.

As provided in current § 21.9710, an individual's educational assistance is dependent upon his or her pursuit of a program of education, except for an individual pursuing tuition assistance Top-Up or reimbursement for taking an approved licensing or certification test. We propose to revise § 21.9710 to clarify that payment of educational assistance is not contingent upon an individual's pursuit when reimbursement is for a national test. This exception is in addition to the current exceptions of an individual's pursuit of tuition assistance Top-Up and reimbursement for taking an approved licensing or certification test. Furthermore, in proposed § 21.9721(a), we propose to provide that VA does not require organizations or entities offering national tests for admission, national tests for credit, or licensing or certification tests to certify that the individual took the test.

*k. Section 109—Continuation of Entitlement to Additional Educational Assistance for Critical Skills or Specialty*

Section 109 of Public Law 111–377 added 38 U.S.C. 3316(c) and (d). Section 3316(c) allows individuals entitled to receive an increased amount of educational assistance for critical skills or specialties (“recruitment or retention kickers” or “kickers”), pursuant to 38

U.S.C. 3015(d) or 10 U.S.C. 16131(i), from the Department of Defense (DOD) or the Department of Homeland Security (DHS) under the MGIB or the Montgomery GI Bill—Selected Reserve to remain entitled to that increased assistance if the individual has elected to receive Post-9/11 GI Bill benefits in lieu of either the MGIB or the Montgomery GI Bill—Selected Reserve. Under section 3316(c), payments of these kickers are now made on a monthly basis, as opposed to a lump sum for the entire term, quarter, or semester. Under section 3316(c), the amount payable on a monthly basis must be determined by multiplying the monthly amount of the kicker by the individual's rate of pursuit, rounded to the nearest multiple of 10.

In § 21.9650, which provides for continued entitlement to the increased “kicker” amount for critical skills or specialties if the individual has elected to receive Post-9/11 GI Bill benefits in lieu of either the MGIB or the Montgomery GI Bill—Selected Reserve, we propose to amend § 21.9650(a)(2) to add that the chapter 33 kicker amount paid to the individual as part of the monthly housing allowance if the individual is entitled to a monthly housing allowance for the period from August 1, 2009, to July 31, 2011, will be paid under § 21.9640(b), and for the period after July 31, 2011, will be paid under § 21.9641(c). Additionally, we propose to amend § 21.9650(b)(2) and (c)(2) to include separate paragraphs applicable to payment for training during different time periods, and amend § 21.9650(b)(3) and (c)(3) to indicate that, after July 31, 2011, payment of the kicker would be made on a monthly basis.

Additionally, we note that section 109 does not require changes to the calculation of payment amounts and the timing of payments for the continued payment of kickers under section 3021 (supplemental educational assistance). The only change we would make to § 21.9655 would be that any increase that is payable for supplemental educational assistance will only be paid to the individual as an increase to the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii), (b)(2)(ii), or § 21.9641(c) for that term, quarter, or semester. We are removing the authority citation to 38 U.S.C. 3316 that appears after paragraph (a) of § 21.9655 and including it at the end of the section. We also note that 38 U.S.C. 3316(d), as added by section 109(b)(1) of Public Law 111–377, directs DOD or DHS, as applicable, to pay for kickers from funds

deposited in the DOD Education Benefits Fund or from appropriations available to the DHS, as appropriate. Because this change is an administrative issue for resolution exclusively by the DOD and the DHS, we would not make any changes to VA regulations to implement section 109(b)(1).

*l. Section 110—Transfer of Unused Education Benefits*

Section 110 of Public Law 111–377 amended 38 U.S.C. 3319, effective August 1, 2011, to permit certain members of the U.S. Public Health Service and the National Oceanic and Atmospheric Administration, in addition to members of the Armed Forces, to transfer Post-9/11 GI Bill benefits to their dependents following completion of minimum duty requirements. It also clarified that the purpose of permitting this transfer is to promote recruitment and retention, and that the individual Secretary concerned (e.g., Secretary of the Army, Secretary of the Navy, Secretary of Health and Human Services, and others) may exercise the authority to allow such transfer when authorized by the Secretary of Defense in the national security interests of the United States.

We propose to amend the introductory text of § 21.9570 to indicate that the regulation would apply for training that occurs before August 1, 2011, and add § 21.9571, to apply to training that occurs after July 31, 2011, which would mostly replicate § 21.9570, but we propose to change “Armed Forces” and “active duty service” to “Uniformed Services” and “service as a member of the Uniformed Services,” respectively, each place they appear, and remove “military” each time it appears with reference to “department” to permit individuals who train with the U.S. Public Health Service and the National Oceanic and Atmospheric Administration after July 31, 2011, to transfer Post-9/11 GI Bill benefits to their dependents. Additionally, in § 21.9571(g)(1), we propose to clarify that any modification of a transfer of entitlement designation, including modification of a beginning date under § 21.9571(d)(1)(iii), will only be effective on or after the date that the modification was submitted, which would be consistent with § 21.9571(g)(2).

*m. Section 111—Bar to Duplication of Certain Educational Assistance Benefits*

Section 111 of Public Law 111–377 amended 38 U.S.C. 3322 by adding four new paragraphs to bar concurrent receipt of various types of VA educational assistance, effective August

1, 2011. Section 111(a) added section 3322(e) to require an election between educational assistance under 38 U.S.C. 3311(b)(9) (Fry Scholarship program) and under 38 U.S.C. 3319 (Post-9/11 GI Bill benefits based on transferred entitlement). Section 111(b) added section 3322(f) to restrict VA from paying dependency and indemnity compensation or pension based on the death of a parent to an eligible child, or increased rates or additional amounts of compensation, dependency and indemnity compensation, or pension based on the child, on the one hand, and educational assistance under the Fry Scholarship on the other hand. Section 111(c) added section 3322(g) to require a spouse or child to elect to receive transferred Post-9/11 GI Bill benefits under 38 U.S.C. 3319 from only one individual at a time if entitled to receive transferred benefits from more than one individual for the same time period.

Section 111(d) added section 3322(h) to require an individual to elect one program under which to establish eligibility for educational assistance even if the individual may be able to establish eligibility under 38 U.S.C. chapters 30, 32, or 33 and 10 U.S.C. chapters 1606 or 1607 based on a single period of active-duty service. New section 3322(h) also requires a child of a member of the Armed Forces who dies in the line of duty on or after September 11, 2001, while serving on active duty, to elect to establish eligibility for educational assistance under either the Fry Scholarship or under chapter 35 even if the child is eligible for educational assistance based on the parent's death under both programs. New paragraphs (e), (g), and (h) of section 3322 allow VA to determine the form and manner of the required elections.

To implement these requirements, we propose to modify § 21.9690 to indicate that the prohibitions on non-duplication of benefits in § 21.9690 are effective during the period beginning August 1, 2009, and ending July 31, 2011. We propose to also add provisions in proposed § 21.9691, in which we would provide that, after July 31, 2011, an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with various types of educational assistance, *see* proposed § 21.9691(a) (*see* discussion of section 202 below regarding this provision); that the payment of educational assistance is prohibited to the eligible individual for courses that are paid in full or in part by the Armed Forces while the individual is on active duty service, or

for a course or courses that are paid under the Government Employees Training Act, *see* proposed § 21.9691(b); that an individual entitled to educational assistance under both the Fry Scholarship and transferred benefits may not receive educational assistance under both provisions concurrently, *see* proposed § 21.9691(c); that an individual may not receive transferred benefits from more than one individual concurrently, *see* proposed § 21.9691(d); that an individual's receipt of educational assistance under the Fry Scholarship is a bar to subsequent payment of both (i) dependency and indemnity compensation or death pension to the individual once they attain the age of 18 years, or (ii) an increased rate or additional amount of compensation, dependency and indemnity compensation, or pension paid on account of the individual, *see* proposed § 21.9691(e); that an individual who is eligible under 38 U.S.C. chapter 30, 32, or 33 and 10 U.S.C. chapter 1606 or 1607 must elect under which authority such service is to be credited; and that a child of a member of the Armed Forces who, after September 10, 2001, dies in the line of duty while serving on active duty, who is eligible for educational assistance under the Fry Scholarship or 38 U.S.C. chapter 35 based on the parent's death may not receive benefits under both provisions, *see* proposed § 21.9691(h).

We propose to implement section 3322(h) by stating in § 21.9691(h)(1)(ii) that an individual may not request that portions of a single period of service be used to establish eligibility under more than one benefit program. In other words, we propose to prohibit an individual from splitting a single period of service into separate periods and use the separate periods to establish eligibility for different benefit programs. In § 21.9691(h)(1)(i), we propose to require an individual whose period of active duty service meets the requirements to establish eligibility under 38 U.S.C. chapter 30, 32, or 33 and 10 U.S.C. chapter 1606 or 1607 to make an irrevocable election of which benefit program to use to establish eligibility and toward which benefit program to credit service. In § 21.9691(h)(2), we propose to require that a child eligible for educational assistance under § 21.9520(d) and 38 U.S.C. chapter 35 based on the parent's death make an irrevocable election in writing specifying which benefit the child wishes to receive. Although Congress does not explicitly state that an election must be irrevocable, VA finds that the statutory language

supports this result. In contrast to section 3322(e) and (g), paragraph (h) does not merely bar "concurrent receipt" but instead bars "duplication of eligibility" under more than one program, and it provides that the individual "shall elect . . . under which authority [their] service is to be credited" or "shall elect . . . under which chapter to receive . . . assistance." VA finds that requiring an election to be irrevocable best meets the requirements concerning the bar on duplication of benefits.

With regard to Post 9/11 GI Bill benefits and duplication of payments, Congress added prohibitions using replicated statutory language from statutes governing payment for other benefit programs (*see* 38 U.S.C. 3033). Congress did not expressly provide any bar to duplication of benefits for the same period of enrollment in the event an individual can establish eligibility for chapter 33 benefits under multiple provisions, such as based on the death of more than one parent, or based on the beneficiary's own active-duty service and a parent's service (either with transferred benefits or Fry Scholarship benefits). However, the statutory structure is most logically construed to preclude concurrent awards of chapter 33 benefits to the same individual. Section 3311(b)(1) through (10) of title 38, U.S.C., provides 10 circumstances under which a person may become an "eligible individual" entitled to chapter 33 benefits, 8 of which pertain to the length of the individual's active service, while the other 2 categories involve the Fry Scholarship and Purple Heart recipients. Once an individual attains eligibility under any of those categories, they are entitled to payments under 38 U.S.C. 3313 for a program of education, with the amount of payment varying depending upon the category under which they attained eligibility. The determination that a person is an "eligible individual" under section 3311 is a threshold determination needed to establish eligibility for payments under section 3313. The fact that a person could satisfy two or more of the eligibility categories in section 3311(b)(1) through (10) does not entitle them to more than one award of benefits under section 3313. Indeed, most individuals who qualify under one of the length-of-service categories in section 3311(b)(1) through (8) would also satisfy one or more of the lesser length-of-service standards in those paragraphs. Where an individual meets two or more of the eligibility categories in section 3311(b)(1) through (10), VA proposes to credit them with the

eligibility category resulting in the highest level of payment, but would not grant them multiple awards of chapter 33 benefits. Similarly, if an individual would qualify under one category for two or more independent reasons, as in the case of an individual who could qualify for the Fry Scholarship based on the death of more than one parent, VA proposes to find that they satisfy the threshold eligibility requirement, but would not grant multiple awards of chapter 33 benefits. Granting concurrent receipt of benefit payments under multiple eligibility provisions of the Post-9/11 GI Bill would result in a windfall of benefit payments not contemplated by the statutory scheme.

Accordingly, we propose to add paragraphs (f) and (g) to § 21.9691 to expressly prohibit concurrent receipt of multiple Post 9/11 GI Bill benefits awards simply because an individual may meet more than one of the eligibility requirements in section 3311(b)(1) through (10). Section 21.9691(f) would prohibit an individual from establishing eligibility for the Fry Scholarship under § 21.9520(d) based on the deaths of more than one parent. Section 21.9691(g) would prohibit an individual from concurrently establishing eligibility for Post 9/11 GI Bill benefits based on his or her own service and someone else's service (*e.g.*, with transferred benefits or Fry Scholarship).

*n. Section 201—Extension of Delimiting Dates for Use of Educational Assistance by Primary Caregivers of Seriously Injured Veterans and Members of the Armed Forces*

Section 201 of Public Law 111–377 amended 38 U.S.C. 3031(d), 38 U.S.C. 3319(h)(5), and 38 U.S.C. 3512(c), effective August 1, 2011, to extend the delimiting date for individuals eligible for educational assistance under each of these chapters to use the educational assistance if they are designated caregivers of disabled veterans or servicemembers and are unable to pursue a program of education because of responsibilities associated with this designation. Implementation of the new provisions will be the subject of a separate rulemaking.

*o. Section 202—Limitations on Receipt of Educational Assistance Under National Call to Service and Other Programs of Educational Assistance*

Section 202 of Public Law 111–377 amended 38 U.S.C. 3322 and 3681, effective August 1, 2011, to add the National Call to Service (NCS) program (10 U.S.C. 510) to the list of programs under which an individual may not

concurrently receive benefits, which bars concurrent receipt of benefits under the NCS program and other listed programs.

Section 21.3022 of title 38, CFR, bars concurrent receipt of benefits under chapter 35 and other chapters listed in sections 3322 and 3681; § 21.5022 bars concurrent receipt of benefits under chapter 32 and other chapters listed in those sections; § 21.7143 bars concurrent receipt of benefits under chapter 30 and other chapters listed in those sections; and § 21.7642 bars concurrent receipt of benefits under 10 U.S.C. 1606 and other chapters listed in those sections. Section 21.4022 bars concurrent receipt of assistance allowances under multiple programs. Section 21.9635(w) also bars concurrent receipt of educational assistance allowance under multiple programs. We propose to amend §§ 21.3022, 21.4022, 21.5022, 21.7143, 21.7642, and 21.9635(w) by adding 10 U.S.C. 510 to the list of programs in these regulations to bar concurrent receipt of benefits under the NCS program and various other programs. We propose to specify in each regulation that the bar on concurrent receipt of benefits under the NCS program and other programs would be effective August 1, 2011, as required by law.

Section 21.9690 bars concurrent receipt of benefits under chapter 33 and other chapters listed in this section. Instead of adding 10 U.S.C. 510 to the list of programs in § 21.9690, we propose to add 10 U.S.C. 510 to the list of programs in new § 21.9691, prohibiting concurrent receipt of benefits under chapter 33 and other chapters listed in this section and applicable to training pursued after July 31, 2011, to bar concurrent receipt of benefits under the NCS program and various other programs.

*p. Section 203—Approval of Courses*

Section 203(a)(1) of Public Law 111–377 amended 38 U.S.C. 3672(b) to provide for constructive approval for accredited standard college degree programs at public or not-for-profit private institutions, certain flight training courses, and apprenticeship programs. Section 203(c) of Public Law 111–377 amended 38 U.S.C. 3675(a) to provide authority for a State approving agency or the Secretary to approve accredited programs (degree and non-college degree) at proprietary for-profit institutions. Prior to the amendment, section 3675 provided approval criteria for all accredited degree and non-college degree programs (regardless of whether the program was offered by a public,

proprietary for-profit, or proprietary not-for-profit institution).

Section 203(a)(1) of Public Law 111–377 amended 38 U.S.C. 3672 to provide that “accredited standard college program[s]” offered by public and proprietary not-for-profit educational institutions are “deemed to be approved” (essentially meaning that they are exempt from all approval criteria except those limitations in 38 U.S.C. 3675(b)(1) and (b)(2), 3680A, 3684, and 3696; in other words, these deemed approved programs are exempt from most of the requirements of 38 CFR 21.4253). *See* 38 U.S.C. 3672(b)(2)(A)(i). However, because section 3672(b)(2)(A)(i) explicitly only applies to “standard college degree program[s],” the “deemed to be approved” status does not apply to non-college degree programs at public or proprietary not-for-profit educational institutions. Furthermore, Public Law 111–377, section 203(c), amended 38 U.S.C. 3675(a)(1) by striking “A State approving agency may approve the courses offered by an educational institution” and inserting “The Secretary or a State approving agency may approve accredited programs (including non-degree accredited programs) offered by proprietary for-profit educational institutions.” Prior to this amendment, section 3675 placed approval requirements on all accredited programs of education. *See* 38 U.S.C. 3675(a)(1) (2010) (stating “A State approving agency may approve the courses offered by an education institution when—” without any further qualifiers on either “courses” or “educational institutions”); therefore, the section applied to all courses at all educational institutions). However, due to the Public Law 111–377 amendments, only proprietary for-profit educational institutions were explicitly subject to the approval requirements of section 3675. *See* 38 U.S.C. 3675(a)(1) (2011) (“ . . . may approve accredited programs (including non-degree accredited programs) offered by proprietary for-profit educational institutions when—”).

The limitations of Public Law 111–377—accredited college degree programs at public and proprietary not-for-profit IHLs are “deemed to be approved” while section 3675 approval requirements only explicitly apply to proprietary for-profit educational institutions—left a hole in coverage concerning the statutory approval requirements of non-college degree programs at public or proprietary not-for-profit educational institutions.

With regard to liberalized approval criteria for programs of study at IHLs, it

is important to note that section 203 only specifically addressed standard college degree programs at IHLs. It is silent with regard to non-college degree programs at IHLs. This change, in combination with the amendment of 38 U.S.C. 3675 to only control programs offered by for-profit proprietary IHLs, left no statutory provisions governing the approval of accredited non-college degree programs at public and proprietary not-for-profit IHLs.

However, the enactment of section 408 of Public Law 114–315 remedied this shortcoming by amending 38 U.S.C. 3675(a)(1) to provide for the approval criteria of accredited non-college degree programs offered by public and proprietary not-for-profit IHLs. Section 3675(a)(1) was amended by striking “The Secretary or a State approving agency” and inserting “A State approving agency, or the Secretary when acting in the role of a State approving agency,” and by striking “offered by proprietary for-profit educational institutions” and inserting “not covered by section 3672 of this title.” As a result of this amendment, accredited non-college degree programs at public and proprietary not-for-profit IHLs are now subject to the approval requirements of section 3675. Thus, State approving agencies, or the Secretary when acting as a State approving agency, are required to determine the approval requirements of non-college degree programs at public or proprietary not-for-profit educational institutions.

We propose to amend § 21.4253 to clarify that accredited standard college degree courses at proprietary for-profit educational institutions and accredited non-college degree courses offered at either proprietary for-profit institutions or public or proprietary not-for-profit institutions would be subject to § 21.4253’s approval criteria.

