

provided in this section or in § 21.7639, the monthly rate of educational assistance payable for training that occurs after September 30, 2003, and before October 1, 2004, to a reservist pursuing a program of education is the rate stated in this table:

Training	Monthly rate
Full	\$282.00
¾ time	212.00
½ time	140.00
¼ time	70.50

(2)(i) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in this table:

Training period	Monthly rate
First six months of pursuit of training	\$211.50
Second six months of pursuit of training	155.10
Remaining pursuit of training	98.70

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AL64

Increase in Rates Payable Under the Survivors' and Dependents' Educational Assistance Program

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the regulations governing rates of educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program to reflect increases required by statutory provisions. The rates of educational assistance payable under the DEA program are changed to show a 1.5% increase for fiscal year 2003 (October 1, 2002, through September 30, 2003) and a 2.2% increase for fiscal year 2004 (beginning October 1, 2003). In addition, the Veterans Benefits Act of 2003 provided an increase in the rates payable effective July 1, 2004. The amendments show the pay tables for the three rate increases identified above.

DATES: *Effective Date:* This final rule is effective October 25, 2004.

Applicability Dates: The changes in rates are applied to conform to the respective statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Lynn M. Nelson, Education Advisor (225C), Education Service, Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Ave. NW., Washington, DC 20420 (202) 273-7294.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3564, the monthly rates of basic educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program must be adjusted each fiscal year. The regulations governing the rates of educational assistance payable under the DEA program for fiscal year (FY) 2003 (October 1, 2002, through September 30, 2003) are changed to reflect a 1.5% increase. The 1.5% increase is the percentage by which the total of the monthly Consumer Price Index-W (CPI-W) for July 1, 2001, through June 30, 2002, exceeds the total of the monthly CPI-W for July 1, 2000, through June 30, 2001.

The regulations are further amended to include the DEA rates payable during FY 2004. The FY 2004 rates reflect a 2.2% increase. The 2.2% increase is the percentage by which the total of the monthly CPI-W for July 1, 2002, through June 30, 2003, exceeds the total of the monthly CPI-W for July 1, 2001, through June 30, 2002.

In addition to the cost of living rate adjustments discussed above, Section 302 of the Veterans Benefits Act of 2003 (Pub. L. 108-183) provides an increase in the DEA rates effective July 1, 2004. A new paragraph (c) is added to Section 21.3131 to show the increased DEA rates effective July 1, 2004.

The changes set forth in this final rule are effective from the date of publication, but the changes in the rates for FY 2003 are effective October 1, 2002, the changes in the rates for FY 2004 are effective October 1, 2003, and the changes in rates provided for in Public Law 108-183 are effective July 1, 2004. This is in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule, because the agency is not required to publish a notice of proposed rulemaking for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1232, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule will have no such effect on State, local or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.117.

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: August 23, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 21 (subpart C) is amended as follows:

**PART 21—VOCATIONAL
REHABILITATION AND EDUCATION****Subpart C—Survivors' and
Dependents' Educational Assistance
Under 38 U.S.C. Chapter 35**

- 1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

- 2. In § 21.3045, paragraph (h) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(h) *Entitlement charge for correspondence courses.* The charge against entitlement of a spouse or surviving spouse for pursuit of a course exclusively by correspondence will be 1 month for each of the following

amounts paid as an educational assistance allowance:

(1) \$680.00 paid after September 30, 2002, and before October 1, 2003;

(2) \$695.00 paid after September 30, 2003, and before July 1, 2004; and

(3) \$788.00 paid after June 30, 2004.

* * * * *

- 3. In § 21.3046, paragraph (d)(4)(ii) is revised to read as follows

**§ 21.3046 Periods of eligibility; spouses
and surviving spouses.**

* * * * *

(d) * * *

(4) * * *

(ii) The total additional amount of instruction that—

(A) \$1,904 will provide during the period October 1, 2002, through September 30, 2003;

(B) \$1,946 will provide during the period October 1, 2003, through June 30, 2004; or

(C) \$2,206 will provide after June 30, 2004.

* * * * *

- 4. Section 21.3131 is amended by:

■ a. Revising paragraphs (a) and (b).

■ b. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

■ c. Adding a new paragraph (c).

The revisions and addition reads as follows:

**§ 21.3131 Rates—educational assistance
allowance—38 U.S.C. chapter 35.**

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates for pursuit of education or training that occurs after September 30, 2002, and before October 1, 2003:

Type of course	Monthly rate
Institutional:	
Full time	\$680.00.
¾ time	511.00.
½ time	340.00.
Less than ½ but more than ¼ time ¹	340.00.
¼ time or less ¹	170.00.
Cooperative training (other than farm cooperative) (Full time only)	680.00.
Apprenticeship or on-the-job (full time only) ² :	
First six months	495.00.
Second six months	370.00.
Third six months	246.00.
Fourth six months and thereafter	124.00.
Farm cooperative:	
Full time	549.00.
¾ time	412.00.
½ time	275.00.
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. ³

¹ If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$340.00 or \$170.00, as appropriate, per month, if the maximum allowance is not initially authorized.

² See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

³ Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(b) *Rates.* Except as provided in § 21.3132, educational assistance

allowance is payable at the following rates for pursuit of education or training

that occurs after September 30, 2003, and before July 1, 2004:

Type of course	Monthly rate
Institutional:	
Full time	\$695.00.
¾ time	522.00.
½ time	347.00.
Less than ½ but more than ¼ time ¹	347.00.
¼ time or less ¹	173.75.
Cooperative training (other than farm cooperative) (Full time only)	695.00.

