

who are or may become involved in Coast Guard actions.

Signed: 14 May 1998.

Robert S. Horowitz,

Chief Counsel (Acting).

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DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AI31

Advance Payments and Lump-Sum Payments of Educational Assistance

AGENCIES: Defense; Coast Guard, Transportation; and Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance regulations of the Department of Veterans Affairs (VA) dealing with the advance payment and lump-sum payment of educational assistance. VA is proposing to amend these regulations by removing provisions that no longer apply and by making other changes for the purpose of clarification. This will make these regulations easier to use.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI31". All written comments received will be available for public inspection at the above address in the Office of Regulations Management between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: For many decades VA by statute has permitted veterans, servicemembers, eligible persons, and reservists to receive an advance payment of educational assistance provided that they request such a payment and certain other requirements are met. These payments have covered educational assistance

scheduled to be paid to the individual during the first month or fraction of a month and the following month in a term or school year. Similarly, some individuals in some of the educational programs VA administers are able in certain circumstances to receive a lump-sum payment covering the educational assistance due for an entire term.

The regulations governing these payments have accumulated obsolete provisions over the years, and have been written in a way that is not always easy to understand. This proposed rule removes these obsolete provisions and makes other clarifying changes. Moreover, VA may make advance payments under many of the educational programs the department administers. The rules governing advance payments are the same for all of those educational programs. There appears to be no need to repeat those rules in each subpart of part 21, 38 CFR. Consequently, VA is proposing to replace the repetition of those rules with references to the complete statement of the advance payment rules that are proposed in subpart D.

Current regulations allow VA to make lump-sum payments to trainees in both the Survivors' and Dependents' Educational Assistance program (DEA) and in the Montgomery GI Bill—Active Duty (MGIB). The rules for making these payments are the same for both programs. There appears to be no need to repeat these rules in both of the affected subparts of Part 21, 38 CFR. Consequently, VA is proposing to replace the repetition of those rules with references to the complete statement of the lump-sum payment rules that are proposed in subpart D. There are no substantive changes in this proposed rule.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has determined that the proposed 38 CFR 21.4138(a) would constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Accordingly, under § 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review.

Title: Request for an Advance Payment of Educational Assistance.

Summary of collection of information: The collection of information in the proposed revisions to § 21.4138(a) in this rulemaking proceeding implements a statutory provision that mandates that an individual who wishes to receive an advance payment of educational assistance must ask for it.

Description of need for information and proposed use of information: The information required in § 21.4138(a) is needed so that VA may make advance payments of educational assistance to those who want such payments.

Description of likely respondents: Veterans, reservists, and eligible persons receiving educational assistance under the programs VA administers.

Estimated number of respondents: 75,000 each year.

Estimated frequency of responses: Occasionally, when a veteran, reservist, or eligible person wants an advance payment of educational assistance at the start of an enrollment period.

Estimated total annual reporting and recordkeeping burden: 6,250 hours of reporting burden. VA does not believe that there will be additional recordkeeping burden.

Estimated average burden per respondent: 5 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proposed 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 proposed collections of information, including the validity of the methodology and assumptions used;
- 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.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

The Department of Defense (DOD) and VA are jointly issuing this proposed rule insofar as it relates to the Post-Vietnam Era Veterans' Educational Assistance program. This program is funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this proposed rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. This program is funded by DOD and the Coast Guard, and is administered by

VA. The remainder of this proposed rule is issued solely by VA.

The signers of this document hereby certify that this regulatory amendment will 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. The adoption of this proposed rule would not make substantive changes. It would remove provisions that no longer apply and make other changes for purposes of clarification.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. The proposed rule will also affect the Montgomery GI Bill—Selected Reserve for which there is no Catalog of Federal Domestic Assistance number.

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, Vocational rehabilitation.

Approved: May 12, 1998.

Togo D. West, Jr.,
Secretary.

Approved: March 16, 1998.

Norman G. Lezy,
Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: February 26, 1998.

G.F. Woolever,
Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out in the preamble, 38 CFR part 21 is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 38 U.S.C. chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4138, the introductory text is removed; paragraphs (c) and (d) are removed and reserved; and paragraphs (a) and (b) are revised to read as follows:

§ 21.4138 Certifications and release of payments.

(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 field facility 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 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 nonpayment for 30 days or more; or

(B) Is the beginning of a school year that is preceded by a period of nonpayment 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 field station 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 safekeeping 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))

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

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

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

4. Section 21.5135 is revised to read as follows.

§ 21.5135 Advance payments.

VA will apply the provisions of § 21.4138(a) in making advance payments to veterans and servicemembers.

(Authority: 38 U.S.C. 3241, 3680)

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

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

Authority: 38 U.S.C. 501(a), ch. 30, 36, unless otherwise noted.

6. In § 21.7140, paragraph (b) is removed; paragraphs (c), (d), (e), (f), and

(g) are redesignated as paragraphs (b), (c), (d), (e), and (f), respectively; and paragraph (a) is revised, to read as follows:

§ 21.7140 Certifications and release of payments.

(a) *Advance payments and lump-sum payments.* VA will apply the provisions of § 21.4138 (a) and (b) in making advance payments and lump-sum payments to veterans and servicemembers.

(Authority: 38 U.S.C. 3034 and 3680)

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Subpart L Educational Assistance for Members of the Selected Reserve

7. 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, unless otherwise noted.

8. In § 21.7640, the authority citations for paragraphs (b), (c), (e), and (f) are amended by removing “; Pub. L. 98–525”; and paragraph (e) is amended by removing “paragraph (d) of this section”

and adding, in its place, “§ 21.4138(a)”; and paragraph (d) is revised to read as follows:

§ 21.7640 Release of payments.

* * * * *

(d) *Advance payments.* VA will apply the provisions of § 21.4138(a) in making advance payments to reservists.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

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