

Department of Veterans Affairs

§ 21.3045

(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.

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(i) VA will not make a charge against the entitlement of an eligible spouse or surviving spouse.

(ii) VA will make a charge against the entitlement of an eligible child.

(4) The following provisions apply to an eligible person for training received after August 14, 1989. When he or she is pursuing a course leading to a secondary school diploma or equivalency certificate or refresher, remedial or deficiency training.

(i) VA will make no charge against the entitlement of an eligible person for the first five months of full time pursuit (or its equivalent in part-time pursuit).

(ii) VA will make a charge against the entitlement of an eligible person for pursuit in excess of the pursuit described in paragraph (b)(4)(i) unless the provisions of paragraph (d) of this section would exempt the eligible person from receiving an entitlement charge.

(Authority: 38 U.S.C. 3511(a), 3533(a); Pub. L. 100-689, Pub. L. 102-127)(Oct. 10, 1991)

(c) *Other courses for which entitlement will be charged.* Except when the requirements of paragraph (d) of this section are met, VA will make a charge against the period of entitlement of—

(1) An eligible person for pursuit of a program of apprenticeship or other on-job training;

(2) A spouse or surviving spouse for pursuit of a correspondence course; or

(3) An eligible person for the pursuit of any course not described in paragraph (a) or (b) of this section.

(Authority: 38 U.S.C. 3534)

(d) *Exemption from entitlement charge.*

(1) VA will not make a charge against the entitlement of an eligible person for the pursuit of any course or courses when the requirements of paragraphs (d)(1)(i) and (ii) of this section are met, by VA finding that the eligible person—

(i) Had to discontinue pursuit of the course or courses as a result of being—

(A) Ordered, in connection with the Persian Gulf War by orders dated before September 11, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, or under former 10 U.S.C. 672(a), 672(d), 672(g), 673, or 673(b) (redesignated effective

December 1, 1994, as 10 U.S.C. 12301(a), 12301(d), 12301(g), 12302, and 12304, respectively);

(B) Ordered, by orders dated after September 10, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(C) Involuntarily ordered, by orders dated after September 10, 2001, to full-time National Guard duty under 32 U.S.C. 502(f).

(ii) Failed to receive credit or training time toward completion of the eligible person's approved educational, professional or vocational objective as a result of having to discontinue, for a reason described in paragraph (d)(1)(i) of this section, his or her course pursuit.

(2) The period for which VA will not make a charge against entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the eligible person failed to receive credit or with respect to which the eligible person lost training time.

(Authority: 38 U.S.C. 3511(a)(2); sec. 103(e), Pub. L. 107-103, 115 Stat. 980)

(e) *Determining entitlement charge.* The provisions of this paragraph apply to all courses except those courses for which VA is not making a charge against the eligible person's entitlement, apprenticeship or other on-job training, correspondence courses, and courses offered solely through independent study.

(1) After making any adjustments required by paragraph (e)(3) of this section, VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit) if the eligible person is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the eligible person is pursuing a program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of enrollment to date of discontinuance. If the eligible person changes his or her training time after the commencing date of enrollment, VA will—

(i) Divide the enrollment period into separate periods of time during which the eligible person's training time remains constant; and

(ii) Compute the elapsed time separately for each time period.

(3) An eligible person may concurrently enroll in refresher, remedial or deficiency training for which paragraph (b)(3) or (b)(4)(i) of this section requires no charge against entitlement and in a course or courses for which paragraph (b)(2) or (b)(4)(ii) or (c) of this section requires a charge against entitlement. When this occurs, VA will charge entitlement for the concurrent enrollment based only on pursuit of the courses described in paragraph (b)(2) or (b)(4)(ii) or (c) of this section, measured in accordance with §§ 21.4270 through 21.4275 of this part, as appropriate.

(Authority: 38 U.S.C. 3533(a); Pub. L. 100-689)

(f) *Entitlement charge for pursuit solely by independent study.* For enrollments in terms, quarters, or semesters that begin after June 30, 1993, VA will make charges against the entitlement of an eligible person in the manner prescribed by paragraph (e) of this section, if he or she is pursuing a program of education solely by independent study. For all other enrollments where the eligible person is pursuing a program of education solely by independent study, the computation will be made as though the eligible person's training were one-quarter time.

(Authority: 38 U.S.C. 3482(b), 3532(a))

(g) *Entitlement charge for apprenticeship or other on-job training.* For each month that an eligible person is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, including months in which the eligible person fails to complete 120 hours of training, VA will make a record-purpose charge against 38 U.S.C. chapter 35 entitlement, if any, as follows:

(1) For training pursued before October 1, 2005, VA will reduce chapter 35

entitlement by one month for each month of benefits paid.

(2) For training pursued on or after October 1, 2005, VA will reduce chapter 35 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution.

(Authority: 38 U.S.C. 3534, 3687; sec. 102, Pub. L. 108-454, 118 Stat. 3600)

(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) \$788.00, paid after June 30, 2004, and before October 1, 2004;

(2) \$803.00, paid after September 30, 2004, and before October 1, 2005;

(3) \$827.00, paid after September 30, 2005, and before October 1, 2006;

(4) \$860.00, paid after September 30, 2006, and before October 1, 2007;

(5) \$881.00, paid after September 30, 2007, and before October 1, 2008; and

(6) \$915.00, paid after September 30, 2008.

(Authority: 38 U.S.C. 3534(b), 3564, 3686(a))

(i) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and is not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive

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of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (i)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3471, 3532)

(j) *Interruption to conserve entitlement.* An eligible person may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the eligible person is enrolled for the term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the eligible person is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment is actually terminated;

(2) The eligible person cancels his or her enrollment, and does not negotiate an educational benefits check for any part of the certified period of enrollment;

(3) The eligible person interrupts his or her enrollment at the end of any term, quarter, or semester within the

certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;

(4) The eligible person requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the eligible person negotiated a check for educational benefits for the certified period is immaterial.

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

(k) *Education loan after otherwise applicable delimiting date—spouse or surviving spouse.* VA will make a charge against the entitlement of a spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 day for each day of entitlement that would have been used had the spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted.

(Authority: 38 U.S.C. 3512)

[55 FR 28024, July 9, 1990, as amended at 57 FR 29799, July 7, 1992; 58 FR 26240, May 3, 1993; 61 FR 26109, May 24, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 67778, Dec. 9, 1998; 66 FR 32227, June 14, 2001; 68 FR 34320, June 9, 2003; 69 FR 62207, Oct. 25, 2004; 73 FR 2423, Jan. 15, 2008; 73 FR 79647, Dec. 30, 2008]

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

This section states how VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(Authority: 38 U.S.C. 3512(b))

(a) *Beginning date of eligibility period—spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.