

## §21.4138

## 38 CFR Ch. I (7–1–14 Edition)

(iii) The individual submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, 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 evidence supporting the existence of mitigating circumstances.

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

(b) *Representative mitigating circumstances.* The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:

- (1) An illness of the individual;
- (2) An illness or death in the individual's family;
- (3) An unavoidable geographical transfer resulting from the individual's employment;
- (4) An unavoidable change in the individual's conditions of 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 school;
- (7) Unanticipated active duty for training;
- (8) Unanticipated difficulties in caring for the individual's child or children.

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

(c) *Failure to complete a course for the educationally disadvantaged.* If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(d) *Withdrawals after May 31, 1989.* In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with re-

spect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a)(3))

(e) *Withdrawals during a drop-add period.* If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

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

[31 FR 8292, June 14, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4136, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### §21.4138 Certifications and release of payments.

For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational assistance allowance claims processed under 38 U.S.C. chapter 35 for educational institutions located in the Philippines.

(a) *Advance payments.* (1) VA will make payments of educational assistance in advance when:

- (i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;
- (ii) The student is enrolled for half time or more;
- (iii) The educational institution at which the veteran, servicemember, reservist, or eligible person is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B) and (C) and (5) pertaining to receipt, delivery, or return of checks and certifications of delivery and enrollment;

(iv) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's, servicemember's, reservist's, or eligible person's educational institution;

(v) There is no evidence in the veteran's, servicemember's, reservist's, or eligible person's claim file showing

**Department of Veterans Affairs**

**§21.4138**

that he or she is not eligible for an advance payment;

(vi) The period for which the veteran, servicemember, reservist, or eligible person has requested a payment either—

(A) Is preceded by an interval of non-payment of 30 days or more; or

(B) Is the beginning of a school year that is preceded by a period of non-payment of 30 days or more; and

(vii) The educational institution or the veteran, servicemember, reservist, or eligible person has submitted the certification required by §21.7151.

(2) The amount of the advance payment to a veteran, reservist, or eligible person is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month. The amount of the advance payment to a servicemember is the amount payable for the entire term, quarter, or semester, as applicable.

(3) VA will mail advance payments to the educational institution for delivery to the veteran, servicemember, reservist, or eligible person. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the period for which VA makes the advance payment.

(4) 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:

(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section;

(ii) The educational institution fails to provide adequately for the safe-keeping of the advance payment checks before delivery to the veteran, servicemember, reservist, or eligible person or return to VA; or

(iii) 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: 10 U.S.C. 16136(b); 38 U.S.C. 3034, 3680(d))

(b) *Lump-sum payments.* A lump-sum payment is a payment of all educational assistance due for an entire quarter, semester, or term. VA will make a lump-sum payment to:

(1) A veteran or servicemember pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 30;

(2) A servicemember pursuing a program of education at the half-time rate or greater under 38 U.S.C. chapter 30, provided that VA did not make an advance payment to the servicemember for the term for which a lump-sum payment would otherwise be due; and

(3) An eligible person pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3034(c), 3680(f))

(c)–(d) [Reserved]

(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in §21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in §21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution.

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

(f) *Payment for intervals and temporary school closings.* VA may authorize payment for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (f)(1) through (f)(5) of this section concerning intervals and in paragraph (f)(6) of this section concerning temporary school closings. For the purposes of this paragraph, *interval* means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in §21.4200(b).)

(1) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (f)(2) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (f)(3), (f)(4), and (f)(5) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(2) *Restrictions on payment for intervals.* VA will make no payment for an interval if:

(i) The student is training at less than the half-time rate on the last day of training during the term, quarter, semester, or summer term preceding the interval;

(ii) The student is on active duty;

(iii) The student requests, prior to authorization of an award or prior to

negotiating the check, that no benefits be paid for the interval period;

(iv) The student's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the student not to receive payment;

(v) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis,

(vi) The student withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter, or semester basis; or

(vii) The student receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

(3) *Payment for interval between periods of enrollment at different schools.* If the student transfers from one approved school for the purpose of enrolling in and pursuing a similar course at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar course at the second school, VA may not make payments for the interval.

(4) *Payment for intervals that occur at the same school.* (i) If the student remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters,

(B) A semester or quarter and a term that is at least as long as the interval,

(C) A semester or quarter and a summer term that is at least as long as the interval,

(D) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(E) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(ii) If the student remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between

## Department of Veterans Affairs

§21.4138

summer sessions within a summer term.

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

(5) *Payment for intervals that occur between overlapping enrollments.* (i) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and what dates the interval and enrollment periods will be considered to begin and end, as follows:

(A) By treating the ending date of each enrollment period as though it were the student's last date of training before the interval,

(B) By treating the beginning date of each enrollment period as though it were the student's first date of training after the interval,

(C) By examining the interval payment that would be made to the student on the basis of the various combinations of beginning and ending dates, and

(D) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(ii) VA will not reduce the interval rate of payment as a result of training the student may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

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

(6) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraphs (f)(2) through (f)(5) of this section to determine if payment may be continued during the interval.

(i) If payment would not be inconsistent with the provisions of paragraphs (f)(2) through (f)(5) of this section, a determination to authorize payment for a period of a temporary

school closing, or to not authorize payment if, in the judgment of the VA official specified in this paragraph, either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(A) The Director of the VA Regional Processing Office of jurisdiction if:

(1) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(2) If the reason for the closing is a strike, the strike has lasted 30 days or less and is not anticipated to last more than 30 days.

(B) The Director, Education Service if:

(1) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(2) The reason for the closing is a strike and the strike lasts, or is anticipated to last, more than 30 days.

(ii) A school that disagrees with a decision made under paragraph (f)(6) 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 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—

(A) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments.

(B) Under Secretary for Benefits, if the Director, Education Service, made

## § 21.4145

the initial decision to continue or discontinue payments.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0604)

[43 FR 35295, Aug. 9, 1978, as amended at 44 FR 62497, Oct. 31, 1979; 46 FR 20673, Apr. 7, 1981; 48 FR 37982, Aug. 22, 1983; 54 FR 33888, Aug. 17, 1989; 57 FR 24367, June 9, 1992; 64 FR 52651, Sept. 30, 1999; 68 FR 34328, June 9, 2003; 68 FR 35178, June 12, 2003; 73 FR 65263, Nov. 3, 2008]

### § 21.4145 Work-study allowance.

(a) *Eligibility.* (1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30, 32 or 33 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when—

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(b) *Selection criteria.* Whenever feasible, the Department of Veterans Affairs will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Department of Veterans Affairs shall consider the following additional selection criteria:

(1) Need of the veteran, reservist, or eligible person to augment his or her educational assistance allowance;

(2) Availability to the veteran, reservist, or eligible person of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran, reservist, or eligible person; and

## 38 CFR Ch. I (7–1–14 Edition)

(4) Compatibility of the work assignment to the veteran's, reservist's, or eligible person's physical condition.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))

(c) *Utilization.* Work-study services may be utilized in connection with:

(1) Outreach services program as carried out under the supervision of a Department of Veterans Affairs employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs;

(3) Hospital and domiciliary care and medical treatment at VA facilities;

(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and

(5) Any other appropriate activity of VA.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) *Rate of payment.* In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or