In § 21.4150(f), we propose to provide that accredited programs of education leading to a standard college degree offered at a public or proprietary not-for-profit IHL, flight training courses approved by the Federal Aviation Administration offered by a certified pilot school possessing a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141, registered apprenticeships, programs of education leading to a secondary school diploma offered by a secondary school approved in the State in which it is operating, and licensure tests offered by a Federal, State, or local government are deemed approved for VA benefits.

We propose to modify § 21.4259 by replacing “State approving agency”

each place it appears in paragraphs (a) and (b)(1) and adding, in each place, “State approving agency or the Secretary” to make it consistent with 38 U.S.C. 3679 and 3689. We propose to also amend § 21.4263 to clarify requirements for approval of flight training programs and provide that certain flight training courses, including those pursued with chapter 33 benefits, are deemed approved under chapter 33, and amend § 21.4235 to provide that flight training is approvable under certain conditions. Further, we propose to amend § 21.4268 to provide that licensure tests offered by a Federal, State, or local government are deemed approved under chapter 33.

Section 203(b) of Public Law 111–377 added 38 U.S.C. 3673(d) to authorize the use of State approving agencies for compliance and oversight activities without regard to whether the Secretary or the State approving agency approved the courses offered in the State concerned. Section 310 of Public Law 115–48 amended section 3673(d) to provide that the Secretary may use the services of a State approving agency to conduct “compliance and risk-based surveys and other such oversight purposes.” We propose to add a requirement in § 21.4151 that SAAs perform compliance and risk-based surveys and oversight without regard to whether a program was deemed approved or approved by the Secretary or SAA.

#### q. Section 204—Reporting Fees

Section 204 of Public Law 111–377 amended 38 U.S.C. 3684(c), effective October 1, 2011, to require educational institutions to use fees paid after January 4, 2011, to make certifications or otherwise support programs for veterans. We propose to revise § 21.4206 to add this new requirement for educational institutions in § 21.4206(e)(3). We propose to also amend § 21.4206 to include references to 10 U.S.C. 510 and 10 U.S.C. chapter 1607. Although these programs are not explicitly listed in 38 U.S.C. 3684, certifications under these benefit programs are nonetheless authorized reporting fees under 10 U.S.C. 510(h)(2)(B) and 10 U.S.C. 16166(b) and were previously inadvertently omitted from the existing regulation governing the payment of reporting fees to educational institutions. These chapters would also be included in revised § 21.4206 showing the new requirement for educational institutions with regard to use of fees for certifications and support for veterans programs.

Additionally, we propose to add in § 21.4206(b) that when computing

reporting fees for institutions, VA will not count individuals whose only receipt of educational assistance during a calendar year was tuition assistance Top-Up under 38 U.S.C. chapter 30, rural relocation payment, or reimbursement for a national test for admission, national test for credit, or a licensing or certification test. The exclusion of tuition assistance Top-Up payments is merely maintaining the same limitation currently found at § 21.4206(b). The exclusion of the additional categories of payments is because these payments do not require certifications. As such, payments under 38 U.S.C. 3684 would be inappropriate because annual reporting fees payments are “in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticeship training committee is required to submit to the Secretary by law or regulation.” Since there is no required certification, there should be no “in lieu of” reporting fee.

We note that the rates that are currently listed in § 21.4206 and that would be listed in proposed § 21.4206 are and would continue to be outdated. We plan to further revise § 21.4206(b) in a separate rulemaking to address the increase in reporting fees authorized by section 204 of Public Law 111–377 and section 304 of Public Law 115–48. VA will, of course, pay the rates authorized by statute, notwithstanding any contrary provisions in regulations pre-dating the current statute.

#### r. Section 205—Election for Receipt of Alternate Subsistence Allowance for Certain Veterans With Service-Connected Disabilities Undergoing Training and Rehabilitation

Section 205 of Public Law 111–377 amended 38 U.S.C. 3108(b), effective August 1, 2011, to permit veterans entitled to a subsistence allowance under 38 U.S.C. chapter 31 (VA’s Veteran Readiness and Employment Program) who also are eligible for educational assistance under 38 U.S.C. chapter 33 (the Post-9/11 GI Bill) to elect to receive a payment in an amount equal to the applicable monthly amount of basic allowance for housing payable under 37 U.S.C. 403 in lieu of the otherwise applicable subsistence allowance payable under chapter 31. The rules implementing this provision of law were addressed in the interim final rule published in the **Federal Register** on August 1, 2011 (Veteran Readiness and Employment Program—Changes to Subsistence Allowance, 76 FR 45697), which was adopted as a final rule on January 12, 2012 (77 FR 1872).

Those rules are currently codified in 38 CFR 21.260(c) and 21.264(b). This election was authorized as an incentive to enroll in the chapter 31 program to benefit from other services available under this program. See 76 FR 45697.

Section 3322(a) of title 38, U.S.C., prohibits VA from paying benefits under both chapter 33 and chapter 31 concurrently. Thus, an individual entitled to benefits under both chapters must elect one chapter under which to receive benefits. While an election in this situation is mandatory, the timing of the election is not specified. VA policy allowing an individual to switch education benefit programs during the enrollment term was in place before Post-9/11 GI Bill education benefits were paid in lump sums. At that time, a switch in education benefit programs during the enrollment term did not create problems because benefit payments were paid monthly rather than in one lump sum. Now that VA is required to make lump sum payments at the beginning of the term under 38 U.S.C. 3313(d), if an individual switches from chapter 33 to chapter 31 during the term, because a lump sum was already paid under chapter 33, there may be an overpayment that the individual is responsible to pay. Under current § 21.9635(w), when an individual switches from chapter 33 to chapter 31, we terminate chapter 33 benefits on the first day of the enrollment period during which the individual makes the election to switch, creating an overpayment because the lump sum has already been paid out.

To avoid the creation of an overpayment when an individual switches from chapter 33 to chapter 31 during a term, we propose to change the rule regarding termination of educational assistance when an individual elects to switch benefit programs. We propose to add § 21.9636(w)(2) to require the termination of educational assistance under chapter 33 to be effective the first day of the enrollment period subsequent to the one during which the individual requests to receive educational assistance under chapter 31. This change would prevent overpayments because payment of chapter 31 benefits would not cover the same period covered by the lump sum payment of chapter 33 benefits, but would begin the following term. Further, for administrative efficiency, we propose to stipulate in § 21.9636(w)(3) that an eligible individual may only request a change in receipt of benefits from chapter 33 to chapter 31 once per term, quarter, or semester.

Similarly, to avoid the creation of an overpayment if an individual elects to switch from chapter 31 to chapter 33 during a term, we propose to add, in § 21.9626(l)(2)(ii), that VA will begin paying net cost of tuition and fees, and the books and supplies stipend, under chapter 33 beginning the first day of the enrollment period subsequent to the enrollment period during which the individual requests to receive educational assistance under chapter 33. Because the chapter 31 subsistence allowance would have been paid through the end of a month (and not in a lump sum for the entire term), we propose to state, in § 21.9626(l)(2)(i), that we will begin paying the monthly housing allowance under chapter 33 beginning the first day of the month following the date the individual requests to receive educational assistance under chapter 33.

*s. Section 206—Modification of Authority To Make Certain Interval Payments*

Section 206 of Public Law 111–377 amended 38 U.S.C. 3680(a), effective August 1, 2011, to remove VA’s authority to make interval payments under its educational assistance and Veteran Readiness and Employment Program. While the law allows VA to continue to make payments for non-training periods under certain circumstances (*i.e.*, when schools are temporarily closed under an established policy based on an Executive Order of the President or due to an emergency situation, including a strike), the total number of weeks that VA may continue to make payments in any 12-month period may not exceed 4 weeks.

We propose to revise the heading of § 21.4138(f) to indicate that, prior to August 1, 2011, there would be no changes in payment of allowances for intervals and temporary school closings and add a new paragraph (g) to eliminate interval payments beginning August 1, 2011, and limit payment of allowances during temporary school closings to 4 weeks in any 12-month period. We would not include in new paragraph (g) the requirement in current paragraph (f)(6) that if the reason for the closing is due to a strike that lasts more than 30 days, the Education Service Director would make the determination whether to deny payment. Similar to current paragraph (f)(6)(2), we propose to allow in new paragraph (g)(4) for the administrative review of decisions concerning whether a school closing is permanent or temporary. We propose to also add § 21.9681(b)(7) to provide that VA may continue to make payments during a temporary school closing. We

plan to further revise § 21.9681(b) in a separate rulemaking to implement section 109 of Public Law 115–48, which authorizes payment of housing allowances for a certain period following a permanent closure. VA will, of course, continue to pay the monthly housing allowance to eligible individuals for a limited period following a permanent school closure, pursuant to the current statute.

*t. Other Clarifications and Modifications*

In addition to the changes we propose to make to implement Public Law 111–377, we propose to clarify other provisions by adding language or simply re-wording language. We propose to also make technical changes to update our regulations, add provisions that were previously inadvertently omitted, and remove references to provisions that no longer exist.

Section 309 of Public Law 115–48 added 38 U.S.C. 3684(a)(4) requiring courses that begin seven or fewer days after the first day of the academic term be treated as if they began on the first day of the academic term for purposes of reporting enrollment under section 3684. In proposed § 21.9626(b)(2) and (3), we propose to provide that resident courses starting within seven calendar days (or one calendar week) of the first scheduled date of classes for an academic term will be considered to have begun on the first scheduled date of the term.

In §§ 21.4002(a), 21.4150(f), 21.4200(oo), 21.4259, 21.9735 and 21.9750, we propose to make several minor changes—removing language, adding language, or re-wording existing language, or reorganizing the section—to clarify the current meanings but would not change any of the substantive meanings of the sections. Specifically, in § 21.4002(a), we propose to remove the reference to §§ 19.192 and 19.183 because these sections no longer exist. In §§ 21.4150(f)(1) and 21.4259, among other changes, we propose to replace the word “course” with the term “program of education,” which would not change the substance of this provision because a course is a component of a program of education. In § 21.4200(oo), we propose to specify that the usage of the terms “we”, “us”, “our” means the United States Department of Veterans Affairs. In § 21.9735, we propose to replace the wording “individuals and institutions of higher learning” with the wording “eligible individuals and educational institutions” to be consistent with the terminology used in the statutes. In § 21.9750, we propose to replace the wording “institution of higher learning”

with the wording “educational institution”.

In § 21.9695, we propose to articulate additional circumstances that we have found in practice that warrant a finding that an educational institution is liable for overpayments to it from VA. We propose to restructure paragraph (b)(3) to clearly enumerate each circumstance. Under current § 21.9695(b)(3), an educational institution is liable for overpayments when an overpayment is the result of willful or negligent false certification by the educational institution, or willful or negligent failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual. Under revised § 9695(b)(3), we propose to add that the overpayment of educational assistance paid to the educational institution on behalf of an individual would constitute a liability of the educational institution when a student never attends classes for which he or she was certified (regardless of the reason for non-attendance), completely withdraws from all courses on or before the first day of the certified period of enrollment, or dies during the term; when an educational institution receives a payment for the wrong student, receives a duplicate payment for a student, or receives a payment in excess of the amount certified to VA on the enrollment certification; or when an educational institution submits an amended enrollment certification to correctly report a reduced amount of tuition and fee charges, reduced Yellow Ribbon Program contributions, or reduced amounts for both tuition and fees and Yellow Ribbon Program contributions. In these circumstances, the school would have received money it was not entitled to or was no longer entitled to because the certification that an individual student attended would have been false. The occurrence of any of these circumstances leads to the reasonable conclusion that an educational institution has made an improper student certification and has been unjustly enriched. Hence, it is reasonable to hold the educational institution liable for the amount of overpayment. Further, 38 U.S.C. 3685(b) and 3323, both of which are applicable to chapter 33, give VA the authority to promulgate regulations prescribing the circumstances which would constitute liability of an educational institution.

In § 21.9715, we propose to remove the references to “§ 21.9640(b)(1)(ii) or (b)(2)(ii)” and replace it with “§ 21.9640(b)(1)(ii), (b)(2)(ii), or 21.9641(c), whichever is applicable” to include the newly added § 21.9641(c).

We propose to replace the term “the institution of higher learning” with the term “the educational institution” in each place it appears in the section and replace the term “an institution of higher learning” with the term “the educational institution” in paragraph (b)(1). Also, we propose to remove the reference to § 21.9730 because this section does not exist, and we would replace it with § 21.9735.

We propose to reword the provisions in § 21.9645(a)(1)(iii), (b)(1)(ii), and (c) to clarify that, in order for an individual to receive a refund of the chapter 30 contribution under the Post-9/11 GI Bill, the individual must have made a contribution into the Montgomery GI Bill and be in receipt of the monthly housing allowance at the time of entitlement exhaustion. We propose to remove the wording in § 21.9645(a)(1)(iii) “He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because he or she has met the requirements of § 21.7042(a) or (b) and is making contributions as provided in § 21.7042(g)” because some of it is extraneous and replace it with the wording “He or she is a member of the Armed Forces who is making contributions as provided in § 21.7042(g) towards educational assistance under 38 U.S.C. chapter 30”. By changing the language in § 21.9645(c) from “will only be paid to the individual who made the contributions as an increase to the monthly housing allowance” to “will only be issued to the individual who made the contribution when the individual is in receipt of the monthly housing allowance payable under § 21.9640(b) or § 21.9641(c) at the time his or her entitlement exhausts”, we are clarifying that an individual must be in receipt of the monthly housing allowance at the time of entitlement exhaustion to get a refund.

Additionally, several sections would be updated to reference newly added sections when applicable. The updated sections would include 21.9550, 21.9620, 21.9645, and 21.9715.

In addition, for clarification, we propose to revise the language in § 21.9550(b)(2) to state that an individual who has not used his or her entitlement under chapter 30 and makes an irrevocable election to receive benefits under chapter 33 will be entitled to 36 months of chapter 33 benefits. The language used in the current § 21.9550(b)(2) does not clearly state that an individual is entitled to 36 months of benefits if they have not used or transferred chapter 30 benefits.

Finally, we propose to add the definition and the rules for “fugitive felons” since the “fugitive felons” provisions, contained in section 505 of Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001 (codified in 38 U.S.C. 5315B), were already implemented in our regulations for chapter 30 benefits but were not included for chapter 33 benefits. The new fugitive felon provisions that we would include in this rulemaking would be merely the reiteration of the provisions mandated by statute. They would not represent any substantively novel policies or practices. We would add the provisions for “fugitive felons” in §§ 21.9505, 21.9506, 21.9625, 21.9626, 21.9635 and 21.9636. In §§ 21.9505 and 21.9506, we propose to provide the definition of “fugitive felon” as a person identified as such by Federal, State, or local law enforcement officials and who is a fugitive by fleeing to avoid prosecution, custody, or confinement for a felony. This term also includes a person who is a fugitive by reason of violating a condition of probation or parole imposed for the commission of a felony. In §§ 21.9625(m) and 21.9626(m), we propose to state that an award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon. In §§ 21.9635(bb) and 21.9636(bb), we propose to state that VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon and that the date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

Additionally, we propose to amend existing regulations and add new regulations to implement policies for determining discontinuance dates. Our current policies and practices function in ways that help to limit a student’s debt by reflecting the reality of how schools refund tuition and fees during drop/add periods and by embodying what VA believes to be equitable dispositions for students that are negatively impacted by a mid-term course disapproval that is beyond the control of the student but where the student bears the brunt of the impact. Our amended and new regulations

would reflect our current policies and practices, except for certain proposed changes with respect to the first instance of withdrawal, reductions in rates of pursuit (either during the drop/add period, with mitigating circumstances, or when a punitive grade is assessed), individuals that have a change in active duty status, and individuals that die during a term—in those cases, we would implement slightly modified policies and practices as explained in greater detail below.

Specifically, regarding discontinuance dates, we propose to amend § 21.9635(c)(1) to state that, if a student withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance as of the first day of the term from which the individual withdraws. We propose to amend § 21.9635(c)(2) to state that, if a student withdraws from all courses with mitigating circumstances, withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier, or withdraws from all courses for which a punitive grade is assigned, VA will terminate educational assistance as of the last day of attendance or the official date of change in status. We propose to specify in § 21.9635(d) that VA will reduce educational assistance effective the end of the month during which the reduction occurred. These changes are being made because they are consistent with how we have interpreted the statutory requirements contained in 38 U.S.C. 3680(a) to process such adjustments under the Montgomery G.I. Bill. With respect to withdrawals during the drop/add period, we have historically processed claims in this manner because of the fact that schools generally do not assign punitive grades (or other penalties) during this period and generally there is no need for any justification or mitigating circumstances for withdrawals during this period, and schools generally refund all tuition and fees paid for courses dropped during drop/add periods or within the first 30 days of enrollment. Punitive and nonpunitive grades have, for the purposes of this regulation, the same meaning as they have historically in the administration of VA educational benefits as defined in 38 CFR 21.4200(j) and (k). It is general practice at most schools that the drop/add period is a time for students to identify whether a course is appropriate for them and to allow the student to withdraw without any negative repercussions. Given the nature of the drop/add period as a time for the student to evaluate a course without the

school imposing any negative consequences and that schools generally refund tuition and fees for courses dropped during drop/add periods or within the first 30 days of enrollment, VA does not want a student to incur debt if he or she withdraws from residence training during a drop/add period or within the first 30 days of enrollment, whichever is earlier. Therefore, in these circumstances, we propose to assign the discontinuance date as the last date of attendance for those in residence training, instead of the first day of the term. This change to discontinue payment on the date the student last attends the course will allow the student to not incur a debt since no payment will be made for any period that the student is not in attendance of the course. The same procedures would likewise be codified in proposed § 21.9636(c) and (d).

Furthermore, in § 21.9636(m), we propose to specify that VA will discontinue any monthly payments at the end of the month during which an eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility or the end date of the enrollment period as certified by the educational institution, whichever is earlier. Previously, in § 21.9635(m), we discontinued the monthly payments the first day of the enrollment period for which the individual's tuition and fees were paid by a Federal, State, or local program, the first day of the enrollment period in which the individual was incarcerated, or the beginning date of the award under 38 CFR 21.9625, whichever was the latest. We are changing the discontinuance date to the end of the month or end of the enrollment period, whichever is earlier, because it would lead to more equitable dispositions for students who are negatively impacted by a mid-term course payment discontinuance.

In addition to these changes, we will also add new paragraphs (b) and (c) in § 21.9676 to clarify that incarcerated individuals are not entitled to a monthly housing allowance when they are incarcerated due to a felony conviction, although they may be still entitled to other educational assistance (such as unpaid tuition and fees, as well as books, supplies, and equipment).

