

§ 21.4135

38 CFR Ch. I (7–1–13 Edition)

- (A) Had not acted on it; or
- (B) Had denied it in whole or in part, but the claimant remained entitled to pursue available administrative and judicial remedies as to the denial; and
- (5) The eligible person would have been eligible to educational assistance under 38 U.S.C. chapter 35 if he or she had filed a claim on his or her eligibility date.

(Authority: 38 U.S.C. 5113; Pub. L. 106–419, 114 Stat. 1832)

(f) *Liberalizing laws and Department of Veterans Affairs issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(g) *Correction of military records.* Eligibility of a veteran or eligible person may arise as the result of correction or modification of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other competent military authority. In these cases the commencing date of educational assistance allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department.

(Authority: 38 U.S.C. 3462(b), 3501(d))

(h) *Individuals in a penal institution.* If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.3132 (a) or (b) or § 21.5139, the rate will be increased or benefits will commence effective the earlier of the following dates:

- (1) The date the tuition and fees are no longer being paid under another Federal program, or a State or local program, or
- (2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(i) *Fugitive felons.* An award of educational assistance allowance to an otherwise eligible veteran or person will begin effective the date the warrant for the arrest of the felon is cleared 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. 5313B)

(j) [Reserved]

[31 FR 6774, May 6, 1966, as amended at 39 FR 43220, Dec. 11, 1974; 41 FR 47929, Nov. 1, 1976; 46 FR 62060, Dec. 22, 1981; 48 FR 37977 and 37978, Aug. 22, 1983; 49 FR 5113, Feb. 10, 1984; 50 FR 48581, Nov. 26, 1985; 51 FR 16318, May 2, 1986; 54 FR 28677, July 7, 1989; 57 FR 40614, Sept. 4, 1992; 61 FR 6782, Feb. 22, 1996; 61 FR 26113, May 24, 1996; 64 FR 23772, May 4, 1999; 66 FR 38938, July 26, 2001; 70 FR 25786, May 16, 2005; 72 FR 16968, Apr. 5, 2007; 72 FR 35661, June 29, 2007; 73 FR 30491, May 28, 2008]

§ 21.4135 Discontinuance dates.

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

(a) *Death of veteran or eligible person.*

(1) If the veteran or eligible person receives an advance payment pursuant to 38 U.S.C. 3680(d) 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.

(2) In all other cases if the veteran or eligible person dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

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

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election

Department of Veterans Affairs

§ 21.4135

was made pursuant to procedures described in § 21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

(c)–(d) [Reserved]

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from.*

(1) If the individual receives all non-punitive grades, or withdraws from all courses other than because of being ordered to active duty, and no mitigating circumstances are found, VA will terminate the individual's educational assistance allowance effective the first date of the term in which the withdrawal occurs.

(2) If the individual withdraws from all other courses other than courses in paragraph (e)(3) of this section and with mitigating circumstances, or withdraws from all courses such that a punitive grade is or will be assigned for those courses:

(i) Residence training: Last date of attendance.

(ii) Independent study: Official date of change in status under the practices of the institution.

(3) If the individual withdraws from correspondence, flight, farm cooperative, cooperative or job training, benefits will be terminated effective:

(i) Correspondence training: Date last lesson is serviced.

(ii) Flight training: Date of last instruction.

(iii) Job training: Date of last training.

(iv) Farm cooperative training: Date of last class attendance.

(v) Cooperative training: Date of last training.

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

(f) *Discontinued by VA (§§ 21.4215, 21.4216).* If VA discontinues payments of educational assistance as provided by §§ 21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:

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

(2) End of the month in which the decision to discontinue is effective pursuant to § 21.4215(d), if the Director of a

VA facility did not suspend payments prior to the discontinuance.

(Authority: 38 U.S.C. 3690)

(g) *Unsatisfactory progress, conduct or attendance § 21.4277.* The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under § 21.4277, whichever is earlier.

(Authority: 38 U.S.C. 3474, 3524)

(h) *Required certifications not received after certification of enrollment (§§ 21.4203 and 21.4204).* (1) If required certification of attendance of a veteran or eligible person enrolled in a course not leading to a standard college degree is not timely received, payments will be terminated date of last certification. If certification is later received, adjustment will be made based on facts found.

