

Department of Veterans Affairs

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of higher learning 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 may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the established 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))

PAYMENTS—EDUCATIONAL ASSISTANCE

§ 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. The maximum amounts of tuition and fees payable for the upcoming academic year under 38 U.S.C. chapter 33 will be published in the "Notices" section of the FEDERAL REGISTER by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at <http://www.gibill.va.gov> or by calling VA's customer service department toll-free at 1-888-442-4551. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year.

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

§ 21.9625 Beginning dates.

VA will determine the beginning date of an award or increased award of educational assistance under this section, but in no case will the beginning date be earlier than August 1, 2009. 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 institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), 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.* (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 institution of higher learning 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; or

(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 institution of higher learning 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

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

(Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.* (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 institution of higher learning.

(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 after the calendar week 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 that does not lead to a standard college degree.* (1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section.

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

(2) When an eligible individual enrolls at an institution of higher learning 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, or

(ii) The date of affirmance (as defined in §21.7020(b)(36)).

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

(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:

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(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 (e) 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 (e) 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 § 21.9570, 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 ap-

proves 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 § 21.9570, 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—

(1) Tuition and fees using the provisions of § 21.9640(b) or (c), whichever is applicable, effective the first day of the enrollment period following the enrollment period during which the individual was discharged;

(2) The monthly housing allowance beginning the 1st day of the month following the date the individual was discharged; and

(3) The book stipend beginning the first day of the enrollment period following the enrollment period during which the individual was discharged.

(1) *Election to receive benefits under 38 U.S.C. chapter 33.* 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,

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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—

- (1) August 1, 2009;
- (2) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;
- (3) One year before the date the valid election request was received; or
- (4) The effective date of the election as requested by the claimant.

§ 21.9630 Suspension or discontinuance of payments.

VA may suspend or discontinue payment of educational assistance in accordance with §§ 21.4210 through 21.4216.

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

§ 21.9635 Discontinuance dates.

The effective date of a reduction or discontinuance of educational assistance 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 under § 21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) 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 institution of higher learning receives a lump sum payment for established charges 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 institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly

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housing allowance pursuant to § 21.9680(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, 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.

(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 institution of higher learning's drop-add period in accordance with § 21.4200(1). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred.

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

(c) *Withdrawal or unsatisfactory completion of all courses.* (1) 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 and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—