Regarding discontinuance dates when a program of education is disapproved during a term, either by the actions of the State approving agency or the Secretary, or in the event that an independent study course loses its accreditation, we propose to add § 21.9636(h), (i), and (x) and state that, in each of these situations, the

discontinuance date would be the end of the course or period of enrollment. This would allow the student to complete the course without incurring a debt for the remaining cost of the course. Currently, when a program of education is disapproved by the actions of the State approving agency or the Secretary, the discontinuance date is either the date the payment was first suspended by the Director of the VA Regional Office (if disapproval was preceded by a suspension) or the end of the month in which the disapproval is effective. Additionally, when an independent study course loses its accreditation, the discontinuance date is the effective date of the withdrawal of accreditation by the accrediting agency. This policy would be made because we have found that to do otherwise (*i.e.*, make the discontinuance date the date of disapproval or withdrawal of accreditation) would unfairly punish the student for a situation completely out of the student's control. The student would be forced to either pay for the remainder of the course out-of-pocket (through the assessment and repayment of a VA educational assistance debt) or transfer—as of the date of the disapproval—to a different program. Transferring to a new program is highly problematic for a student, given the limited availability of programs willing to accept an intra-term transfer and the inconvenience to a student of trying to find and transfer to a new program. As a result, many students in such situations would ultimately choose to stay in the disapproved course and incur a debt. We believe our policies should be designed to limit the negative impact on the student when forced to make such a choice; therefore, we feel it is appropriate to pay educational benefits through the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval or withdrawal of accreditation is effective and, thereby, avoid creating a student debt to cover the cost for the remainder of the term.

Additionally, in the event of a student's first instance of withdrawal (proposed § 21.9636(b)) or reduction in the rate of pursuit of a program of education (proposed § 21.9636(d)(1)), we propose to implement a policy change whereby VA would now adjust the eligible individual's educational assistance effective the last date of attendance as opposed to our current policy of adjusting effective the end of the month in which the change occurred. With respect to a change in active duty status affecting an individual's eligibility for a monthly



housing allowance, section 3313(j) requires VA to determine the amount of the monthly housing stipend on a pro rata basis for the period of the month during which an individual is not performing active duty service. Under this provision, in the event of a student's change in active duty status affecting eligibility to a monthly housing allowance—leaving active duty (proposed § 21.9626(k)) or entering active duty (proposed § 21.9636(n)), we propose to implement a policy change whereby we would no longer pay to the end of the month but, instead, would begin or discontinue payments effective the actual date of the change in status. For clarity, we propose to also include § 21.9636(n)(1)(ii) to redirect readers to proposed paragraph (n)(2), as these changes would also apply to those who reduced or terminated training due to active duty service since monthly housing would no longer be payable while on active duty.

Our current policies and practices with regard to these three changes in a student's status (rate of pursuit, entering active duty, or leaving active duty) were designed to help minimize overpayments of monthly benefit payments. The Post-9/11 GI Bill was initially implemented with rudimentary information technology (IT) systems, a heavy reliance on manual benefit calculations and payment authorization processes, and, as a consequence, suboptimal claims processing timeliness. Therefore, the adoption of an “end of month” rule, as opposed to specifying the actual date of change, was deemed necessary in order to attenuate the establishment of overpayments due to the lag time inherent with our limited functional capabilities. However, VA's current IT systems now possess features sufficient to handle these changes and the implementation of claims automation functionality has significantly reduced claims processing time. As a result, we now feel that it is appropriate, and more equitable, to begin and discontinue payments based on the actual date of the status change.

We expect that there will be concern that these changes would reduce benefits, especially with regard to monthly housing allowances now being discontinued on the date of entry on active duty as opposed to the end of the month. However, we would like to note that our policy to pay the monthly housing allowance until the end of the month of entry onto active duty service has always been balanced by our policy to not resume payment of the monthly housing allowance until the 1st day of the month following the date on which

the individual was discharged. In addition, section 113 of Public Law 115–48 and section 501(c) of Public Law 115–62 also amended section 3313 to ensure equal treatment for all people leaving active duty, regardless of component and ensures proration of everyone's housing on the day the individual enters and leaves active duty service, effective August 1, 2018. Furthermore, although §§ 21.9626 and 21.9636 appear under headings that state the provisions of each section will be effective for any claim submitted after July 31, 2011, this date would not apply to proposed § 21.9626(k) or § 21.9636(b), (d), or (n). These amended provisions would not be a result of Public Law 111–377, therefore, the effective dates as set for the Improvement Act provisions do not apply. The effective date for these sections would be the effective date of the final rule implementing them. These exceptional effective dates are explicitly included in the proposed text of each section. Additionally, it should be noted that current § 21.9625(k) explicitly provides for separate beginning date rules for tuition and fees, monthly housing allowance, and book and supply stipends. These distinct rules were necessary under the statutory structure that existed prior to Public Law 111–377 where tuition and fee payments for active duty servicemembers were different than for veterans and dependents. However, Public Law 111–377 removed the distinctions. VA now pays tuition and fee and book and supply stipends, as required by Public Law 111–377, in the same manner for all beneficiaries, regardless of active duty status. Therefore, the standard rules for beginning dates contained in the proposed § 21.9625(a) apply for all payments except monthly housing payments with regards to active duty servicemembers. The only special beginning dates rules that are needed for active duty servicemembers are those for monthly housing payments contained in proposed § 21.9625(k).

Lastly, we propose to add § 21.9636(a)(4), which would change the discontinuance-date rule for non-lump sum payments (*e.g.*, monthly housing allowance) in death cases. We propose to discontinue payment effective the date of death. Our current rule, in § 21.9635(a), provides that if an individual dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of the lump sum payment will be the last date of the period covered by the

lump sum payment. This current regulation also specifies that for all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended. The change to discontinue payment effective the date the individual dies is necessary because, upon death, the student terminates his or her attendance and, therefore, is no longer entitled to further payments. These payments, unlike lump sum payments, would not be made at the time of student's death and, therefore, deserve to be treated differently than lump sum payments because there is no reason for us to make a payment after it is already known that the payment is not authorized.

## II. Fry Scholarship

### a. General

On June 24, 2009, the President signed into law the Supplemental Appropriations Act, 2009, Public Law 111–32. Section 1002 of Public Law 111–32 amended 38 U.S.C. chapter 33 (the Post-9/11 GI Bill) by adding 38 U.S.C. 3311(b)(9), effective August 1, 2009, to extend eligibility for educational assistance under chapter 33 to children of members of the Armed Forces who, on or after September 11, 2001, die in line of duty while on active duty. The educational assistance payable for such individuals' pursuit of programs of education under chapter 33 is known as the “Marine Gunnery Sergeant John David Fry Scholarship” (Fry Scholarship). 38 U.S.C. 3311(f)(1). Although this amendment extending eligibility for chapter 33 educational assistance was effective August 1, 2009, section 1002(d)(2) of Public Law 111–32 allowed VA to begin making payments of educational assistance by not later than August 1, 2010. For individuals entitled to educational assistance between August 1, 2009, and July 31, 2010, section 1002(d)(2) requires VA to make retroactive payments. Accordingly, the changes implementing the Fry Scholarship would be applicable to claims received on or after August 1, 2009, and we propose to make retroactive payments for the period between August 1, 2009, and July 31, 2010, on any allowed claim received on or after August 1, 2009. This proposed rule would amend 38 CFR part 21, subpart P, specifically §§ 21.9520(d), 21.9530(f), 21.9626(o), 21.9640(a)(2), and 21.9700(b), to implement the Fry Scholarship.

*b. Rules Required by Public Law 111–32*

## 1. Definition of “Child”

According to the amendment to 38 U.S.C. 3311(f)(2) made by section 1002(a) of Public Law 111–32, for purposes of paying the Fry Scholarship, the term “child” must “include” married individuals and individuals above 23 years of age. We believe Congress intended for VA to apply current law and regulations defining “child” for VA benefit purposes to eligibility determinations for the Fry Scholarship and include children who are married and/or above 23 years of age. Accordingly, for purposes of the Fry Scholarship, we propose to define “child” in § 21.9520(d) as an individual who meets the requirements of 38 CFR 3.57, (implementing the definition of “child” in 38 U.S.C. 101(4)), except for the requirements in § 3.57 pertaining to age and marital status. With regard to age and marital status, we propose to add § 21.9520(d)(1) and (2) to include in the definition of child, for purposes of eligibility for the Fry Scholarship, individuals who are married or over the age of 23. In proposed § 21.9520(d), we propose to include that eligibility to Fry Scholarship will be for the child of a person who, after September 10, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces.

## 2. Effective Date and Entitlement Beginning and Ending Dates

Section 1002(b) of Public Law 111–32 amended 38 U.S.C. 3313(c)(1) to provide individuals entitled to a Fry Scholarship the full amount of tuition and fees for pursuit of a program of education. We propose to add paragraph (2) to §§ 21.9640(a) and 21.9641(a) to explain that we will pay 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for a Fry Scholarship under § 21.9520(d).

Section 1002(c) amended 38 U.S.C. 3321(b) to specify that an individual who first becomes entitled to the Fry Scholarship before January 1, 2013, may use the entitlement until “the end of the 15-year period beginning on the date of [the individual’s] eighteenth birthday,” *i.e.*, until age 33. We believe that the reference to an individual’s 18th birthday in section 3321(b)(4) is intended only as a point in time used in determining the future ending date of the individual’s entitlement, rather than the age at which an individual becomes eligible for the Fry Scholarship. Section 3321 speaks only of the period during which an individual “may use” his or her entitlement, not the date an

individual may first be entitled to chapter 33 benefits. Section 3311 lists the individuals who meet the criteria for entitlement to chapter 33 educational assistance. Section 3311(b)(9) states that “a child or spouse of a person who, on or after September 11, 2001, dies in line of duty while serving on active duty as a member of the Armed Forces” is entitled to chapter 33 educational assistance; however, this section does not specify when such individual may first be entitled to chapter 33 benefits. In light of the lack of a specified beginning date of eligibility and given the fact that individuals can pursue a program of education at an institution of higher learning before reaching the age of 18, we believe a reasonable beginning date would be either when a child graduates from high school and receives a high school diploma, even if the child may not have turned 18, or when the child turns 18, whichever is earlier.

This interpretation of 38 U.S.C. 3321(b)(4) is consistent with our interpretation of other provisions of 38 U.S.C. 3321 when we have interpreted the statute in a manner that injects a logical beginning date when one is lacking. For example, for an individual who was last discharged or released from active duty before January 1, 2013, section 3321 specifies that entitlement to chapter 33 educational assistance expires at the end of the 15-year period beginning on the date of an individual’s last discharge or release from active duty of at least 90 continuous days or discharge or release from active duty of at least 30 continuous days for a service-connected disability. *See* 38 U.S.C. 3321(a)(1), (b)(3). Section 3321, however, does not address the period of eligibility for individuals who are entitled to educational assistance based on a minimum of 90 aggregate days of active duty service who do not have a period of service consisting of 90 continuous days, as we stated in the preamble to proposed § 21.9530(b). 73 FR 78876, 78879–80. In § 21.9530(b), we established a 15-year period of eligibility for these individuals, beginning on the date of discharge or release from active duty for the last period of service used to meet the minimum service requirements under chapter 33.

Likewise, we propose to establish a reasonable beginning date for the period during which a child may use his or her entitlement to chapter 33 educational assistance as either the child’s 18th birthday or upon attainment of a high school diploma, whichever is earlier. We propose to codify our interpretation pertaining to beginning dates of a child’s eligibility in § 21.9626(o) and

ending dates of a child’s eligibility in § 21.9530(f). In § 21.9626(o), we propose to provide that the earliest beginning date of educational assistance for a child eligible for Fry Scholarship will be the earlier of either the date the child completes the requirements of a secondary school diploma (or an equivalency certificate) or the date the child reaches age 18. In § 21.9530(f), we propose to state that the ending date for a child who first becomes eligible for Fry Scholarship before January 1, 2013, is the date the child turns age 33. For a child who first becomes eligible to Fry Scholarship on or after January 1, 2013, we propose to provide that their eligibility to Fry Scholarship never expires.

We recognize that our interpretation means that a child may use the Fry Scholarship for a period that may exceed 15 years if the child begins an approved course of education before age 18. Nonetheless, our interpretation does not change the number of months of entitlement to chapter 33 educational assistance. Under 38 U.S.C. 3312(a), a child is entitled to a maximum of 36 months of educational assistance. Reading 38 U.S.C. 3312(a) and 3321(b)(4) together, we believe Congress intended that a Fry Scholarship be provided for a maximum of 36 months to any child of an individual who died in line of duty while on active duty in the Armed Forces after September 10, 2001, to pursue an approved program of education as long as the child has not reached 33 years of age. Section 112(b) of Public Law 115–48 further amended 38 U.S.C. 3321(b)(4) to extend the time for use of entitlement of chapter 33 educational assistance indefinitely for children who first become entitled to a Fry scholarship on or after January 1, 2013. Therefore, § 21.9530(f) would say, in the case of a child who first becomes entitled before January 1, 2013, benefits shall expire the day the child turns 33; or in the case of a child who first becomes entitled on or after January 1, 2013, benefits shall not expire.

## 3. Yellow Ribbon Program

Section 5003(a)(1) of Public Law 110–252 added 38 U.S.C. 3317 establishing the “Yellow Ribbon G.I. Education Enhancement Program” (Yellow Ribbon Program), which provides for enhancements to the educational assistance provided under 38 U.S.C. 3313. The final sentence of section 3317(a), as added by Public Law 110–252, provided that “[t]he program shall only apply to covered individuals described in paragraphs (1) and (2) of section 3311(b).” Although Congress, in Public Law 111–32, made specific

amendments to some provisions in chapter 33 concerning individuals entitled to Fry Scholarship benefits, it did not amend section 3317(a) to add a reference to section 3311(b)(9) to allow individuals entitled to Fry Scholarship benefits to be eligible for enhanced educational assistance under the Yellow Ribbon Program. Therefore, we could not provide enhanced educational assistance under this program to such individuals. Subsequently, with the enactment of Public Law 115–48, Congress amended section 3317(a), effective August 1, 2018, adding a reference to section 3311(b)(9), to explicitly apply the Yellow Ribbon Program to individuals entitled to Fry Scholarship benefits. Accordingly, we propose to amend 38 CFR 21.9700(b) to make clear that contributions under the Yellow Ribbon Program are available to individuals who establish eligibility for the Fry Scholarship under new § 21.9520(d) after August 1, 2018.

Executive Orders 12866 and 13563 and 14094

Executive Orders 12866 and 13563 and 14094 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is a significant rule under Executive Order 12866, Section 3(f)(1), as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this regulatory action would affect some small entities, such as testing organizations or educational institutions who qualify as “small” using the most recent official revenue standards, the economic impact on them would be minor. Educational institutions of all sizes voluntarily apply for approval to

receive GI Bill benefits likely because tuition and fees revenue from student Veterans consists of guaranteed government funding (from U.S. taxpayer funds). However, if the cost for smaller educational institutions applying for GI Bill approval and meeting the requirements for continued approval were substantial, participating in the GI Bill program would not be financially viable. Because the policies memorialized in this regulatory action have been in effect for a long period of time and small institutions continue to seek and maintain GI Bill approval, likely profiting from this status, we conclude that the rules and policies in this regulatory action do not significantly impact these entities. Furthermore, realizing that there are costs to educational institutions associated with their participation in GI Bill programs, Congress enacted 38 U.S.C. 3684, increasing the reporting fee payable to testing organizations and educational institutions for carrying out reporting requirements, consequently further minimizing the economic impact on smaller educational and testing organizations. On this basis, the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act of 1995

This proposed rule includes provisions constituting revised collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collections of information contained in this rulemaking should be submitted through [www.regulations.gov](http://www.regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900–AQ88, Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments” and should be sent within 60 days of publication of this rulemaking. The collections of information associated with this rulemaking can be viewed at: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register** (FR). Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in—

- Evaluating whether the revised collection of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information associated with this rulemaking contained in 38 CFR are described immediately following this paragraph, under its respective title.

*Title:* State Approving Agency Reports and Notices.

*OMB Control No:* 2900–0051.

*CFR Provision:* 38 CFR 21.4259(b).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.4259(b) would require State approving agencies (SAAs) who approve, disapprove, or suspend programs of education to prepare notices of approval to inform educational institutions, training establishments, and organizations or entities of the approval, disapproval, or suspension of their courses, training, or tests, and submit to VA copies of the notices for each program of education that is suspended or disapproved.

*Description of need for information and proposed use of information:* The collection of information is necessary to ensure programs of education are operating appropriately. VA will use the approval notice information to determine if payment of educational assistance is appropriate.

*Description of likely respondents:* State approving agencies.

*Estimated total number of respondents:* 57 in FY 2024.

*Estimated total number of responses:* 4,707 in FY 2024.

*Estimated frequency of responses:* Annual.

*Estimated average burden per response:* 15 total hours.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 70,605 burden hours. Using the annual number of responses 4,707, VA estimates a total annual reporting and recordkeeping burden of 70,605 for respondents.

*Estimated cost to respondents per year:* There is no cost to the respondents because, by contract, SAAs are reimbursed for submitting this information.

*Title:* Application for VA Education Benefits (VA Form 22–1990).

*OMB Control No:* 2900–0154.

*CFR Provision:* 38 CFR 21.9505, 21.9506, 21.9520(c), 21.9570, 21.9571, 21.9636(w), 21.9641(b)(3), 21.9691(h), and 21.9700(b).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9505, 21.9506, 21.9520(c), 21.9570, 21.9571, 21.9636(w), 21.9641(b)(3), 21.9691(h), and 21.9700(b) would require the following individuals to submit an application for VA education benefits to establish their eligibility:

- Reserve and National Guard members (38 CFR 21.9505, 21.9506)
- Individuals eligible for Montgomery GI Bill—Active Duty (chapter 30), Montgomery GI Bill—Selected Reserve (chapter 1606), and Reserve Educational Assistance Program (chapter 1607) who want to relinquish their eligibility to

establish eligibility under the Post-9/11 GI Bill (chapter 33) (38 CFR 21.9520(c))

- Individuals who train with the U.S. Public Health Service and the National Oceanic and Atmospheric Administration who want to transfer Post-9/11 GI Bill benefits to dependents (38 CFR 21.9570, 21.9571)

- Individuals receiving chapter 33 benefits and who are eligible for 10 U.S.C. chapter 106a, 1606, or 1607, 10 U.S.C. 510, 38 U.S.C. chapter 30, 31, 32, or 35 or Hostage Relief Act of 1980 benefits who want to receive educational assistance under another program (38 CFR 21.9636(w))

- Students pursuing a non-college degree program at a non-IHL (38 CFR 21.9641(b)(3))

- Individuals eligible under multiple programs (38 U.S.C. chapter 30, 32, or 33 or 10 U.S.C. chapter 1606 or 1607) who must elect under which authority service is to be credited (38 CFR 21.9691(h))

- Individuals eligible for the Fry Scholarship who want to apply for Yellow Ribbon Program benefits (38 CFR 21.9700(b))

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. This information collected will be used by VA to determine an individual's eligibility for educational assistance benefits.