Type of course	Monthly rate
Apprenticeship or on-the-job (full time only) ² :	
First six months	506.00.
Second six months	378.00.
Third six months	251.00.
Fourth six months and thereafter	127.00.
Farm cooperative:	
Full time	561.00.
¾ time	421.00.
½ time	281.00.
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. ³

¹ If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$347.00 or \$173.75, as appropriate, per month, if the maximum allowance is not initially authorized.

² See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

³ Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(c) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following

rates for pursuit of education or training that occurs after June 30, 2004:

Type of course	Monthly rate
Institutional:	
Full time	\$788.00.
¾ time	592.00.
½ time	394.00.
Less than ½ but more than ¼ time ¹	394.00.
¼ time or less ¹	197.00.
Cooperative training (other than farm cooperative) (Full time only)	788.00.
Apprenticeship or on-the-job (full time only) ² :	
First six months	574.00.
Second six months	429.00.
Third six months	285.00.
Fourth six months and thereafter	144.00.
Farm cooperative:	
Full time	636.00.
¾ time	477.00.
½ time	319.00.
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. ³

¹ If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$394.00 or \$197.00, as appropriate, per month, if the maximum allowance is not initially authorized.

² See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

³ Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

* * * * *

■ 5. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) *Duration of special restorative training.* VA may provide special

restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of—

(1) \$213.00 a month for the period beginning October 1, 2002, and ending September 30, 2003;

(2) \$218.00 a month for the period beginning October 1, 2003, and ending June 30, 2004; and

(3) \$247.00 a month for months after June 30, 2004.

* * * * *

■ 6. Section 21.3333 is amended by:

■ a. In paragraph (a)(1), removing “September 30, 2001, and before January 1, 2002.” and adding, in its place, “September 30, 2002, and before October 1, 2003.”

■ b. In the rates table immediately following paragraph (a)(1), under the “Monthly rate” column, removing “\$608.00” and adding, in its place, “\$680.00”; and under the “Accelerated charges” column, removing “\$190.00” each place it appears, and adding, in its place, “\$213.00”.

■ c. In paragraph (a)(2), removing “December 31, 2001:” and adding, in its place, “September 30, 2003, and before July 1, 2004:”.

■ d. In the rates table immediately following paragraph (a)(2), under the “Monthly rate” column, removing “\$670.00” and adding, in its place, “\$695.00”; and under the “Accelerated charges” column, removing “\$210.00” each place it appears, and adding, in its place, “\$218.00”.

■ e. Adding a new paragraph (a)(3) immediately following the authority

citation at the end of paragraph (a)(2) rates table.

■ f. Revising paragraph (b)(1).

The addition and revision reads as follows:

§ 21.3333 Rates.

(a) * * *

(3) For special restorative training that occurs after June 30, 2004:

Course	Monthly rate	Accelerated charges
Special restorative training	\$788.00	If costs for tuition and fees average in excess of \$247.00 per month, rate may be increased by training such amount in excess of \$247.00.

(Authority: 38 U.S.C. 3542)

(b) * * * (1) VA may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each—

(i) \$22.67 that the special training allowance exceeds the basic monthly rate of \$680.00 for the period October 1, 2002, through September 30, 2003;

(ii) \$23.17 that the special training allowance exceeds the basic monthly rate of \$695.00 for the period October 1, 2003, through June 30, 2004; and

(iii) \$26.27 that the special training allowance exceeds the basic monthly rate of \$788.00 for months after June 30, 2004.

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DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AL81

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that the Secretary of Defense shall adjust the rates of subsistence allowance and educational assistance under the Educational Assistance Test Program annually. The law further provides those rates must be adjusted based upon the average actual cost of attendance at public institutions of higher education

in the 12-month period since the rates were last adjusted. After obtaining data from the Department of Education, the Department of Defense has determined that the rates for the 2003-04 academic year should be increased by 9.6 percent over the rates payable for the 2002-03 academic year. The regulations dealing with these rates are amended accordingly.

DATES: *Effective Date:* October 25, 2004.

Applicability Date: The changes in rates are applied retroactively to October 1, 2003, to conform to statutory requirements. For more information concerning the applicability date, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Nelson, Education Adviser (225C), Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7294.

SUPPLEMENTARY INFORMATION: Section 2145 of title 10, United States Code, provides that the Secretary of Defense shall make adjustments in the amount of educational assistance offered in any academic year under the Educational Assistance Test Program and likewise, in the amount of subsistence allowance authorized under that program. This provision further requires that these adjustments will be consistent with the change in the average actual cost of attendance at public institutions of higher education over the preceding 12-month period. As required by sections 2145, 2143, and 2144 of title 10, the Department of Defense has obtained data from the Department of Education. The Department of Defense has calculated that the costs of educational assistance and subsistence allowance have each increased by 9.6 percent. Accordingly, this final rule changes 38

CFR 21.5820 and 21.5822 to reflect a 9.6 percent increase in the rates payable in the 2003-04 academic year, including changes needed to compensate for rounding.

The Secretary of Defense delegated the authority to administer the benefit payment portion of the Educational Assistance Test Program, also known as Section 901 benefits, to the Secretary of Veterans Affairs (VA). Thus, VA regulations include the educational assistance amounts payable under the program.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied from October 1, 2003, in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Since changes made by this final rule only reflect statutory requirements and adjustments based on previously established formulas, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no such consequential effect on State, local, or tribal governments.