

§ 21.9630

38 CFR Ch. I (7–1–12 Edition)

- (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, 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 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

Department of Veterans Affairs

§ 21.9635

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—

(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 institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, 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 the

circumstances in either paragraphs (d)(1)(i) or (d)(1)(ii) apply—

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) 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.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the requirements of § 21.9680(b)(5) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses).

(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 institution of higher learning.

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

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw

§21.9635

38 CFR Ch. I (7-1-12 Edition)

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 IHL to complete the course;
- (ii) The date the IHL 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) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in §21.4210 if disapproval was preceded by such a suspension; or
- (2) The end of the month in which the disapproval is effective or 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 educational assistance will be—

- (1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments, as provided in §21.4210, if such suspension preceded the disapproval; or
- (2) The end of the month in which the disapproval occurred, 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(a), 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 institution of higher learning 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 institution of higher learning'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

Department of Veterans Affairs

§21.9635

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 institution of higher learning, or an officer or employee of a State approving agency and an institution of higher learning, 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 §21.9675(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following—

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal (other than one administered by VA), State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility; or

(iii) The beginning date of the award as determined by §21.9625.

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

(n) *Reduction or termination due to 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 established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the “book stipend”, the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted.

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

(o) *Exhaustion of entitlement*. (1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date 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 an institution of higher learning that does not regularly operate on the quarter or semester system 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 institution of higher learning on the date of

§21.9635

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 institution of higher learning 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

38 CFR Ch. I (7-1-12 Edition)

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 this

Department of Veterans Affairs

§ 21.9640

chapter who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 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. 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, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3322(a))

(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 effective date of the withdrawal of accreditation by the accrediting agency.

(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 § 21.9570.

(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 § 21.9570.

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

(bb) *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 (aa) 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)

§ 21.9640 Rates of payment of educational assistance.

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.* Except as provided in paragraph (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	Percentage of maximum amounts payable
At least 36 months ¹	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months ¹	90
At least 24 months, but less than 30 months ¹	80 ³
At least 18 months, but less than 24 months ²	70 ³
At least 12 months, but less than 18 months ²	60
At least 6 months, but less than 12 months ²	50
At least 90 days, but less than 6 months ²	40

¹ Includes entry level and skill training.

² Excludes entry level and skill training.