*Description of likely respondents:* Individuals.

*Estimated number of respondents:* 810,000 in FY 2024.

*Estimated frequency of responses:* Once.

*Estimated average burden per response:* 20 minutes (VA.gov); 15 minutes (paper).

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 249,750 burden hours. Using the annual number of responses 810,000 (567,000 responses at 20 minutes/response; 243,000 responses at 15 minutes/response), VA estimates a total annual reporting and recordkeeping burden of 249,750 for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$6,995,498 (567,000 applicants (using Vets.gov) per year  $\times$  20 minutes per application  $\times$  \$28.01 \* = 5,293,890) and (243,000 (using paper form) per year  $\times$  15 minutes per application  $\times$  \$28.01 \* = 1,701,608).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This

information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Dependents' Application for VA Education Benefits.

*OMB Control No:* 2900–0098.

*CFR Provision:* 38 CFR 21.9520(d), 21.9530(f), 21.9691(e), 21.9691(h).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9520(d), 21.9530(f), 21.9691(e), and 21.9691(h) would require certain children to submit an application to establish eligibility for the Fry Scholarship, and certain individuals who must elect the Fry Scholarship or either Dependency and Indemnity Compensation (DIC) or Survivors' and Dependents' Educational Assistance (DEA) to submit an application to establish eligibility for the elected benefit.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. The information collected will be used by VA to determine an individual's eligibility for the Fry scholarship, DIC, or DEA.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 63,807 in FY 2024.

*Estimated frequency of responses:* Once.

*Estimated average burden per response:* 45 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 47,855 burden hours. Using the annual number of responses 63,807, VA estimates a total annual reporting and recordkeeping burden of 47,855 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$1,340,419 (63,807 respondents per year  $\times$  45 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Application for Reimbursement of a National Exam Fee.

*OMB Control No:* 2900–0706.

*CFR Provision:* 38 CFR 21.9626(a)(3), 21.9668, 21.9681(b)(5).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9626(a)(3), 21.9668, 21.9681(b)(5) would require individuals to submit a claim and supporting

documentation to be reimbursed for the cost of a national test for admission or a national test for credit.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. The information collected will be used by VA to determine if an individual is eligible to receive reimbursement for a claimed national test, and to determine the amount of the reimbursement.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 310 in FY 2024.

*Estimated frequency of responses:* Once.

*Estimated average burden per response:* 15 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 78 burden hours. Using the annual number of responses 310, VA estimates a total annual reporting and recordkeeping burden of 78 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$2,185 (310 respondents per year  $\times$  15 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Application for Reimbursement of Licensing and Certification Fees.

*OMB Control No:* 2900–0695.

*CFR Provision:* 38 CFR 21.9667.

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9667 would require individuals to submit a claim to be reimbursed for the cost of licensing and certification tests.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. The information collected will be used by VA to determine if an individual is eligible to receive reimbursement for a licensing and certification test, and to determine the amount of the reimbursement.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 4,210 in FY 2024.

*Estimated total number of responses:* 12,630 in FY 2024.

*Estimated frequency of responses:* On occasion. (3 responses per year).

*Estimated average burden per response:* 15 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 3,158 burden hours. Using the annual number of responses 12,630, VA estimates a total annual reporting and recordkeeping burden of 3,158 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$88,456 (12,630 responses per year  $\times$  15 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Monthly Certification for On-the-Job Training and Apprenticeship.

*OMB Control No:* 2900–0178.

*CFR Provision:* 38 CFR 21.9626(c).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9626(c) would require students pursuing on-the-job and apprenticeship programs at non-institutions of higher learning (IHLs) to submit monthly certifications to receive payment for such pursuit.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. The information collected will be used to determine whether an individual’s educational assistance should be continued without change, amended, or terminated, and to determine the effective date of such continuance, amendment, or termination.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 15,900 in FY 2024.

*Estimated total number of responses:* 190,800 in FY 2024.

*Estimated frequency of responses:* Monthly.

*Estimated average burden per response:* 10 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 31,800 burden hours. Using the annual number of responses 190,800, VA estimates a total annual reporting and recordkeeping burden of 31,800 for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$890,718 (190,800 responses per year  $\times$  10 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Monthly Certification for Flight Training.

*OMB Control No:* 2900–0162.

*CFR Provision:* 38 CFR 21.9641(b)(5).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9641(b)(5) would require students pursuing flight training programs at non-IHLs to submit monthly certifications to receive payment for such pursuit.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. The information collected will be used to determine whether the individual’s educational assistance should be continued without change, amended, or terminated, and to determine the effective date of such continuance, amendment, or termination.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 3,900 in FY 2024.

*Estimated total number of responses:* 23,400 in FY 2024.

*Estimated frequency of responses:* On occasion. (6 responses annually).

*Estimated average burden per response:* 30 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 11,700 burden hours. Using the annual number of responses 23,400, VA estimates a total annual reporting and recordkeeping burden of 11,700 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$327,717 (23,400 responses per year  $\times$  30 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Certification of Lessons Completed.

*OMB Control No:* 2900–0353.

*CFR Provision:* 38 CFR 21.9641(b)(6).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9641(b)(6) would

require students pursuing correspondence training programs at non-IHLs to submit certification of lessons completed to receive payment for such pursuit.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits, which in the case of correspondence training, are based on the number of lessons completed. The information collected will be used by VA to determine the amount of educational assistance to be paid.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 154 in FY 2024.

*Estimated total number of responses:* 616 in FY 2024.

*Estimated frequency of responses:* Quarterly.

*Estimated average burden per response:* 10 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 103 burden hours. Using the annual number of responses 616, VA estimates a total annual reporting and recordkeeping burden of 103 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$2,885 (616 responses per year  $\times$  10 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Certification of Affirmation of Enrollment Agreement Correspondence Course.

*OMB Control No:* 2900–0576.

*CFR Provision:* 38 CFR 21.9641(b)(6).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9641(b)(6) would require students pursuing correspondence training programs at non-IHLs to submit an affirmation of enrollment in a correspondence course to receive payment for such pursuit.

*Description of need for information and proposed use of information:* The collection of information is necessary to pay benefits. The information collected will be used by VA to ensure an individual is enrolled in a correspondence course following the signing of a contract.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 75 in FY 2024.

*Estimated frequency of responses:* Annually.

*Estimated average burden per response:* 3 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 4 burden hours. Using the annual number of responses 75, VA estimates a total annual reporting and recordkeeping burden of 4 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$112 (75 responses per year  $\times$  3 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* VA Enrollment Certification.

*OMB Control No:* 2900–0073.

*CFR Provision:* 38 CFR 21.9681(b)(1); 21.9721.

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9681(b)(1) and 21.9721 would require an educational institution to certify a student’s enrollment in an approved program of education (other than a student seeking reimbursement for taking an approved licensure or certification test or a national test).

*Description of need for information and proposed use of information:* The collection of information is necessary to ensure a student is properly enrolled in an approved program of education before making any payments of educational assistance benefits. VA will use the information collected on VA Form 22–1999 to determine the amount of educational benefits payable to an individual during a period of enrollment or training.

*Description of likely respondents:* Individuals.

*Estimated total number of respondents:* 7,581,273 in FY 2024.

*Estimated total number of responses:* 15,162,546 in FY 2024.

*Estimated frequency of responses:* On occasion. (2 responses per year).

*Estimated average burden per response:* 10 minutes.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 2,527,091 burden hours. Using the annual number of responses 15,162,546, VA estimates a total annual reporting and

recordkeeping burden of 2,527,091 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$70,783,819 (15,162,546 responses per year  $\times$  10 minutes per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

*Title:* Yellow Ribbon Program Agreement.

*OMB Control No:* 2900–0718.

*CFR Provision:* 38 CFR 21.9700(b).

*Summary of collection of information:* The collection of information in proposed 38 CFR 21.9700(b) would include individuals who establish eligibility for the Fry Scholarship to receive benefits under the Yellow Ribbon Program.

*Description of need for information and proposed use of information:* The collection of information is necessary to provide IHLs with the opportunity to indicate their participation in the Yellow Ribbon Program and to allow IHLs to indicate the maximum number of students that will receive benefits under the program. VA will use the information collected to determine which IHLs will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, and the maximum dollar amount of outstanding established charges that will be waived for each student based on student status (*i.e.*, undergraduate, graduate, doctoral) or sub-element (*i.e.*, college or professional school).

*Description of likely respondents:* Institutions of higher learning.

*Estimated total number of respondents:* 5,600 in FY 2024.

*Estimated frequency of responses:* Once.

*Estimated average burden per response:* 14 hours.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 78,400 burden hours. Using the annual number of responses 5,600, VA estimates a total annual reporting and recordkeeping burden of 78,400 hours for respondents.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$2,195,984 (5,600 responses per year  $\times$  14 hours per application  $\times$  \$28.01 \*).

\* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$28.01 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this proposed rule are 64.027, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.116, Veteran Readiness for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans’ Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance.

Severability

The purpose of this section is to clarify the agencies’ intent with respect to the severability of provisions of this proposed rule. Each provision that the agency has proposed is capable of operating independently. If any provision of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, the agencies intend that the rule remain applicable to all other circumstances.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Veteran readiness.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 21 as follows:

**PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION**

**Subpart C—Survivors’ and Dependents’ Educational Assistance Under 38 U.S.C. Chapter 35**

■ 1. The authority citation for part 21, subpart C continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

■ 2. Amend § 21.3022 by:

- a. In paragraph (i), removing “and”.
- b. In paragraph (j), removing the period and adding a semicolon in its place.
- c. Adding paragraph (k).

The addition reads as follows:

**§ 21.3022 Nonduplication—programs administered by VA.**

\* \* \* \* \*

(k) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

\* \* \* \* \*

**Subpart D—Administration of Educational Assistance Programs**

■ 3. The authority citation for part 21, subpart D continues to read as follows:

**Authority:** 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

**§ 21.4002 [Amended]**

■ 4. Amend § 21.4002, in paragraph (a), by removing “(see §§ 19.192 and 19.183 of this chapter.)”.

■ 5. Amend § 21.4022 by:

- a. In paragraph (k), removing the period and adding a semicolon in its place.
- b. Adding paragraph (l).

The addition reads as follows:

**§ 21.4022 Nonduplication—programs administered by VA.**

\* \* \* \* \*

(l) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

\* \* \* \* \*

■ 6. Amend § 21.4138 by:

- a. Revising the paragraph heading for paragraph (f).
- b. Adding paragraph (g).

The revision and addition read as follows:

**§ 21.4138 Certifications and release of payments.**

\* \* \* \* \*

(f) *Payment for intervals and temporary school closings before August 1, 2011.* \* \* \*

\* \* \* \* \*

(g) *Payment for temporary school closings after July 31, 2011.* (1) Subject to paragraph (2), VA may authorize payment for a temporary school closing that occurs during a certified period of enrollment if the closing is due to an emergency (including a strike) or established policy based on an Executive Order of the President.

(2) An individual may not receive more than 4 weeks of payment for temporary school closings in any 12-month period.

(3) The decision as to whether a school closing is permanent or temporary will be made by—

- (i) The director of the VA regional processing office of jurisdiction; or
- (ii) The Director, Education Service, if the emergency or established policy based on an Executive Order of the President results in the closing of schools in the jurisdiction of more than one VA regional processing office.

(4) A school that disagrees with a decision made under paragraph (g)(3) of this section may request an administrative review. The review request must be submitted in writing and received by the director of the VA regional processing office of jurisdiction, or the Director, Education Service, whoever made the decision under paragraph (g)(3), within one year of the date of VA’s letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

- (i) Director, Education Service, if the director of the VA regional processing office of jurisdiction made the initial decision to continue or discontinue payments.
- (ii) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3680(a))

■ 7. Amend § 21.4150 by revising paragraphs (c)(2) and (f) to read as follows:

**§ 21.4150 Designation.**

\* \* \* \* \*

(c) \* \* \*

(2) When VA has approval, disapproval, or suspension authority.

(f)(1) The Secretary is responsible for approving programs of education offered by any agency or instrumentality of the Federal Government.

(2)(i) Effective August 1, 2011, subject to sections 21.4201, 21.4203, 21.4251, 21.4252, 21.4253(d)(2) and (d)(3) of this chapter, the following programs of education are deemed approved—

(A) An accredited standard college degree program offered at a public or not-for-profit proprietary institution of higher learning that is accredited by a national or regional agency or organization recognized for that purpose by the Department of Education.

(B) A flight training course approved by the Federal Aviation Administration that is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141.

(C) An apprenticeship program registered with the Office of Apprenticeship of the Employment Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship under 29 U.S.C. 50, *et seq.*

(D) A program of education leading to a secondary school diploma offered by a secondary school approved in the State in which it is operating.

(E) A licensure test offered by a Federal, State, or local government.

(Authority: 38 U.S.C. 3672(b))

■ 8. Amend § 21.4151 by:

■ a. In paragraph (b)(5), removing “and”.

■ b. Redesignating paragraph (b)(6) as (b)(7).

■ c. Adding new paragraph (b)(6).

The addition reads as follows:

**§ 21.4151 Cooperation.**

(b) \* \* \*

(6) Effective August 1, 2011, performing compliance and risk-based surveys and oversight (in accordance with the provisions in the State approving agency contract) without regard to whether the Secretary or the State approving agency approved the courses offered at the educational institution or the courses were deemed approved; and

■ 9. Amend § 21.4200 by adding paragraphs (mm), (nn), and (oo) to read as follows:

**§ 21.4200 Definitions.**

(mm) *National test for admission.* A national test for admission is a test used for admission to an institution of higher learning or graduate school (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)). A list of national tests approved by VA can be found at: <http://inquiry.vba.va.gov/weamspub/buildSearchNE.do>.

(Authority: 38 U.S.C. 3452(b), 3315A, 3501(a)(5))

(nn) *National test for credit.* A national test for credit is a test that provides an opportunity for course credit at an institution of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)). A list of national tests approved by VA can be found at: <http://inquiry.vba.va.gov/weamspub/buildSearchNE.do>.

(Authority: 38 U.S.C. 3452(b), 3315A, 3501(a)(5))

(oo) *We, us, our.* When we use the terms *we*, *us*, or *our*, we mean the United States Department of Veterans Affairs.

■ 10. Amend § 21.4206 by revising the introductory text, paragraphs (b) and (e) to read as follows:

**§ 21.4206 Reporting fee.**

VA will pay annually to each educational institution furnishing education or to each joint apprenticeship training committee acting as a training facility under 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

(b) In computing the reporting fee, VA will not count an eligible individual whose only receipt of educational assistance during a calendar year was tuition assistance Top-Up under 38 U.S.C. chapter 30, a rural relocation payment, or reimbursement for a national test for admission, national test for credit, or a licensing or certification test.

(e) Before VA will pay a reporting fee, an educational institution must certify that—

(1) It has exercised reasonable diligence in determining whether it or any courses approved for VA education benefits offered by it meet all the

applicable requirements of 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36;

(2) It will, without delay, report any failure to meet any requirement to VA; and

(3) The reporting fees received after January 4, 2011, will be used solely for the purpose of making certifications for VA educational assistance under 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36 or for supporting programs for veterans. (Authority: 10 U.S.C. 510, 16136, 16166; 38 U.S.C. 3034, 3241(a), 3323(a), 3684(c))

- 11. Amend § 21.4235 by:
  - a. Revising paragraph (a) introductory text and the authority citation following paragraph (a)(3).
  - b. Removing paragraph (b).
  - c. Redesignating paragraphs (c) through (f) as (b) through (e).
  - d. In newly redesignated paragraph (b)(5), removing “(c)(2)” and adding in its place “(b)(2)”.
  - e. In newly redesignated paragraph (e), removing “chapter 1606 or 38 U.S.C. chapter 30, 32, or 35” and adding in its place “chapter 1606 or 1607 or 38 U.S.C. chapter 30, 32, 33, or 35”; removing “(a)(2) through (d)” and adding in its place “(a)(2) through (c)”; and removing “paragraph (f)(1)” and adding in its place “paragraph (e)(1)”.
  - f. Revising the authority citation following newly redesignated paragraph (e)(2).

The revisions read as follows:

**§ 21.4235 Programs of education that include flight training.**

(a) An individual who is otherwise eligible to receive educational assistance under 38 U.S.C. chapters 30, 32, or 33, or a reservist eligible for educational assistance under 10 U.S.C. chapters 1606 or 1607, may receive educational assistance for flight training in an approved program of education provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (e) of this section, the individual must—

(3) \* \* \*

(Authority: 10 U.S.C. 16136(c), 16166(c); 38 U.S.C. 3034(d), 3241(b), 3313(g), 3323(a))

(e) \* \* \*

(2) \* \* \*

(Authority: 10 U.S.C. 16136, 16166; 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241, 3301(3), 3323(a)).



■ 12. Amend § 21.4253 by revising paragraph (a) introductory text and the authority citation following paragraph (a)(5) to read as follows:

§ 21.4253 Accredited Courses.

(a) General. All standard college degree courses offered at proprietary for-profit institutions and non-college degree courses offered at proprietary for-profit institutions and public or proprietary not-for-profit institutions may be approved as accredited courses if they meet one of the following criteria:

- \* \* \* \* \*
(5) \* \* \*

(Authority: 38 U.S.C. 501(a), 3323(c) 3675(a)
\* \* \* \* \*

■ 13. Amend § 21.4259 by revising paragraphs (a) and (b) to read as follows:

§ 21.4259 Suspension or disapproval.

(a) The appropriate State approving agency or the Secretary (whichever entity approved the program), after approving a program of education or licensing or certification test—

(1) May suspend the approval of a program of education for new enrollments or for a licensing or certification test for a period not to exceed 60 days to allow the institution to correct any deficiencies if the evidence of record establishes that the program of education or licensing or certification test fails to meet any of the requirements for approval.

(2) Will immediately disapprove the program of education or licensing or certification test if any of the requirements for approval are not being met and the deficiency cannot be corrected within a period of 60 days.

(b) Notification of suspension or disapproval. (1) Upon suspension or disapproval, the State approving agency or the Secretary, whichever suspended or disapproved the program of education, will notify the educational institution by certified or registered letter with a return receipt secured. It is incumbent upon the State approving agency or the Secretary to determine the conduct of the program of education and to take immediate appropriate action in each case in which it is found that the conduct of the program of education in any manner fails to comply with the requirements for approval.

(2)(i) Each State approving agency will immediately notify VA of each program of education or licensing and certification test that it has suspended or disapproved.