(2) If verification of enrollment and certificate of delivery of the check is not received within 60 days, in the case of an advance payment, the actual facts will be determined and adjustment made, if required, on the basis of facts found. If student failed to enroll, termination will be effective the beginning date of the enrollment period.

(i) *False or misleading statements.* See § 21.4006.

(j) *Disapproval by State approving agency (§ 21.4259(a)).* If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

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

(2) End of the month in which disapproval is effective or notice of disapproval is received in the Department of Veterans Affairs, whichever is later, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.

(Authority: 38 U.S.C. 3672(a), 3690)

(k) *Disapproval by Department of Veterans Affairs (§§ 21.4215, 21.4259(c)).* If VA

§21.4135

38 CFR Ch. I (7-1-13 Edition)

disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

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

(2) End of the month in which disapproval occurred, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.

(Authority: 38 U.S.C. 3671(b), 3672(a), 3690)

(1) *Conflicting interests (not waived) (§21.4005)*. Thirty days after date of letter notifying veteran or eligible person, unless terminated earlier for other reason.

(m) *Incarceration in prison or penal institution for conviction of a felony*. (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate under §21.3132(a) or (b) or §21.5139.

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

(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program,

(ii) The date the veteran or eligible person is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by §21.4131.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(n) *Fugitive felons: veterans eligible under 38 U.S.C. chapter 32*. VA will not award educational assistance allowance to an otherwise eligible veteran for any period after December 26, 2001, during which the veteran is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a veteran who is a fugitive felon is the later of—

(1) The date of the warrant for the arrest of the felon; or

(2) December 27, 2001.

(Authority: 38 U.S.C. 5313B)

(o) [Reserved]

(p) *Error; payee's or administrative*. (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

(2) Date of last payment on an erroneous award based solely on administrative error by VA or error in judgment by VA.

(Authority: 38 U.S.C. 5112(b)(10) and 5113)

(q) *Fraud; forfeiture resulting (§21.4007)*. Beginning date of award or day preceding date of fraudulent act whichever is later.

(r) *Treasonable acts or subversive activities; forfeiture (§21.4007)*. Beginning date of award or date preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.

(s) *Reduction in rate of pursuit of course (§21.4270)*. (1) VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual received a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(3) VA will reduce an individual's educational assistance allowance effective the date on which an individual reduces training when:

(i) The reduction does not occur at the beginning of the term;

Department of Veterans Affairs

§21.4136

(ii) The individual did not receive a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(4) If the individual reduces training by withdrawing from a part of a course and the withdrawal does not occur because the individual was ordered to active duty; there are no mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; VA will reduce the individual's educational assistance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(5) An individual who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of §21.4138(f) of this part are met. If those requirements are not met, VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 5113, 3680)

(t) *Change in law or Department of Veterans Affairs issue, or interpretation.* See §3.114(b) of this chapter.

(u) *Except as otherwise provided.* On basis of facts found.

(v) [Reserved]

(w) *Nonpunitive grade assigned without a withdrawal from courses.* (1) If an individual receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the individual's educational assistance allowance effective the last date of attendance when mitigating circumstances are found.

(2) If an individual receives a nonpunitive grade in a particular course for any reason other than a withdrawal from it, and there are no mitigating circumstances, VA will reduce his or

her educational assistance effective the later of the following:

(i) The first date of enrollment for the term in which the grade applies, or

(ii) December 1, 1976. See paragraphs (e) and (s) of this section.

(Authority: 38 U.S.C. 3680(a)(4))

(x) *Independent study course loses accreditation.* Except as otherwise provided in §21.4252(g), if the veteran or eligible person is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3672, 3676, 3680A(a))

(y)-(aa) [Reserved]

CROSS REFERENCE: *Special restorative training.* See §21.3332.

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4135, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) *General.* VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

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

(2) All of the following criteria are met:

(i) There are mitigating circumstances;

(ii) The individual submits a description of the circumstances in writing to VA either within one year from the date VA notifies the individual that he or she must submit the mitigating circumstances or at a later date if the 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