

## § 21.3042

(v) The child's election is in accordance with the choices VA identified in the written notice described in paragraph (i)(1) of this section.

(2) If the child does not elect a beginning date within 60 days of VA's written notice informing him or her of the right to elect a beginning date, the period of eligibility beginning date will be whichever of the following applies—

(i) The date of VA's decision that the veteran has a P&T disability; or

(ii) The date of VA's decision that the veteran's death is service-connected.

(3) If upon review of the child's application VA determines the child is entitled to and eligible for an immediate award of educational assistance under 38 U.S.C. chapter 35, VA will for purposes of such award—

(i) Consider the beginning date of the child's period of eligibility to be the date of VA's decision that the—

(A) Veteran has a P&T disability in the case of a child whose eligibility is derived from a veteran with a P&T disability; or

(B) Veteran's death is service-connected in the case of a child whose eligibility is derived due to the veteran's death.

(ii) Notify the child of his or her right to elect a beginning date in accordance with paragraph (i)(1) of this section.

(iii) Adjust the child's beginning date based on the child's election if the child makes an election within 60 days after VA's written notice in accordance with paragraph (i)(1) of this section.

(Authority: 38 U.S.C. 3512(a)(3), (a)(4))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0703)

[73 FR 30489, May 28, 2008; 73 FR 31742, June 3, 2008]

## § 21.3042 Service with Armed Forces.

(a) No educational assistance under 38 U.S.C. chapter 35 may be provided an otherwise eligible person during any period he or she is on duty with the Armed Forces. See § 21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See § 21.3135(f).

(Authority: 38 U.S.C. 3501(d))

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(b) If the eligible person served with the Armed Forces, his or her discharge or release from each period of service must have been under conditions other than dishonorable.

(Authority: 38 U.S.C. 3501(d))

[30 FR 15633, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 36 FR 2508, Feb. 5, 1971; 41 FR 42929, Nov. 1, 1976; 61 FR 26109, May 24, 1996; 73 FR 30491, May 28, 2008]

## § 21.3043 Suspension of program; child.

For an eligible person who suspends his program due to conditions determined by the Department of Veterans Affairs to have been beyond his or her control the period of eligibility may, upon his request, be extended by the number of months and days intervening the date the suspension began and the date the reason for suspension ceased to exist. The burden of proof is on the eligible person to establish that suspension of a program was due to conditions beyond his or her control. The period of suspension shall be considered to have ended as of the date of the person's first available opportunity to resume training after the condition which caused it ceased to exist. The following circumstances may be considered as beyond the eligible person's control:

(a) While in active pursuit of a program of education he or she is appointed by the responsible governing body of an established church, officially charged with the selection and designation of missionary representatives, in keeping with its traditional practice, to serve the church in an official missionary capacity and is thereby prevented from pursuit of his or her program of studies.

(b) Immediate family or financial obligations beyond his or her control require the eligible person to take employment, or otherwise preclude pursuit of his or her program.

(c) Unavoidable conditions arising in connection with the eligible person's employment which preclude pursuit of his or her program.

(d) Pursuit of his or her program is precluded because of the eligible person's own illness or illness or death in his or her immediate family.

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(e) Active duty, including active duty for training in the Armed Forces.

[41 FR 47929, Nov. 1, 1976]

### § 21.3044 Entitlement.

(a) *Limitations on entitlement.* Each eligible person is entitled to educational assistance not in excess of 45 months, or the equivalent thereof in part-time training. The Department of Veterans Affairs will not authorize an extension of entitlement except as provided in paragraph (c) of this section. The period of entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which employment adjustment allowance was paid after the eligible person completes a period of rehabilitation and reaches a point of employability.

(b) *Continuous pursuit is not required.* The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program for 45 consecutive months.

(Authority: 38 U.S.C. 3511(a))

(c) *Exceeding the 45 months limitation.* The 45 months limitation may be exceeded only in the following cases:

(1) Where no charge against the entitlement is made based on a course or courses pursued by a spouse or surviving spouse under the special assistance for the educationally disadvantaged program (See § 21.3344(d); or

(2) Where special restorative training authorized under § 21.3300 exceeds 45 months.

(Authority: 38 U.S.C. 3541(b), 3533(b))

[49 FR 48692, Dec. 14, 1984, as amended at 61 FR 26109, May 24, 1996]

### § 21.3045 Entitlement charges.

VA will make record-purpose charges against an eligible person's 38 U.S.C. chapter 35 entitlement only when required by this section. Charges for institutional training will be based upon the principle that an eligible person who trains full time for 1 day should be charged 1 day of entitlement.

(a) *No entitlement charge for eligible persons receiving tutorial assistance.* VA will make no charge against the entitlement of an eligible person for tutorial assistance received in accordance with § 21.4236.

(Authority: 38 U.S.C. 3492, 3533(b))

(b) *Entitlement charges for elementary and secondary education.* (1) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.3344, there are two sets of circumstances which will always result in VA's making no charge against his or her entitlement. These are as follows:

(i) Either the eligible spouse or surviving spouse completed training during the period beginning on October 1, 1980, and ending on August 14, 1989, and remained continuously enrolled from October 1, 1980, through the time the spouse or surviving spouse either completed training or August 14, 1989, whichever is earlier; or

(ii) The eligible spouse or surviving spouse completed training before August 15, 1989, and received educational assistance based upon the tuition and fees charged for the course.

(2) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.3344, the following circumstances will always result in VA's making a charge against his or her entitlement unless the provisions of paragraph (d) of this section would exempt the spouse or surviving spouse from receiving an entitlement charge.

(i) The spouse or surviving spouse elects to receive dependents' educational assistance at the rate described in § 21.3131(a), and

(ii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1, 1980, or has not remained continuously enrolled in such a course since October 1, 1980.

(3) When an eligible person pursues refresher, remedial or deficiency training before August 15, 1989, the following provisions govern the charge against the entitlement.