(ii) The Secretary will immediately notify the appropriate State approving agency of each program of education or

licensing and certification test that it has suspended or disapproved.

(Authority: 38 U.S.C. 3679, 3689)
\* \* \* \* \*

■ 14. Amend § 21.4263 by revising paragraph (a) to read as follows:

§ 21.4263 Approval of flight training courses.

(a)(1) A flight program may be approved if—

(i)(A) For 38 U.S.C. chapters 32 and 35 and 10 U.S.C. chapters 1606 and 1607, the flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; or

(B) For 38 U.S.C. chapters 30 and 33, effective August 1, 2011, the flight program is deemed approved (A flight program will be deemed approved if it is approved by the Federal Aviation Administration and is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141. Flight programs offered at flight schools listed in paragraph (b)(2) and (b)(3) of this section will not be approved for VA training under 38 U.S.C. chapters 30 and 33); and

(ii)(A) The flight training offered by a flight school is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(B) The flight training is offered by an institution of higher learning for credit towards a standard college degree program.

(2) A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it.

(Authority: 10 U.S.C. 16136(c), 16166(c), 38 U.S.C. 3032(e), 3241(b), 3672, 3676, 3680A)
\* \* \* \* \*

■ 15. Amend § 21.4268 by revising paragraph (a) to read as follows:

§ 21.4268 Approval of licensing and certification tests.

(a) Authority to approve licensing and certification tests. (1) Tests deemed approved. Effective August 1, 2011, a licensure test offered by a Federal, State, or local government is deemed approved in accordance with § 21.4150(f).

(2) VA approval. The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel

the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve licensing and certification tests and the organizations and entities offering the tests as provided in § 21.4250(c)(2)(vi).

(3) State approving agency approval. Except for the licensing and certification tests and organizations or entities offering these tests that are approved under (a)(1) and (a)(2) of this section, the Secretary of Veterans Affairs delegates to each State approving agency the authority to approve licensing and certification tests and the organizations and entities offering these tests located within the State approving agency's jurisdiction as provided in § 21.4250(a).

(Authority: 38 U.S.C. 512(a), 3672(b), 3689(a))
\* \* \* \* \*

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

■ 16. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 17. Amend § 21.5022 by:

■ a. In paragraph (a)(1)(ix), removing "or".

■ b. In paragraph (a)(1)(x), removing the period and adding a semicolon in its place.

■ c. Adding paragraph (a)(1)(xi).

The addition reads as follows:

§ 21.5022 Eligibility under more than one program.

(a) \* \* \*

(1) \* \* \*

(xi) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

\* \* \* \* \*

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 18. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 19. Amend § 21.7143 by:

■ a. In paragraph (a)(1)(ix), removing "or".

■ b. In paragraph (a)(1)(x), removing the period and adding a semicolon in its place.

■ c. Adding paragraph (a)(1)(xi).

The addition reads as follows:

§ 21.7143 Nonduplication of educational assistance.

(a) \* \* \*

(1) \* \* \*  
 (xi) Effective August 1, 2011, 10  
 U.S.C. 510 (National Call to Service).  
 \* \* \* \* \*

#### Subpart L—Educational Assistance for Members of the Selected Reserve

■ 20. The authority citation for part 21, subpart L continues to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

■ 21. Amend § 21.7642 by:

■ a. In paragraph (a)(9), removing “or”.

■ b. In paragraph (a)(10), removing the period and adding a semicolon in its place.

■ c. Adding paragraph (a)(11).

The addition reads as follows:

#### § 21.7642 Nonduplication of educational assistance.

(a) \* \* \*  
 (11) Effective August 1, 2011, 10  
 U.S.C. 510 (National Call to Service).  
 \* \* \* \* \*

#### Subpart P—Post-9/11 GI Bill

■ 22. The authority citation for part 21, subpart P continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

■ 23. Amend § 21.9505 by:

■ a. Revising the section heading.

■ b. In the introductory text, removing “apply.” and adding in its place “apply to provisions effective before August 1, 2011, unless otherwise noted.”

■ c. Revising the term “Active duty”.

■ d. Adding in alphabetical order the term “Educational institution”.

■ e. Revising the term “Entry level and skill training”.

■ f. Adding in alphabetical order the term “Fugitive felon”.

The revisions and additions read as follows:

#### § 21.9505 Definitions—for provisions effective before August 1, 2011.

\* \* \* \* \*

*Active duty* means—

(1) Full-time duty:

(i) In the regular components of the Armed Forces, or

(ii) Under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304.

(2) In the case of a member of the Army National Guard of the United States or the Air National Guard of the United States, in addition to service described in paragraph (1)(ii) under the definition of “active duty” in this section, full-time service—

(i) In the National Guard of a State for the purpose of organizing,

administering, recruiting, instructing, or training the National Guard; or

(ii) In the National Guard under 32 U.S.C. 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(3) Active duty does not include—

(i) Any period during which the individual—

(A) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians; or

(B) Served as a cadet or midshipman at one of the service academies; or

(C) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(ii) A period of service—

(A) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b); or

(B)(1) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348; or

(2) Effective for individuals entering into agreements after January 3, 2011, required by an officer pursuant to an agreement under section 1925 of title 14, U.S.C.

(C) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(D) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109.

(iii) A period of service after July 31, 2011, used to establish eligibility under 38 U.S.C. chapter 30 or 32, or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b), (c); Pub. L. 111-377, 124 Stat. 4107-4108)

\* \* \* \* \*

*Educational institution* has the same meaning as the term *institution of higher learning* as defined in § 21.4200(h) for training pursued prior to August 1, 2011.

(Authority: 38 U.S.C. 3323(a))

\* \* \* \* \*

*Entry level and skill training* means—

(1) Basic Combat Training, Advanced Individual Training, and, effective January 4, 2011, One Station Unit Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training (“A” School) for members of the Navy

(3) Basic Military Training and Technical Training for members of the Air Force

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training and, for individuals entering service on or after January 4, 2011, Skill Training (or so-called “A” School) for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

\* \* \* \* \*

*Fugitive felon* means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(Authority: 38 U.S.C. 3323(c), 5313B)

\* \* \* \* \*

■ 24. Add § 21.9506 to read as follows:

#### § 21.9506 Definitions—for provisions effective after July 31, 2011.

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33), effective after July 31, 2011, unless otherwise noted, the following definitions apply. (See also additional definitions in §§ 21.1029 and 21.4200).

*Academic year* means the period of time beginning August 1st of each calendar year and ending July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

*Active duty* means—

(1) Full-time duty:

(i) In the regular components of the Armed Forces, or

(ii) Under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304.

(2) In the case of a member of the Army National Guard of the United States or the Air National Guard of the United States, in addition to service described in paragraph (1)(ii) under the definition of “active duty” in this section, full time service—

(i) In the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) In the National Guard under 32 U.S.C. 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(3) Active duty does not include—

(i) Any period during which the individual—

(A) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians; or

(B) Served as a cadet or midshipman at one of the service academies; or

(C) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(ii) A period of service—

(A) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b); or

(B)(1) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348; or

(2) Effective for individuals entering into agreements after January 3, 2011, required by an officer pursuant to an agreement under section 1925 of title 14, U.S.C.

(C) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(D) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b), (c), (h); Pub. L. 111–377, 124 Stat. 4107–4108)

*Advance payment* means an amount of educational assistance payable under § 21.9641(c) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

*Course* means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3323(c))

*Distance learning* means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(7).

(Authority: 20 U.S.C. 1003(7); 38 U.S.C. 3323(c))

*Educational assistance* means all monetary benefits (including but not limited to tuition, fees, and monthly housing allowances) payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33

(Authority: 38 U.S.C. 3313)

*Educational institution* has the same meaning as the term institution of higher learning as defined in § 21.4200(h).

(Authority: 38 U.S.C. 3323(a)).

*Enrollment period* means a term, quarter, or semester during which the educational institution offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

*Entry level and skill training* means—

(1) For members of the Army—

(i) Basic Combat Training,

(ii) Advanced Individual Training,

and

(iii) Effective January 4, 2011, One Station Unit Training.

(2) For members of the Navy, Recruit Training (Boot Camp) and Skill Training (“A” School).

(3) For members of the Air Force, Basic Military Training and Technical Training.

(4) For members of the Marine Corps, Recruit Training and Marine Corps Training (School of Infantry Training).

(5) For members of the Coast Guard—

(i) Basic Training and

(ii) For individuals entering service on or after January 4, 2011, Skill Training (or so-called “A” School).

(Authority: 38 U.S.C. 3301(2))

*Fees* mean any mandatory charges (other than tuition, room, and board) that are applied by the educational institution for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.

(Authority: 38 U.S.C. 501(a), 3323(c))

*Fugitive felon* means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the

laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(Authority: 38 U.S.C. 3323(c), 5313B)

*Institution of higher learning (IHL)* means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the Secretary of Education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

*Lump sum payment* means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

*Mitigating circumstances* means circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those that VA considers to be mitigating. This list is not all-inclusive.

(1) An illness or mental illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable change in the individual's conditions of employment;

(4) An unavoidable geographical transfer resulting from the individual's employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to

suspend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the educational institution;

(7) Unanticipated active duty for training; or

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

*Net cost* means the amount of in-State tuition and fees the individual enrolled in a program of education is responsible for paying after the application of any—

(1) Waiver of, or reduction in, tuition and fees, and

(2) Scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution specifically designated for the sole purpose of reducing the individual's tuition and fee charges.

(Authority: 38 U.S.C. 3313, 3323(c))

*Non-public institution* means a proprietary institution as defined in

**§ 21.4200 (z) of this title.**

(Authority: 38 U.S.C. 3323(c))

*Program of education* means a curriculum or combination of courses pursued at an educational institution that is accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an educational institution that is accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. The curriculum or combination of courses pursued must be listed in the educational institution's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv).

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

*Pursuit* means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of title 38, U.S.C., and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

*Rate of pursuit* means the measurement obtained by dividing the number of course hours (or the equivalent hours as determined in § 21.9750) that an individual is pursuing, including hours applied to refresher, remedial, and deficiency courses, by the number of hours considered to be full-time training at the educational institution. The resulting percentage (rounded to the nearest hundredth) will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(Authority: 38 U.S.C. 3323, 3680)

*Transferor* means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0154.)

■ 25. Revise § 21.9520 to read as follows:

**§ 21.9520 Basic eligibility.**

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33, if he or she—

(a) Serves on active duty after September 10, 2001, for a minimum of 90 aggregate days, excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, *see* § 21.9640(a) or § 21.9641(a), whichever is applicable) and, after completion of such service,—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is released from service characterized as honorable and placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5)(i) Before January 4, 2011, is discharged or released from service for—

(A) A medical condition that preexisted such service and is not determined to be service-connected;

(B) Hardship, as determined by the Secretary of the military department concerned; or

(C) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(ii) On or after January 4, 2011, is discharged or released from service with an honorable discharge for—

(A) A medical condition that preexisted such service and is not determined to be service-connected;

(B) Hardship, as determined by the Secretary of the military department concerned; or

(C) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves on active duty after September 10, 2001, for a minimum of 30 continuous days and, after completion of such service, is discharged from active duty under other than dishonorable conditions due to a service-connected disability; or

(c)(1) After meeting the minimum service requirements in paragraph (a) or (b) of this section—

(i) An individual makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under either 38 U.S.C. chapter 30, or 10 U.S.C. chapter 106a, 1606, or 1607, if eligible for such benefits;

(ii) A member of the Armed Forces who is eligible for educational assistance under 38 U.S.C. chapter 30 and who is making contributions towards educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(b) or 3012(c) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33; or

(iii) A member of the Armed Forces who made an election not to receive educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(c)(1) or 3012(d)(1) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33.

(2) An individual may make an irrevocable election to receive benefits under this chapter by properly completing VA Form 22-1990, submitting a transfer-of-entitlement designation under this chapter to the Department of Defense, or submitting a written statement that includes the following—

(i) Identification information (including name, social security number, and address);

(ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable

chapters listed in paragraph (c)(1)(i) of this section (e.g., “I elect to receive benefits under the Post-9/11—GI Bill in lieu of benefits under the Montgomery GI Bill—Active Duty (chapter 30) program.”);

(iii) The date the individual wants the election to be effective (e.g., “I want this election to take effect on August 1, 2009.”). An election request for an effective date prior to August 1, 2009, will automatically be effective August 1, 2009; and

(iv) An acknowledgement that the election is irrevocable (e.g., “I understand that my election is irrevocable and may not be changed.”); or

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0154.)

(d) Is the child of a person who, after September 10, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces. For purposes of this paragraph, the term “child” means an individual who meets the requirements of § 3.57 of this chapter, except as to age and marital status. With regard to age and marital status, the term includes individuals who are—

- (1) Married; or
- (2) Over the age of 23.

(Authority: 38 U.S.C. 3311; Pub. L. 111–32, 123 Stat. 1859)

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0098.)

#### § 21.9525 [Amended]

■ 26. Amend § 21.9525 by removing “under § 21.9640(b)(1)(ii) or (b)(2)(ii)” each place it appears and adding in each place “under § 21.9640(b)(1)(ii) or (b)(2)(ii) or § 21.9641(c)”.

■ 27. Amend § 21.9530 by:

■ a. In paragraph (a), removing “through (e)” and adding in its place “through (f)”.

■ b. Adding paragraph (f) after the authority citation following paragraph (e).

The addition reads as follows:

#### § 21.9530 Eligibility time limit.

\* \* \* \* \*

(f) *Time limit for child eligible under 38 CFR 21.9520(d) (Marine Gunnery Sergeant John David Fry Scholarship).*

(1) In the case of a child who first becomes entitled to educational assistance under 38 CFR 21.9520(d) before January 1, 2013, the period during which the child may use his or her entitlement expires the day the child turns 33; or

(2) In the case of a child who first becomes entitled to educational assistance under 38 CFR 21.9520(d) on or after January 1, 2013, the period during which the child may use his or her entitlement never expires.

(Authority: 38 U.S.C. 3321(b))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0098.)

■ 28. Revise § 21.9550 to read as follows:

#### § 21.9550 Entitlement.

(a) Subject to the provisions of § 21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual who has not used any entitlement under 38 U.S.C. chapter 30 or has not revoked any months of chapter 30 entitlement by transferring to a dependent and who makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30 will be entitled to 36 months of educational assistance under chapter 33.

(c) Except as provided in §§ 21.9560(d), 21.9561(g), 21.9570(m), 21.9571(m), 21.9635(o), and 21.9636(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

■ 29. Amend § 21.9560 by revising the section heading and adding introductory text to read as follows:

#### § 21.9560 Entitlement charges—for provisions effective before August 1, 2011.

For training that occurs before August 1, 2011—

\* \* \* \* \*

■ 30. Add § 21.9561 to read as follows:

#### § 21.9561 Entitlement charges—for provisions effective after July 31, 2011.

For training that begins after July 31, 2011—

(a) *Training pursued at an IHL.* The entitlement charge for an individual pursuing training at an IHL will be one of the following:

(1) During any period for which VA pays net costs or a Yellow Ribbon Program payment to the institution of higher learning on the individual’s behalf, the individual will be charged a percentage of a day equal to the individual’s rate of pursuit for each day of the certified enrollment period;

(2) During any period for which VA does not pay net costs or a Yellow Ribbon Program payment to the institution of higher learning on the individual’s behalf but pays a monthly housing allowance or an increase (“kicker”) to the individual, the individual will be charged a percentage of a day equal to the individual’s rate of pursuit for each day of the certified enrollment period for each day the individual received a monthly housing allowance or an increase (“kicker”);

(3) During any period for which VA does not pay net costs or Yellow Ribbon Program payment to the institution of higher learning on the individual’s behalf or a monthly housing allowance or an increase (“kicker”) to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

(b) *Training pursued at a non-college degree institution.* The entitlement charge for an individual pursuing a certificate or other non-college degree at a non-college degree institution will be one of the following:

(1) During any period for which VA pays tuition and fees to the non-college degree institution on the individual’s behalf, the individual will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by the amount equal to 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(3)(ii) or (iii).

(2) During any period for which VA does not pay net costs to the non-college degree institution on the individual’s behalf but pays a monthly housing allowance or an increase (“kicker”) to the individual, the individual will be charged a percentage of a day equal to the individual’s rate of pursuit for each day of the certified enrollment period

for each day the individual received a monthly housing allowance or an increase (“kicker”).

(3) During any period for which VA does not pay net costs to the non-college degree institution on the individual’s behalf or a monthly housing allowance or an increase (“kicker”) to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

(c) *Apprenticeship or other on-the-job training.* For each month an individual is paid educational assistance while pursuing an approved apprenticeship or other on-the-job training program, VA will make a charge against entitlement of—

(1) During the first 6-month period of the program, 1 month for each month of training pursued.

(2) During the second 6-month period of the program, .80 of a month for each month of training pursued.

(3) During the third 6-month period of the program, .60 of a month for each month of training pursued.

(4) During the fourth 6-month period of the program, .40 of a month for each month of training pursued.

(5) After the first 24 months of the program, .20 of a month for each month of training pursued.

(d) *Flight training.* An individual pursuing a non-college degree program consisting of flight training will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(5)(ii) or (iii).

(e) *Correspondence training.* An individual pursuing a program of education by correspondence will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(6)(ii) or (iii).

(f) *Licensing or certification tests and national tests.* When an individual receives educational assistance for taking an approved licensing or certification test, national test for admission, or national test for credit, VA will make a charge against entitlement for each payment made to him or her. The charge will be determined by—

(1) Dividing the total amount of the payment by—

(i) For the academic year beginning August 1, 2011, \$1460; or

(ii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h) (but for a licensing or certification test the amount will not be greater than \$2,000) and (2)(i) For tests taken prior to August 1, 2018, rounding the result of paragraph (f)(1) of this section to the nearest whole month. The charge must be at least one month.

(ii) For test taken on or after August 1, 2018, multiplying the result of paragraph (f)(1) of this section by 30, rounding to the nearest whole day. The charge must be at least one day.

(Authority: 38 U.S.C. 3315, 3315A)

(g) *No entitlement charge.* VA will not make a charge against an individual’s entitlement—

(1) For tutorial assistance as provided under § 21.9685; or

(Authority: 38 U.S.C. 3314)

(2) For the rural relocation benefit as provided under § 21.9660; or

(Authority: 38 U.S.C. 3318)

(3) For receipt of a work-study allowance as provided under § 21.4145.

