

SUMMARY: This document amends the regulations governing the education programs the Department of Veterans Affairs (VA) administers in order to implement some provisions of the Veterans Benefits and Health Care Improvement Act of 2000 and the Veterans' Survivor Benefits Improvements Act of 2001. More specifically, it implements provisions that changed an eligibility criterion concerning the time for obtaining a high school diploma; repealed the requirement that eligibility for the Montgomery GI Bill—Active Duty be based on the initial obligated period of active duty; provided an additional opportunity for participants in the Post-Vietnam Era Veterans' Educational Assistance Program to participate in the Montgomery GI Bill—Active Duty instead; provided an opportunity for servicemembers to increase their monthly rate of benefits by contributing additional monies while on active duty; and revised the requirements that must be met before a veteran or eligible person can be paid during the break between terms. In addition, this document makes nonsubstantive changes in VA education regulations for purposes of clarity and to remove obsolete provisions.

DATES: *Effective Date:* This final rule is effective June 9, 2003.

Applicability Date. The substantive changes made by this final rule are applied retroactively to November 1, 2000, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This document amends the regulations in 38 CFR Part 21 governing various aspects of the education programs the Department of Veterans Affairs (VA) administers in order to implement some provisions of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106-419) and the Veterans' Survivor Benefits Improvements Act of 2001 (Pub. L. 107-14) that affect those programs. This document includes changes affecting the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selective Reserve, Survivors' and Dependents' Educational Assistance, and the Post-Vietnam Era Veterans' Educational Assistance Program.

One of the criteria an individual has to meet in order to establish eligibility for the Montgomery GI Bill—Active Duty (MGIB) is receiving a high school diploma or its equivalent. Before the enactment of Public Law 106-419 on November 1, 2000, the time limit for earning that diploma (or its equivalent) varied according to the various ways for servicemembers to establish MGIB eligibility. Some had to earn the diploma before completion of their first obligated period of active duty. Others had to earn it before their release from active duty. Public Law 106-419 provided instead for all individuals the requirement that they must earn a high school diploma (or its equivalent) before applying to VA for educational assistance. For individuals who are enabled by that change to establish eligibility but who on October 31, 2000, would have been unable to establish eligibility due to the time limits for obtaining a high school diploma (or its equivalent), Public Law 106-419 created a new ten-year period starting November 1, 2000, for commencing use of benefits. We are amending various paragraphs to make them conform to these statutory provisions. Our amendments reflect our interpretation that under the statute a veteran who unsuccessfully applies for educational assistance before meeting this requirement would be able to meet this requirement by applying again after obtaining a high school diploma or its equivalent.

Since the inception of the MGIB, servicemembers have had to serve all or a major part of their initial obligated period of active duty in order to establish eligibility for the MGIB. Thus, an individual who failed to meet the length of service requirements for the initial period and subsequently re-enlisted could serve many years in the Armed Forces and have no education benefits. Public Law 106-419 and Public Law 107-14 contain provisions that allow an individual to meet the length of service requirements for eligibility by using any period of active duty of sufficient length. For individuals who are enabled by that change to establish eligibility but who on October 31, 2000, would have been unable to establish eligibility based on their initial obligated period of service, Public Law 106-419 created a new ten-year period starting November 1, 2000, for commencing use of benefits. We are amending various paragraphs to make them conform to these statutory provisions.

Public Law 106-419 also gave some present and former participants in the Post-Vietnam Era Veterans' Educational

Assistance Program (VEAP) the opportunity to establish eligibility for MGIB. Under that statute, these individuals must have elected MGIB before November 1, 2001, and must contribute \$2,700 within the 18-month period beginning on the date the individual made the election. We are amending the rules for establishing MGIB eligibility to conform to these provisions of law.

MGIB, Montgomery GI Bill—Selective Reserve (MGIB—SR), Survivors' and Dependents' Educational Assistance (DEA), and VEAP benefits may be paid to individuals during some intervals between terms. The requirements for deciding whether an individual qualifies for such an interval payment are found in statute. Public Law 106-419 revised those requirements to state that payments may be made for intervals between terms when those intervals are no longer than eight weeks and the terms before and after the interval are not shorter than the interval. We are amending the provisions of 38 CFR 21.4138(f) to make them conform to the statute.

Moreover, VA has long had rules governing payment for short terms that occur during intervals. The rules were designed to insure that veterans were not discouraged by the interval pay provisions from enrolling in those terms. In our view, it was not Congress' intent that the new interval payment provisions discourage attendance during short terms. We are amending accordingly the regulations in § 21.4138(f) governing payment for these short terms and the intervals that precede and follow them.

This document's changes in provisions in § 21.4138(f) concerning payment for intervals and for short terms that occur during intervals are applicable to MGIB, DEA, VEAP, and MGIB—SR benefits under applicability provisions in current regulations for each program, respectively. (The amended provisions in § 21.4138(f) apply to MGIB benefits under § 21.7140(c), to DEA benefits under § 21.3133(a), to VEAP benefits under § 21.5130(c), and to MGIB—SR benefits under § 21.7640(b)(1).)

Public Law 106-419 (as amended by Public Law 107-14) contains provisions that allow some servicemembers who are eligible for the MGIB to increase their monthly rate of educational assistance by contributing \$600 while on active duty. The statute prescribes that for every \$20 contributed, the monthly rate payable to a full-time student will increase by \$5. However, the statute does not state what the increase payable to a part-time student