(Authority: U.S.C. 3485)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being—

(A) Ordered to active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) While on active duty service, ordered to a new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(h) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if

the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment for the entire certified period of enrollment; or

(3) The individual requests interruption or cancellation for any break when the school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual received a payment for educational assistance provided under this chapter for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(i) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be 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 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).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, 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 as determined in paragraph (i)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, course costs and marshal fees);

(iii) Dividing the result obtained in paragraph (i)(3)(ii) of this section from the amount of the original overpayment (exclusive of interest, administrative

costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (i)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

■ 31. Amend § 21.9570 by revising the section heading and in the introductory text removing “An individual” and adding in its place “For training that occurs before August 1, 2011, an individual” to read as follows:

**§ 21.9570 Transfer of entitlement—for provisions effective before August 1, 2011.**

\* \* \* \* \*

■ 32. Add § 21.9571 to read as follows:

**§ 21.9571 Transfer of Entitlement—for provisions effective after July 31, 2011.**

For training that occurs after July 31, 2011, an individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own service as a member of the Uniformed Services, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent using transferred entitlement in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9506—Definitions—for provisions effective after July 31, 2011.

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA’s duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.* (i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor’s right to revoke or modify transfer at any time and that VA may only extend a child’s ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.* (i) Section 21.9550—Entitlement;

(ii) Section 21.9561—Entitlement charges—for provisions effective after July 31, 2011.

(Authority: 38 U.S.C. 3319)

(5) *Counseling.* (i) Section 21.9580—Counseling;

(ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses.* (i) Section 21.9591—Approved programs of education and courses—for provisions effective after July 31, 2011;

(ii) Section 21.9601—Overcharges—for provisions effective after July 31, 2011.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.* (i) Section 21.9620—Educational assistance;

(ii) Section 21.9626—Beginning dates—for provisions effective after July 31, 2011, except for paragraphs (e), (g), (h), (k), or (l);

(iii) Section 21.9630—Suspension or discontinuance of payments;

(iv) Section 21.9636—Discontinuance dates—for provisions effective after July 31, 2011, except for paragraphs (o), and (v);

(v) Section 21.9660—Rural relocation benefit;

(vi) Section 21.9667—Reimbursement for licensing or certification tests—for provisions effective after July 31, 2011;

(vii) Section 21.9668—Reimbursement for national tests;

(viii) Section 21.9670—Work-study allowance;

(ix) Section 21.9676—Conditions that result in reduced rates or no payment—for provisions effective after July 31, 2011;

(x) Section 21.9681—Certifications and release of payments—for provisions effective after July 31, 2011;

(xi) Section 21.9685—Tutorial assistance;

(xii) Section 21.9691—Nonduplication of educational assistance—for provisions effective after July 31, 2011;

(xiii) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and

(Authority: 38 U.S.C. 3319)

(xiv) Section 21.9700—Yellow Ribbon Program.

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.* (i) Section 21.9710—Pursuit;

(ii) Section 21.9715—Advance payment certification;

(iii) Section 21.9721—Certification of enrollment—for provisions effective after July 31, 2011;

(iv) Section 21.9725—Progress and conduct;

(v) Section 21.9735—Other required reports;

(vi) Section 21.9740—False, late, or missing reports; and

(vii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment.* Section 21.9750—Course measurement.

(Authority: 38 U.S.C. 3319)

(10) *Administrative.* Section 21.9770—Administrative.

(Authority: 38 U.S.C. 3319)

(b) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to:

(i) The individual’s spouse;

(ii) One or more of the individual’s children; or

(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter at the time of transfer.

(3) A child must meet the definition of child in § 3.57 of this chapter at the time of transfer. The transferor must make the required designation shown in § 21.9571(d)(1) before the child attains the age of 23.

(4) A stepchild, who meets VA’s definition of child in § 3.57 of this chapter at the time of transfer and who is temporarily not living with the transferor, remains a member of the transferor’s household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her department to transfer entitlement may do so at any time while serving as a member of the uniformed services, subject to the transferor’s 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.* (1) An individual transferring entitlement under this section must:

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent. The designated beginning date may not be earlier than the date the individual requests approval from his or her service department.

(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3319)

(e) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of:

(i) Thirty-six months of his or her entitlement; or

(ii) The maximum amount authorized by the Secretary of the department concerned; or

(iii) The amount of entitlement he or she has available at the time of transfer.

(2) The transferor may transfer up to the maximum amount of transferable entitlement:

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement (transferred entitlement is "used" in the amount of the entire enrollment period on the first day of the enrollment period; therefore, a transferor cannot revoke the entitlement used for an enrollment period after the enrollment period has begun) at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the Secretary of the department concerned as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement.* (1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time,

except that a modification of a beginning date under paragraph (d)(1)(iii) of this section must be effective on or after the date the modification is submitted. Any modification made will apply only with respect to unused transferred entitlement (transferred entitlement is "used" in the amount of the entire enrollment period on the first day of the enrollment period; therefore, a transferor cannot revoke the entitlement used for an enrollment period after the enrollment period has begun). The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.9641 (and §§ 21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in § 21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or

equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Disregard the fact that either the transferor or the dependent child is (or both are) on active duty, and pay the veteran rate to a dependent child;

(2) Pay the veteran rate to a surviving spouse; and

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under § 21.9641 if the dependent's months of entitlement will exhaust during the certified enrollment period, by—

(i) Determining the amount of payment for the net cost of tuition and fees the dependent would otherwise be eligible to receive for the entire enrollment period, then dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of payment for the net cost of tuition and fees to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under § 21.9571; and

(ii) Discontinuing the dependent's monthly housing allowance effective as of the date the dependent's months and days of entitlement exhausts.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the uniformed services in order to participate in the transferability program, unless—

(i) The transferor did not complete the service due to:

(A) His or her death;

(B) A medical condition that preexisted such service on active duty and that the Secretary of the department concerned determines is not service-connected;

(C) A hardship, as determined by the Secretary of the department concerned; or

(D) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of



duty, as determined by the Secretary of the department concerned; or

(ii) The transferor is considered to have completed his or her service agreement as a result of being discharged for—

- (A) A disability; or  
(B) A reduction in force.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) of this section or the transferor was not discharged for one of the reasons stated in paragraph (l)(1)(ii) of this section.

(Authority: 38 U.S.C. 3034(a), 3311(c)(4), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.*

Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service are not subject to the 48-month limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48-month limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0154.)

■ 33. Amend § 21.9590 by revising the section heading and adding introductory text to read as follows:

**§ 21.9590 Approved programs of education and courses—for provisions effective before August 1, 2011.**

For training that occurs prior to August 1, 2011—

\* \* \* \* \*

■ 34. Add § 21.9591 to read as follows:

**§ 21.9591 Approved programs of education and courses—for provisions effective after July 31, 2011.**

For training that begins on or after August 1, 2011—

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in § 21.7020(b);

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, national test for admission, or national test for credit for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of tuition and fees not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3315, 3315A, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9506;

(2) Except for a program consisting of a licensing or certification test, a national test for admission, or a national test for credit, the program has an educational, vocational, or professional objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, licensing or certification tests, national tests for admission, or national tests for credit in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, or for a program consisting of a national test for admission or a national test for credit, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

■ 35. Amend § 21.9600 by revising the section heading and adding introductory text to read as follows:

**§ 21.9600 Overcharges—for provisions effective before August 1, 2011.**

The provisions of this section apply to enrollment periods that begin before August 1, 2011.

\* \* \* \* \*

■ 36. Add § 21.9601 to read as follows:

**§ 21.9601 Overcharges—for provisions effective after July 31, 2011.**

The provisions of this section apply to enrollment periods that begin after July 31, 2011.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an educational institution for further enrollments if the educational institution charges an individual, or receives from an individual or from VA on behalf of an individual, an amount for tuition and fees that exceeds the tuition and fees that the educational institution requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests, national test for admission, or national tests for credit may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test, national test for admission, or national test for credit, when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

■ 37. Revise § 21.9620 to read as follows:

**§ 21.9620 Educational Assistance.**

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in §§ 21.9640 and 21.9641 of this part.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

■ 38. Amend § 21.9625 by:

- a. Revising the section heading.
- b. In the introductory text, removing “VA will determine” and adding in its place “For a claim submitted during the period beginning August 1, 2009, and ending July 31, 2011, VA will determine”.

■ c. Adding paragraph (m).

The revision and addition reads as follows:

**§ 21.9625 Beginning dates—for provisions effective before August 1, 2011.**

\* \* \* \* \*

(m) *Fugitive felons.* An award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon, as shown by evidence, which may include evidence that a warrant for an offense involving flight is resolved by—

- (1) Arrest;
- (2) Surrendering to the issuing authority;
- (3) Dismissal; or
- (4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 3323(c), 5313B)

■ 39. Add § 21.9626 to read as follows:

**§ 21.9626 Beginning dates—for provisions effective after July 31, 2011.**

For a claim submitted after July 31, 2011, VA will determine the beginning date of an award or increased award of educational assistance under this section. In no case will the beginning date be earlier than August 1, 2009, or for training pursued at non-degree institutions before October 1, 2011. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

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

- (1) *For other than a licensing or certification test, a national test for admission, or a national test for credit.* (i) If the award is an award for the first period of enrollment for which the eligible individual began pursuing his or her program of education, the beginning date will be 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 program of education;

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is an award for a second or subsequent period of enrollment for which the eligible individual is pursuing a program of education, the effective date of the award will be the latest of—

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

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

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

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) When the claim for reimbursement for the cost of the test is submitted within 1 year of the date the test is taken.

(3) *For a national test for admission or a national test for credit.* VA will award educational assistance for the cost of a national test for admission or a national test for credit only when the eligible individual takes such test after July 31, 2011—

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

(ii) While the individual is eligible for educational assistance under this chapter; and

(iii) When claim for reimbursement for the cost of the test is submitted within 1 year of the date the test is taken.

(Authority: 38 U.S.C. 3034(a), 3315A, 3323(a), 3452(b))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900-0706.)

(b) *Certification for program of education offered at an IHL.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the educational institution.

(2) When the individual enrolls in a resident course, the beginning 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 eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins on or after the eighth calendar day when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning 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.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

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

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

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education offered by a non-college degree educational institution.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, when an eligible individual enrolls at a non-college degree educational institution, the beginning date of the award of educational assistance will be the later of—

(i) The date determined in paragraph (b) of this section, or

(ii) October 1, 2011.

(2) When an eligible individual enrolls at a non-degree educational institution for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

- (i) The date the first lesson was sent,
- (ii) The date of affirmance (as defined in § 21.7020(b)(36)), or
- (iii) October 1, 2011.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(3) When an individual enrolls in a program of apprenticeship or other on-the-job training, the beginning date of the award of educational assistance will be the later of—

(i) The first date of employment in the training position; or  
(ii) October 1, 2011.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0154, 2900–0178, 2900–0162, 2900–0353, and 2900–0576.)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in § 21.9530, 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 beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving or is receiving a reduced rate of educational assistance under § 21.9675 (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

- (1) The date the tuition and fees are no longer being paid under a Federal (other than one administered by VA), State, or local program; or
- (2) The date the individual is released from the penal institution or correctional facility.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase ("kicker") based on critical skills or specialty.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance under 38 U.S.C. 3316, the effective date of that increase ("kicker") will be the later of—

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (f) of this section; or

(2) The first date on which the eligible individual is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (f) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9571, the beginning 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 military 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. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9571, the beginning 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 § 3.57 of this chapter; or

(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. 3319)

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified

period of enrollment, VA will begin paying the monthly housing allowance—(1) If released or discharged before August 1, 2018, beginning the 1st day of the month following the date the individual was discharged; or (2) If released or discharged on or after August 1, 2018, beginning the day following the date the individual was discharged.

(l) *Election to receive benefits under 38 U.S.C. chapter 33.* (1) If an individual makes an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under 10 U.S.C. chapter 106a, 1606, or 1607, or 38 U.S.C. chapter 30 in accordance with 38 CFR 21.9520(c), VA will begin paying benefits under 38 U.S.C. chapter 33 effective the later of the following—

(i) August 1, 2009;

(ii) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;

(iii) One year before the date the valid election request was received; or

(iv) The effective date of the election as requested by the claimant.

(2) If an individual is in receipt of benefits under 38 U.S.C. chapter 31 during a term, quarter, or semester, and requests to begin receiving benefits under 38 U.S.C. chapter 33 during that term, quarter, or semester, VA will begin paying—

(i) The monthly housing allowance under 38 U.S.C. chapter 33 effective the 1st of the month following the date of the request.

(ii) Net cost of tuition and fees, and the books and supplies stipend, the first day of the following term, quarter, or semester.

(m) *Fugitive felons.* An award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon, as shown by evidence, which may include evidence that a warrant for an offense involving flight is resolved by—

(1) Arrest;

(2) Surrendering to the issuing authority;

(3) Dismissal; or

(4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 3323(c), 5313B)

(n) *National Guard members' retroactive beginning dates for claims submitted through September 30, 2012.* For any claim received up until September 30, 2012, for retroactive benefits based on service in the National Guard, the beginning date of the award will be the later of either (1) the date the

National Guard member satisfied the eligibility requirements in § 21.9520 of this title, or (2) August 1, 2009.

(c) *Child eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* If a child is eligible for entitlement under § 21.9520(d), the beginning date of the award of educational assistance will be no earlier than the earlier of the following dates—

- (1) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or
- (2) The date the child attains age 18.

(Authority: Pub. L. 111–32, 123 Stat. 1859)

- 40. Amend § 21.9635 by:
  - a. Revising the section heading.
  - b. In the introductory text, removing “The effective date” and adding in its place “During the period beginning August 1, 2009, and ending July 31, 2011, the effective date”.
  - c. Revising paragraphs (c), (d), and (w).
  - d. Redesignating paragraph (bb) as paragraph (cc).
  - e. Adding new paragraph (bb).

The revisions and addition read as follows:

**§ 21.9635 Discontinuance dates—for provisions effective before August 1, 2011.**

\* \* \* \* \*

(c) *Withdrawal or unsatisfactory completion of all courses.* If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades after the first day of the term, VA will terminate educational assistance as follows—

(1) If the eligible individual withdraws from all courses after the school’s drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance effective the first day of the term from which the eligible individual withdrew.

(2) If the eligible individual withdraws from all courses with mitigating circumstances; withdraws during the school’s drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

- (i) Residence training; effective the last date of attendance; and
- (ii) Independent study or distance learning; effective on the official date of change in status under the practices of the educational institution.

(3) When an eligible individual withdraws from an approved correspondence course offered by an educational institution, VA will

terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual’s educational assistance effective the end of the month during which the reduction occurred when—

(i) The withdrawal from one or more courses occurs during the school’s drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances; or

(iii) A punitive grade is assigned for the course from which the eligible individual 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) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

\* \* \* \* \*

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under chapter 33 who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 38 U.S.C. chapter 30, 31, 32, or 35; the Hostage Relief Act of 1980; or, effective August 1, 2011, 10 U.S.C. 510, may choose to receive educational assistance under another program.

\* \* \* \* \*

(bb) *Fugitive felons.* VA will not award educational assistance to an

otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon. The date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

(Authority: 38 U.S.C. 3323(c), 5313B)

\* \* \* \* \*

- 41. Add § 21.9636 to read as follows:

**§ 21.9636 Discontinuance dates—for provisions effective after July 31, 2011.**

The effective date of a reduction or discontinuance of educational assistance that occurs after July 31, 2011, will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment for the books and supplies stipend under § 21.9641(d) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the educational institution receives a lump sum payment for tuition and fees under § 21.9641(b) on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The educational institution will be required to return to VA any portion of the tuition and fees paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the educational institution.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9681(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, e.g., monthly housing allowance under § 21.9641(c), if the eligible individual

dies while pursuing a program of education, the discontinuance date of educational assistance will be the date of death.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider mitigating circumstances to exist with respect to the withdrawal of a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider a course or courses dropped during an educational institution's drop-add period in accordance with § 21.4200(l). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective—(1) For withdrawals occurring before [EFFECTIVE DATE OF THE FINAL RULE] the end of the month during which the withdrawal occurred; (2) For withdrawals occurring on or after [EFFECTIVE DATE OF THE FINAL RULE], the last date of attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades after the first day of the term, VA will terminate educational assistance as follows—

(1) If the eligible individual withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance effective the first day of the term from which the eligible individual withdrew.

(2) If the eligible individual withdraws from all courses with mitigating circumstances; withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training; effective the last date of attendance; and

(ii) Independent study or distance learning; effective on the official date of change in status under the practices of the educational institution.

(3) When an eligible individual withdraws from an approved

correspondence course offered by an educational institution, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective either the end of the month during which the reduction occurred (in the case of reductions occurring before [EFFECTIVE DATE OF THE FINAL RULE]), or the last date of attendance (in the case of reductions occurring on or after [EFFECTIVE DATE OF THE FINAL RULE]), when—

(i) The withdrawal from one or more courses occurs during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances; or

(iii) A punitive grade is assigned for the course from which the eligible individual 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) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(3) If an eligible individual receives an incomplete grade for a course or courses, VA will delay creating an overpayment for such course or courses to allow the individual an opportunity to complete the course or courses. However, if the incomplete grade is not replaced with a punitive grade, VA will reduce the individual's educational assistance in accordance with paragraph (f)(1) or (2) of this section effective the earliest of—

(i) The last date permitted by the educational institution to complete the course;

(ii) The date the educational institution permanently assigns a nonpunitive grade;

(iii) One year from the date the incomplete grade was assigned.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under § 21.9630 or § 21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) For a program of education at an IHL or a non-college degree institution, the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval is effective; or

(2) For an apprenticeship or other on-the-job training program, the end of the program or the end of the academic year, whichever is earlier, in which the disapproval is effective or in which VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) For a program of education at an IHL or a non-college degree institution, the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval is effective; or

(2) For an apprenticeship or other on-the-job training program, the end of the program or the end of the academic year in which the disapproval occurred, whichever is earlier, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(b)(1), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the educational institution discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of § 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an educational institution, or an officer or employee of a State approving agency and an educational institution, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.* (1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9676(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The discontinuance of any monthly payments will be the end of the month during which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility or the end date of the enrollment period as certified by the educational institution, whichever is earlier.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Change in active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

(i) For tuition and fees, the last date of the certified enrollment period,

(ii) For monthly housing allowance, see paragraph (2), and

(iii) For the "book stipend," the last date of the period covered by the book stipend payment.

(2) If an individual enters active duty during a certified period of enrollment, regardless of whether there is a reduction or termination of training, the discontinuance date for the monthly housing allowance will be—(A) For entry occurring before August 1, 2018, the end of the month during which the individual entered active; (B) For entry occurring on or after August 1, 2018, the date of entry onto active duty.

(Authority: 38 U.S.C. 3313(j))

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an educational institution that regularly operates on the quarter or semester basis exhausts his or her entitlement under 38 U.S.C. chapter 33, the discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) The ending date for an individual enrolled in a course that is not scheduled on a quarter or semester basis, who exhausts his or her entitlement under 38 U.S.C. chapter 33 after he or she has completed more than half of the course, will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in a course that is not scheduled on a quarter or semester basis exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an educational institution on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an educational institution in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment 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 eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of

Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, 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. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date 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. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date 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 individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase ("kicker") for Selected Reserve service.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible

individual is no longer eligible to the increase ("kicker").

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under chapter 33 who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 10 U.S.C. 510; 38 U.S.C. chapter 30, 31, 32, or 35; or the Hostage Relief Act of 1980 may choose to receive educational assistance under another program.

(1) VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 10 U.S.C. 510; 38 U.S.C. chapter 30, 32, or 35; or the Hostage Relief Act of 1980.

(2) For individuals in receipt of benefits under this chapter during a term, quarter, or semester who are requesting to receive benefits under 38 U.S.C. chapter 31, VA will terminate educational assistance under this chapter effective the first day of the subsequent enrollment period.

(3) An eligible individual may only request a change in receipt of benefits from 38 U.S.C. chapter 33 to 38 U.S.C. chapter 31 once per term, quarter, or semester.

(Authority: 38 U.S.C. 3322(a))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900-0154.)

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the end of the course or period of enrollment, as certified by the educational institution in which the withdrawal of accreditation occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a

transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9571.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9571(l).

(Authority: 38 U.S.C. 3319)

(bb) *Fugitive felons.* VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon. The date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

(Authority: 38 U.S.C. 3323(c), 5313B)

(cc) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (bb) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

■ 42. Amend § 21.9640 by revising the section heading, introductory text, and paragraphs (a) and (d) to read as follows:

**§ 21.9640 Rates of payment of educational assistance—for provisions effective before August 1, 2011.**

For training that occurs before August 1, 2011, unless otherwise noted, VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* (1) Except as provided in paragraphs (a)(2) and (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Number of days	Percentage of maximum amounts payable
At least 36 months <sup>1</sup> .....	If aggregate service (including entry training) is 1,095 days or more days.	100
At least 30 continuous days (Must be discharged due to service-connected disability).	.....	100
At least 30 months, but less than 36 months <sup>1</sup> .....	If aggregate service (including entry training) is from 910 to 1,094 days.	90
At least 24 months, but less than 30 months <sup>1 3</sup> .....	If aggregate service (including entry training) is from 730 to 909 days.	<sup>3</sup> 80
At least 18 months, but less than 24 months <sup>2 3</sup> .....	If aggregate service (excluding entry training) is from 545 to 729 days.	<sup>3</sup> 70
At least 12 months, but less than 18 months <sup>2</sup> .....	If aggregate service (excluding entry training) is from 365 to 544 days.	60
At least 6 months, but less than 12 months <sup>2</sup> .....	If aggregate service (excluding entry training) is from 180 to 364 days.	50
At least 90 days, but less than 6 months <sup>2</sup> .....	If aggregate service (excluding entry training) is from 90 to 179 days.	40

<sup>1</sup> Includes entry level and skill training.

<sup>2</sup> Excludes entry level and skill training.

<sup>3</sup> The 70/80% rule: If the aggregate service including training is at least 24 months but less than 30 months (730–909 days) BUT the aggregate service excluding training is at least 18 but less than 24 months (545 to 729 days), the individual will be deemed eligible at the 70% benefit level. This limitation is explicitly mandated by 38 U.S.C. 3311(e).

(Authority: 38 U.S.C. 3311, 3313)

(2) *Amounts payable for individuals eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* VA will apply 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for educational assistance under § 21.9520(d).

\* \* \* \* \*

(d) *Amounts payable for individuals on active duty.* (1) *Amounts payable for programs of education beginning on or after August 1, 2009, and on or before March 4, 2011.* Individuals on active duty who are pursuing a program of education during a quarter, semester, or term that starts during the period beginning August 1, 2009, and ending March 4, 2011, may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire term, quarter, or semester, as applicable. The amount payable will be the lowest of—

- (i) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;
- (ii) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment;
- (iii) The lesser amount of paragraph (d)(i) or (ii) of this section, divided by

the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§ 21.4020 and 21.9635(o);

(2) *Amounts payable for a program of education, on more than half-time basis, leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* (i) VA may, on behalf of an individual on active duty who is pursuing a program of education leading to a degree on more than half-time basis at a public IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the net cost for in-State tuition and fees.

(ii) VA may, on behalf of an individual on active duty who is pursuing a program of education leading to a degree on more than half-time basis at a non-public or foreign IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the lesser of the applicable percentage (as listed in paragraph (a) of this section) of the net cost for tuition and fees assessed by the institution or—

- (A) For the academic year beginning August 1, 2011, \$17,500;
- (B) For the academic year beginning on any subsequent August 1, the

amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 501(a), 3313(e))

(3) *Amounts payable for a program of education, on a half-time basis or less, leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* Amounts payable for the individual will be calculated in accordance with paragraph (d)(1) of this section.

(4) *Amounts payable for a program of education not leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* Amounts payable for the individual will be calculated in accordance with paragraph (d)(1) of this section.

(Authority: 38 U.S.C. 3313, 3323(c))

■ 43. Add § 21.9641 to read as follows:

**§ 21.9641 Rates of payment of educational assistance—for provisions effective after July 31, 2011.**

For training that begins after July 31, 2011, unless otherwise noted, VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* (1) Except as provided in paragraph (a)(2) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—



Aggregate length of creditable active duty service after 09/10/01	Number of days	Percentage of maximum amounts payable
At least 36 months <sup>1</sup> .....	If aggregate service (including entry training) is 1,095 days or more days.	100
At least 30 continuous days .....	.....	100
(Must be discharged due to service-connected disability) .....	.....	.....
At least 30 months, but less than 36 months <sup>1</sup> .....	If aggregate service (including entry training) is from 910 to 1,094 days.	90
At least 24 months, but less than 30 months <sup>1 3</sup> .....	If aggregate service (including entry training) is from 730 to 909 days.	<sup>3</sup> 80
At least 18 months, but less than 24 months <sup>2 3</sup> .....	If aggregate service (excluding entry training) is from 545 to 729 days.	<sup>3</sup> 70
At least 12 months, but less than 18 months <sup>2</sup> .....	If aggregate service (excluding entry training) is from 365 to 544 days.	60
At least 6 months, but less than 12 months <sup>2</sup> .....	If aggregate service (excluding entry training) is from 180 to 364 days.	50
At least 90 days, but less than 6 months <sup>2</sup> .....	If aggregate service (excluding entry training) is from 90 to 179 days.	40

<sup>1</sup> Includes entry level and skill training.

<sup>2</sup> Excludes entry level and skill training.

<sup>3</sup> The 70/80% rule: If the aggregate service including training is at least 24 months but less than 30 months (730–909 days) BUT the aggregate service excluding training is at least 18 but less than 24 months (545 to 729 days), the individual will be deemed eligible at the 70% benefit level. This limitation is explicitly mandated by 38 U.S.C. 3311(e).

(2) *Amounts payable for individuals eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* VA will apply 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for educational assistance under § 21.9520(d).

(Authority: 38 U.S.C. 3311(f))

(b) *Tuition and fees payable.* (1) *Program of education leading to a degree at public IHLs.* After July 31, 2011, VA may, on behalf of an individual, who may be either on active duty or not on active duty and pursuing a program of education leading to a degree at a public IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the net cost for in-State tuition and fees.

(Authority: 38 U.S.C. 3313(c)(1)(A)(i))

(2) *Program of education leading to a degree at non-public IHLs or foreign IHLs.* (i) After July 31, 2011, VA may, on behalf of an individual, who may be either on active duty or not on active duty and pursuing a program of education leading to a degree at a non-public or foreign IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(A) The actual net cost for tuition and fees assessed by the institution; or

(B) For the academic year beginning August 1, 2011, \$17,500; or

(C) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(c)(1)(A)(ii))

(3) *Program of education in pursuit of a certificate or other non-college degree at institutions other than IHLs.* On or after October 1, 2011, VA may, on behalf of an individual pursuing a program of education in pursuit of a certificate or other non-college degree at an institution other than an IHL, issue a lump sum payment for the term, quarter, or semester, directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The actual net cost for in-State tuition and fees assessed by the institution; or

(ii) For the academic year beginning August 1, 2011, \$17,500; or

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(g)(3)(A))

(4) *Full-time program of apprenticeship or other on-the-job training at institutions other than IHLs.* No tuition and fee amount is payable for this type of training.

(Authority: 38 U.S.C. 3313(g)(3)(B))

(5) *Program of education for flight training (regardless of the institution providing such program of education).* After September 30, 2011, upon receipt of certification for training completed by the individual and serviced by the

educational institution, on behalf of an individual pursuing a program of education consisting of flight training, VA may issue a lump sum payment directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The actual net cost for in-State tuition and fees, or

(ii) For the academic year beginning August 1, 2011, \$10,000;

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(g)(3)(C))

(6) *Program of education pursued exclusively by correspondence at an IHL or institution other than an IHL.* After September 30, 2011, on behalf of an individual pursuing program of education by correspondence at an IHL or institution other than an IHL, VA may issue a quarterly payment on a pro rata basis for the lessons completed by the individual and serviced by the educational institution during such quarter, directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The net cost for tuition and fees, or

(ii) For the academic year beginning August 1, 2011, \$8,500; or

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(g)(3)(D))

(7) *No reduction in tuition and fee annual cap.* VA will not make a

reduction in the tuition and fee maximum amount payable during the academic year equal to the amount of tuition and fees charged for a course or courses from which the individual withdrew when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 501(a), 3323(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0154, 2900–0178, 2900–0162, 2900–0353, and 2900–0576.)

(c) *Monthly housing allowance payable.* An individual who is pursuing a program of education leading to a degree at a domestic or foreign IHL, a program of education at a non-college degree institution, or an on-the-job or apprenticeship training can receive a monthly stipend (referred to as the “monthly housing allowance”), subject to the applicable percentage (as listed in paragraph (a) of this section), as follows—

(1) *Residence training at domestic IHLs on more than half-time basis.* An individual, other than one on active duty, who is pursuing a program of education with at least one in-residence course and who has a rate of pursuit of greater than 50 percent at an IHL located in a State, may receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to—

(i) During the period beginning August 1, 2011, and ending July 31, 2012, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 using the ZIP code area in which all, or a majority, of the IHL in which the individual is enrolled is located multiplied by the lesser of—

(A) 1.0, or

(B) The individual’s rate of pursuit, rounded to the nearest tenth.

(ii) On or after August 1, 2012, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403

for a member with dependents in pay grade E–5 using the ZIP code or location code, whichever is applicable, in which all, or a majority, of the institution in which the individual is enrolled is located multiplied by the lesser of—

(A) 1.0, or

(B) The individual’s rate of pursuit, rounded to the nearest tenth.

(Authority: 38 U.S.C. 3313(c)(1)(B)(i))

(2) *Residence training at foreign IHLs on more than half-time basis.* On or after August 1, 2011, an individual, other than one on active duty, who is pursuing a program of education leading to a degree at a foreign IHL with at least one in-residence course and who has a rate of pursuit of greater than 50 percent, may receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to the national average of the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5, multiplied by the lesser of—

(i) 1.0, or

(ii) The individual’s rate of pursuit, rounded to the nearest tenth.

(Authority: 38 U.S.C. 3313(c)(1)(B)(ii))

(3) *Residence training at non-college degree institutions on more than half-time basis.* After October 1, 2011, an individual, other than one on active duty, who is pursuing a program of education at a non-college degree institution (other than those listed in paragraph (c)(6) of this section) with at least one in-residence course and who has a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or a prorated amount for a partial month) of training pursued. The amount will be calculated in accordance with paragraph (c)(1) of this section.

(Authority: 38 U.S.C. 3313(g)(3)(A)(ii))

(4) *Training pursued solely via distance learning on more than half-time basis.* After September 30, 2011, an individual, other than one on active duty, who is pursuing a program of education solely via distance learning at a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to 50 percent of the amount payable under paragraph (c)(2) of this section.

(Authority: 38 U.S.C. 3313(c)(1)(B)(iii))

(5) *On-the-job and apprenticeship training on full-time basis.* After September 30, 2011, an individual,

other than one on active duty, pursuing a full-time program of apprenticeship or other on-the-job training may receive a monthly housing allowance—

(i) During the first 6-month period of the program, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or a majority portion of the ZIP code area in which the employer is located.

(ii) During the second 6-month period of the program, 80 percent of the amount payable in paragraph (i) of this paragraph.

(iii) During the third 6-month period of the program, 60 percent of the amount payable in paragraph (i) of this paragraph.

(iv) During the fourth 6-month period of the program, 40 percent of the amount payable in paragraph (i) of this paragraph.

(v) During any month after the first 24 months of training, 20 percent of the amount payable in paragraph (i) of this paragraph.

(vi) In any month in which an individual pursuing training fails to complete 120 hours of training, the amount of the monthly housing stipend payable will be the amount determined by multiplying the applicable amount as determined by paragraphs (5)(i) through (5)(v) of this section by the figure determined as follows—

(A) The number of hours worked during the month, rounded to the nearest 8 hours; then

(B) Dividing the result by 120.

(C) Rounding the quotient to the nearest hundred.

(Authority: 38 U.S.C. 3313(g)(3)(B)(i))

(6) *Program of education for vocational flight training at institutions other than IHLs; Program of education pursued exclusively by correspondence; Program of education pursued on a half-time basis or less; Program of education pursued while on active duty.* No monthly housing allowance is payable for these types of training.

(Authority: 38 U.S.C. 3313(e), (f), (g)(3)(C), (g)(3)(D))

(7) *Rate payable during the academic year.* The monthly housing allowance payable during each academic year beginning on August 1 of a calendar year under paragraphs (c)(1) through (c)(5) of this section will be determined using the basic allowance for housing rates payable under 37 U.S.C. 403 in effect as of January 1 of each such calendar year.

(Authority: 38 U.S.C. 3313(i))

(8) *Rate protection.* The monthly housing allowance payable under paragraphs (c)(1) through (c)(5) of this section will not decrease as long as the individual—

(i) Has not had a break in training that exceeds 6 months. An individual called to active duty (during an enrollment period or 6-month grace period) will not see a decrease as long as the individual resumes training at the educational institution within 6 months from the release from active duty; and

(ii) Previously received the monthly housing allowance based on the same type of training (residence, distance, foreign) at the same educational institution. A change in facility (transferring to a different school or a different branch of the same school) constitutes a change in educational institution.

(Authority: 38 U.S.C. 501(a), 3323(c))

(9) *Concurrent eligibility for more than one monthly housing stipend rate.* In the event that an individual is concurrently eligible for more than one monthly housing stipend rate, the housing stipend will be paid at the highest rate for which the individual qualifies.

(Authority: 38 U.S.C. 501(a), 3323(c))

(d) *Books, supplies, and equipment stipend payable.* An individual who is pursuing a program of education at an IHL, non-college degree institution, or an individual pursuing on-the-job or apprenticeship training can receive an amount for books, supplies, equipment, and other educational costs (referred to as the “book stipend”), subject to the applicable percentage (as listed in paragraph (a) of this section), as follows—

(1) *Book stipend for training pursued at an IHL.* (i) The maximum amount payable to an individual pursuing training at an IHL is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). The lump sum payment for each term, quarter, or semester is equal to \$41.67 (\$1,000 divided by 24 credit hours) multiplied by the number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(A) Before October 1, 2011, an eligible individual, other than one on active duty, may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent credit

hours if enrollment is reported in clock hours) in a single academic year.

(B) On or after October 1, 2011, an eligible individual, including an individual on active duty, may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent credit hours if enrollment is reported in clock hours) in a single academic year.

(ii) In no event may the amount paid during an academic year exceed \$1,000.

(2) *Book stipend for training pursued at a non-college-degree institution and on-the-job or apprenticeship training.* After September 30, 2011, an individual pursuing a program of education at a non-college degree institution (other than those listed in paragraph (d)(3) of this section) or full-time on-the-job or apprenticeship training can receive a lump sum payment equal to \$83 for each month (or a prorated amount for a partial month) of training pursued.

(Authority: 38 U.S.C. 3313(g)(3)(A), (B))

(3) *Program of education for vocational flight training at institutions other than IHLs and program of education pursued exclusively by correspondence.* No book stipend is payable for these types of training.

(Authority: 38 U.S.C. 3313(c),(e),(f),(g))

(e) *Publication of educational assistance rates.* VA will publish the maximum amount of tuition and fees payable each academic year in the “Notices” section of the **Federal Register** and on the GI Bill website at <http://www.GIBill.va.gov>.

(Authority: 38 U.S.C. 3313, 3323(c))

■ 44. Amend § 21.9645 by revising paragraphs (a)(1)(iii), (b)(1)(ii), and (c) to read as follows:

**§ 21.9645 Refund of basic contribution to chapter 30.**

(a)(1) \* \* \*

(iii) He or she is a member of the Armed Forces who is making contributions as provided in § 21.7042(g) towards educational assistance under 38 U.S.C. chapter 30.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) 36 for individuals making contributions towards educational assistance under 38 U.S.C. chapter 30 in accordance with § 21.7042(g).

\* \* \* \* \*

(c) *Timing of payment.* The amount payable under this section will only be issued to the individual who made the contribution when the individual is in receipt of the monthly housing allowance payable under § 21.9640(b) or

§ 21.9641(c) at the time his or her entitlement exhausts. No payment will be made if the individual who made the contributions is not in receipt of a monthly housing allowance when entitlement exhausts.

\* \* \* \* \*

■ 45. Amend § 21.9650 by revising paragraphs (a)(2), (b)(2)(ii), (b)(3), (c)(2)(ii), and (c)(3) to read as follows:

**§ 21.9650 Increase in educational assistance.**

\* \* \* \* \*

(a) \* \* \*

(2) The increase (“kicker”) amount payable under paragraph (a)(1) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance during the term, quarter, or semester—

(i) For the period beginning August 1, 2009, and ending July 31, 2011, under § 21.9640(b)(1)(ii) or (b)(2)(ii), or

(ii) For the period after July 31, 2011, under § 21.9641(c).

(Authority: 38 U.S.C. 3015(d)(1), 3313(c), 3316(a))

(b) \* \* \*

(2) \* \* \*

(i)(A) For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, the full-time training amount under paragraph (b)(2)(i) of this section multiplied by the individual’s rate of pursuit.

(B) For training pursued after July 31, 2011, the full-time training amount under paragraph (b)(2)(i) of this section multiplied by the lesser of—

(1) 1.0, or

(2) The individual’s rate of pursuit, rounded to the nearest multiple of 10.

(3) The increase (“kicker”) amount payable under paragraph (b) of this section will be paid to the individual—

(i) As a lump sum for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33, if training is pursued during the period beginning August 1, 2009, and ending July 31, 2011; or

(ii) On a monthly basis, for training pursued after July 31, 2011.

(Authority: 38 U.S.C. 3015(d), 3316; Pub. L. 110–252, 122 Stat. 2378, Pub. L. 111–377, 124 Stat. 4119)

(c) \* \* \*

(2) \* \* \*

(i)(A) For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, the full-time training amount under paragraph (c)(2)(i) of this section multiplied by the individual’s rate of pursuit.

(B) For training pursued after July 31, 2011, the full-time training amount under paragraph (c)(2)(i) multiplied by the lesser of—

(1) 1.0, or

(2) The individual's rate of pursuit, rounded to the nearest multiple of 10.

(3) The increase ("kicker") amount payable under paragraph (c) of this section will be paid to the individual—

(i) As a lump sum for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33, if training is pursued during the period beginning August 1, 2009, and ending July 31, 2011; or

(ii) On a monthly basis, for training pursued after July 31, 2011.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3316; Pub. L. 110–252, 122 Stat. 2378; Pub. L. 111–377, 124 Stat. 4119)

**§ 21.9655 [Amended]**

■ 46. Amend § 21.9655, in paragraph (a)(2), by removing "or (b)(2)(ii)" and adding in its place ", (b)(2)(ii), or § 21.9641(c)".

■ 47. Amend § 21.9665 by revising the section heading and introductory text to read as follows:

**§ 21.9665 Reimbursement for licensing or certification tests—for provisions effective before August 1, 2011.**

An eligible individual is entitled to receive reimbursement for taking one approved licensing or certification test during the period beginning August 1, 2009, and ending July 31, 2011. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test is the lesser of the following:

\* \* \* \* \*

■ 48. Add § 21.9667 to read as follows:

**§ 21.9667 Reimbursement for licensing or certification tests—for provisions effective after July 31, 2011.**

An individual eligible for benefits under the Post-9/11 GI Bill is entitled to receive reimbursement for taking any number of approved licensing or certification tests after July 31, 2011. The amount of reimbursement VA will pay for an approved licensing or certification test taken after July 31, 2011, is the least of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test;

(b) \$2,000; or

(c) The amount equal to the number of whole months of remaining entitlement available to the individual at the time of payment for the test multiplied by the rate for one month of

payment for licensing and tests, as specified in § 21.9561(f)(1)(ii).

(Authority: 38 U.S.C. 3315)

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0695.)

■ 49. Add § 21.9668 to read as follows:

**§ 21.9668 Reimbursement for national tests.**

An eligible individual is entitled to receive reimbursement for taking a national test for admission or a national test for credit after July 31, 2011. The amount of reimbursement VA will pay for an approved national test for admission or a national test for credit taken after July 31, 2011, is the lesser of the following:

(a) The fee charged for the test, not including any optional costs not required for the testing process; or

(b) The amount equal to the number of whole months of remaining entitlement available to the individual at the time of payment for the test multiplied by the rate for one month of payment for national tests, as specified in § 21.9561(f)(1)(ii).

(Authority: 38 U.S.C. 3315A)

■ 50. Amend § 21.9675 by revising the section heading, introductory text, and paragraph (c)(2) to read as follows:

**§ 21.9675 Conditions that result in reduced rates or no payment—for provisions effective before August 1, 2011.**

During the period beginning August 1, 2009, and ending July 31, 2011, the payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

\* \* \* \* \*

(c) \* \* \*

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be—

(i)(A) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program; plus

(B) The amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment not to exceed \$1,000 each academic year.

(ii) The amounts payable under paragraph (c)(2)(i) of this section will be prorated based on the individual's eligibility percentage as determined in § 21.9640(a).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

■ 51. Add § 21.9676 to read as follows:

**§ 21.9676 Conditions that result in reduced rates or no payment—for provisions effective after July 31, 2011.**

After July 31, 2011, the payment rates as established in §§ 21.9641 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual 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

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual 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 evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No monthly housing allowance for some incarcerated individuals.* An individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction will not receive a monthly housing allowance.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) An individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction will receive—

(i) The net costs for tuition and fees not paid by any other form of financial assistance, not to exceed the amounts specified in § 21.9641(b); and

(ii) The amount of necessary books, supplies, and equipment not paid by any other form of financial assistance, not to exceed \$1,000 each academic year.

(2) The amounts payable under paragraph (c)(1) of this section will be prorated based on the individual's eligibility percentage as determined in § 21.9641(a).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (see § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

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

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

■ 52. Amend § 21.9680 by revising the section heading and adding introductory text to read as follows:

**§ 21.9680 Certifications and release of payments—for provisions effective before August 1, 2011.**

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011—

\* \* \* \* \*

■ 53. Add § 21.9681 to read as follows:

**§ 21.9681 Certifications and release of payments—for provisions effective after July 31, 2011.**

For training pursued after July 31, 2011—

(a) *Payee.* (1) VA will make payment of the appropriate amount of tuition and fees, as determined under § 21.9641, directly to the educational institution as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.* (1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance Top-Up; one seeking reimbursement for taking an approved licensing or certification test; one seeking reimbursement for a national test for admission or a national test for credit; or one who qualifies for an advance payment of the monthly housing allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9721 and provided its Taxpayer Identifying Number (TIN) and/or Automated Clearing House (ACH) information in accordance with section 7701(c)(1) of title 31, U.S.C.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689; 31 U.S.C. 7701(c)) (The Office of Management and Budget has approved the information collection provision in this section under control number 2900-0073).

(2) VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The educational institution at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's educational institution;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment is preceded by a period of nonpayment of 30 days or more.

(G) The educational institution or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the educational institution for delivery to the eligible individual. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if:

(A) The educational institution demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To the educational institution, on behalf of an eligible individual, for the appropriate amount of tuition and fees;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the \$500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) [Reserved]

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her 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 eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provision in this section under control numbers 2900-0695 and 2900-0706.)

(6) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved national test for admission or a national test for credit only after the eligible individual has submitted a claim for the test to VA that includes the following information:

- (i) The name of the test;
- (ii) The name of the organization offering the test;
- (iii) The date the eligible individual took the test;
- (iv) The cost of the test; and
- (v) Such other information as the Secretary may require.

(Authority: 38 U.S.C. 3315A)

(The Office of Management and Budget has approved the information collection provision in this section under control numbers 2900-0695, 2900-0698, and 2900-0706.)

(7) *Payment for temporary school closings.* VA may authorize payment of the monthly housing allowance (as increased under §§ 21.9650(a) and 21.9655(a), if applicable) for a temporary school closing in accordance with the provisions of § 21.4138(g) of this chapter.

(Authority: 38 U.S.C. 3680(a))

(c) *Rural relocation benefit.* VA will make the \$500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9721;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

(1) DD Form 214, Certification of Release or Discharge from Active Duty; or

(2) The most recent Federal income tax return; or

(3) The most recent State income tax return; or

(4) Rental/lease agreement; or

(5) Mortgage document; or

(6) Current real property assessment; or

(7) Voter registration card.

(B) An individual using entitlement granted under § 21.9571 who, because he or she resides with the transferor or,

in the case of a child, a parent, who cannot provide any of the documents in paragraph (c)(2)(ii) of this section, may submit as proof of residence any document in paragraphs (c)(2)(ii)(A)(2) through (7) of this section bearing the name and current address of the transferor or, in the case of a child, a parent; and

(C) VA must determine that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation.

(iii) *Proof of relocation.* An individual must provide proof that he or she either: (A) physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2)(ii) of this section as the beginning point and the address of the educational institution as the ending point; or (B) traveled by air to physically attend an institution of higher learning for pursuit of such a program of education because the individual could not travel to the educational institution by land due to the absence of road or other infrastructure. An individual must provide airline receipts for travel with a departure and destination airport within reasonable distance from the home of residence and the educational institution.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

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

■ 54. Amend § 21.9690 by revising the section heading and adding introductory text to read as follows:

**§ 21.9690 Nonduplication of educational assistance—for provisions effective before August 1, 2011.**

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011—

\* \* \* \* \*

■ 55. Add § 21.9691 to read as follows:

**§ 21.9691 Nonduplication of educational assistance—for provisions effective after July 31, 2011.**

For training pursued after July 31, 2011—

(a)(1) *Nonduplication—Concurrent benefits.* Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(i) 10 U.S.C. 510 (National Call to Service);

(ii) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(iii) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(iv) 10 U.S.C. chapter 106a (Section 901, Educational Assistance Test Program);

(v) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(vi) 38 U.S.C. chapter 31 (Veteran Readiness and Employment Program);

(vii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(viii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance); or

(ix) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96-342)

(2) An individual who is eligible for educational assistance under more than one program listed in paragraph (a)(1) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(b) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

(c) *Nonduplication—Transferred benefits and Fry Scholarship.* An individual entitled to educational assistance under § 21.9520(d) and because of a transfer of entitlement under § 21.9571—

(1) May not receive educational assistance under both provisions concurrently.

(2) Must specify in writing the provision under which he or she wishes to receive benefits. The individual may request to receive benefits under either provision at any time, but may not change the provision under which he or she will receive benefits more than once during a term, quarter, or semester. Except in cases when an individual exhausts entitlement under a provision during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 3322(e), 3323(c))

(d) *Nonduplication—Transferred benefits.* An individual who is entitled to educational assistance based on a transfer of entitlement under § 21.9571 from more than one individual—

(i) May not receive assistance based on transfers from more than one individual concurrently.

(ii) Must specify in writing whose entitlement he or she wishes to use at any one time. The individual may request to use benefits transferred to him or her by any of the transferors at any time, but may not change whose entitlement he or she wishes to use from one individual to another more than once during a term, quarter, or semester. Except in cases when an individual exhausts his or her transferred entitlement during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 3322(g), 3323(c))

(e) *Nonduplication—Fry Scholarship and compensation and pension.* The commencement of a program of education based on eligibility for educational assistance under § 21.9520(d) by an eligible individual is a bar to—

(1) Subsequent payments of dependency and indemnity compensation or pension based on the death of a parent to the eligible individual when the eligible individual attains 18 years of age.

(2) Increased rates, or additional amounts, of compensation, dependency and indemnity compensation, or pension paid on account of the eligible individual.

(Authority: 38 U.S.C. 3322(f))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0098.)

(f) *Nonduplication—Fry Scholarship.*  
(1) An individual who is entitled to

educational assistance based on the death of more than one parent under § 21.9520(d) may not receive assistance under § 21.9520(d) for the same enrollment period based on the deaths of both parents.

(2) The individual must specify in writing on which parent's death to base his or her entitlement. The individual may request to base entitlement on either parent's death at any time, but may not change on whose death he or she chooses to base entitlement more than once during a term, quarter, or semester. Except in cases where an individual exhausts entitlement that is based on one parent's death during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 501(a), 3323(c))

(g) *Nonduplication—Entitlement based on individual's active duty service.* (1) An individual who is entitled to educational assistance under § 21.9520(a) or (b) and who is entitled to educational assistance under § 21.9520(d) or § 21.9571 may not receive educational assistance based on his or her own period of service and educational assistance based on someone else's service concurrently.

(2) The individual must specify in writing the provision under which he or she wishes to receive benefits. The individual may request to receive benefits under either provision at any time, but may not change the provision under which he or she will receive benefits more than once during a term, quarter, or semester. Except in cases when an individual exhausts entitlement under one provision during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 501(a), 3323(c))

(h) *Nonduplication—Eligibility based on a single event or period of service.* (1) *Active duty service.* (i) An individual with qualifying active duty service in the Armed Forces that may be used to establish eligibility for educational assistance under chapter 30, 32, or 33 of 38 U.S.C., and chapter 1606 or 1607 of 10 U.S.C., must make an irrevocable election in writing specifying under which program to establish eligibility and to which program to credit service.

(ii) An individual may not request that portions of a single period of service be credited to different benefit programs. VA considers a single period of service to be one from which the individual is discharged or released,

including a discharge for immediate reenlistment.

(2) *Assistance based on parent's service.* A child eligible for educational assistance under § 21.9520(d) and chapter 35 of 38 U.S.C., based on the parent's death must make an irrevocable election in writing specifying which benefit he or she wishes to receive.

(Authority: 38 U.S.C. 501(a), 3322(h))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0154 and 2900–0098.)

■ 56. Amend § 21.9695 by:

■ a. In paragraph (a), removing “institutions of higher learning” and adding in its place “educational institutions”.

■ b. Removing “institution of higher learning” each place it appears and adding in each place “educational institution”.

■ c. Revising paragraph (b)(3).

■ d. In paragraph (b)(4)(ii)(A), removing “established charges” and adding in its place “tuition and fees”.

The revision reads as follows:

**§ 21.9695 Overpayments.**

\* \* \* \* \*

(b) \* \* \*

(3)(i) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the educational institution on behalf of the individual, constitutes a liability of the educational institution if:

(A) VA determines that the overpayment is the result of willful or negligent false certification by the educational institution, or willful or negligent failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(B) The student never attends classes for which he or she was certified (regardless of the reason for non-attendance);

(C) The student completely withdraws from all courses on or before the first day of the certified period of enrollment;

(D) The student dies during the term (see §§ 21.9635(a)(2) and 21.9636(a)(2));

(E) The educational institution receives a payment for the wrong student;

(F) The educational institution receives a duplicate payment for a student;

(G) The educational institution receives a payment in excess of the amount certified to VA on the enrollment certification; or

(H) The educational institution submits an amended enrollment

certification to correctly report a reduced amount of tuition and fee charges, reduced Yellow Ribbon Program contributions, or reduced amounts for both tuition and fees and Yellow Ribbon Program contributions.

(ii) In determining whether an overpayment resulting from the actions listed in paragraph (b)(3)(i) of this section should be recovered from an educational institution, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

\* \* \* \* \*

■ 57. Amend § 21.9700 by:

■ a. Removing “established charges” each place it appears and adding in its place “tuition and fees”.

■ b. Removing “38 U.S.C. chapter 3313(c)(1)(A)” each place it appears and adding in each place “paragraphs (b) and (c) of § 21.9640 and paragraphs (b)(1) and (b)(2) of § 21.9641”.

■ c. Revising paragraph (b).

■ d. In paragraph (d)(6)(i), removing “undergraduate” and adding in its place “certificate, undergraduate”.

■ e. In paragraph (f), removing “school” and adding in its place “IHL”.

■ f. In paragraph (g), removing “school’s” and adding in its place “IHL’s”.

The revision reads as follows:

**§ 21.9700 Yellow Ribbon Program.**

\* \* \* \* \*

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100-percent educational assistance rate (based on service requirements as shown in § 21.9640(a) or § 21.9641(a), whichever is applicable) or to their designated dependents using entitlement transferred under § 21.9570 or § 21.9571, whichever is applicable, or effective August 1, 2018, to individuals using Fry Scholarship entitlement under § 21.9520(d) who are pursuing training at an eligible IHL.

\* \* \* \* \*

■ 58. Revise § 21.9710 to read as follows:

**§ 21.9710 Pursuit.**

Except for an eligible individual seeking tuition assistance Top-Up or reimbursement for taking an approved national test for admission, a national test for credit, or a licensing or certification test, the individual’s educational assistance depends upon his or her pursuit of a program of education.

(Authority: 38 U.S.C. 3323(c))

**§ 21.9715 [Amended]**

■ 59. Amend § 21.9715 by:

■ a. In the introductory text, removing “§ 21.9640(b)(1)(ii) or (b)(2)(ii)” and adding in its place “§ 21.9640(b)(1)(ii), (b)(2)(ii), or § 21.9641(c), whichever is applicable”.

■ b. Removing “the institution of higher learning” each place it appears and adding in each place “the educational institution”.

■ c. In paragraph (b)(1), removing “an institution of higher learning” and adding in its place “the educational institution”.

■ d. In paragraph (b)(2), removing “§ 21.9730” and adding in its place “§ 21.9735”.

■ 60. Amend § 21.9720 by revising the section heading and the introductory text to read as follows:

**§ 21.9720 Certification of enrollment—for provisions effective before August 1, 2011.**

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, an IHL must certify an eligible individual’s enrollment before he or she may receive educational assistance, except as stated in § 21.9680.

\* \* \* \* \*

■ 61. Add § 21.9721 to read as follows:

**§ 21.9721 Certification of enrollment—for provisions effective after July 31, 2011.**

For training pursued after July 31, 2011, an educational institution must certify an eligible individual’s enrollment before he or she may receive educational assistance, except as stated in § 21.9681.

(a) *Educational institutions must certify most enrollments.* VA does not, as a condition of advance payment, require educational institutions to certify the enrollments of eligible individuals who are seeking an advance payment (as described in § 21.9715). VA does not require organizations or entities offering a national test for admission, a national test for credit, or a licensing or certification test to certify that the eligible individual took the test. In all other cases, the educational institution must certify the eligible individual’s enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.*

(1) Educational institutions that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school

year, or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report each term, quarter, or semester separately.

(2) Educational institutions organized on a year-round basis that do not offer courses on a term, quarter, or semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning’s certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the educational institution has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution’s estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0073.)

**§ 21.9725 [Amended]**

■ 62. Amend § 21.9725 by removing “institution of higher learning” each place it appears and adding in each place “educational institution” and by removing “institution of higher learning’s” and adding in its place “educational institution’s”.

**§ 21.9735 [Amended]**

■ 63. Amend § 21.9735 by removing “individuals and institutions of higher learning” and adding in its place “eligible individuals and educational institutions”.

**§ 21.9740 [Amended]**

■ 64. Amend § 21.9740 by removing “institution of higher learning” each place it appears and adding in each place “educational institution” and by removing “institution of higher learning’s” each place it appears and adding in each place “educational institution’s”.

■ 65. Amend § 21.9750 by:

■ a. In paragraph (a), removing “institution of higher learning” and adding in its place “educational institution”.

■ b. Revising paragraphs (b) introductory text and (b)(1).

The revision reads as follows:

**§ 21.9750 Course measurement.**

\* \* \* \* \*



(b) *Measurement of courses reported in clock hours at IHLs.* (1) If the courses pursued at an IHL are measured in clock hours, VA will convert the clock hours to equivalent credit hours by—

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(2) of this section rounded to the nearest 100th by—

(A) If the educational institution measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the educational institution by the number of clock hours considered full-time at the educational institution.

(B) If the educational institution only measures courses using clock hours, the

decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the educational institution.

\* \* \* \* \*

**§ 21.9765 [Amended]**

■ 66. Amend § 21.9765 by removing “institution of higher learning” and adding in its place “educational institution”.

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