

Department of Veterans Affairs

§21.5741

under 10 U.S.C. Chapter 107 an individual must—

(1) Enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force or Marine Corps after September 30, 1980 and before October 1, 1981 specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149, Pub. L. 96-342,

(2) Have graduated from a secondary school,

(3) Meet other requirements as the Secretary of Defense may consider appropriate for the purpose of this chapter and the needs of the Armed Forces,

(4) Meet the service requirements stated in paragraph (b) of this section, and

(5) If a veteran, have been discharged under honorable conditions.

(Authority: 10 U.S.C. 2142(b), 38 U.S.C. 5303A)

(b) *Service Requirements.* (1) The individual must complete 24 continuous months of active duty of the enlistment or reenlistment described in paragraph (a)(1) of this section; or

(2) If the enlistment described in paragraph (a) of this section is the individual's initial enlistment for service on active duty, the individual must—

(i) Complete 24 continuous months of active duty, or

(ii) Be discharged or released from active duty—

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or

(iii) Be found by the VA to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in §3.4(b) of this title. Once the VA makes this finding, the individual's eligibility will continue notwithstanding that the disability becomes non-compensable.

(3) In computing time served for the purpose of this paragraph, VA will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this title. However, those periods will not inter-

rupt the individual's continuity of service.

(Authority: 10 U.S.C. 2142; 38 U.S.C. 5303A)

[45 FR 31, Jan. 2, 1980, as amended at 54 FR 34984, Aug. 23, 1989]

§21.5741 Eligibility under more than one program.

(a) *Veterans and servicemembers.* A veteran or servicemember who is eligible for educational assistance under either 38 U.S.C. chapter 31 or 34, or subsistence allowance under 38 U.S.C. chapter 31 may also be eligible for the Educational Assistance Test Program. (See §21.5824 for restrictions on duplication of benefits.)

(b) *Spouse, surviving spouse or dependent child.* A spouse, surviving spouse or dependent child who is eligible to receive educational assistance under 38 U.S.C. Chapters 31, 32, 34 and 35 may also be eligible for the Educational Assistance Test Program. (See §21.5824 for restrictions on duplication of benefits.)

(Authority: 10 U.S.C. 2142)

(c) *Limitation on benefits.* (1) Before March 2, 1984 the 48 month limitation on benefits under two or more programs found in 38 U.S.C. 3695 does not apply to the Educational Assistance Test Program when taken in combination with any program authorized under title 38 U.S.C.

(2) After March 1, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and the provisions of any of the laws listed below may not exceed 48 months (or the part-time equivalent thereof):

(i) Part VII or VIII, Veterans Regulations numbered 1(a) as amended,

(ii) Title II of the Veterans' Readjustment Assistance Act of 1952,

(iii) The War Orphans' Educational Assistance Act of 1956,

(iv) Chapters 32, 34, 35 and 36 of title 38 U.S.C. and the former chapter 33,

(v) Section 903 of the Department of Defense Authorization Act, 1981.

(Authority: Pub. L. 96-342, 10 U.S.C. 2141 note)

(vi) The Hostage Relief Act of 1980.

(3) After October 19, 1984 the aggregate period for which any person may

§ 21.5742

receive assistance under the Educational Assistance Test Program and any of the laws listed in paragraph (c)(2) of this section, may not exceed 48 months (or the part-time equivalent thereof):

- (i) Chapter 30 of title 38, U.S.C., and
- (ii) Chapter 1606 of title 10, U.S.C.

(Authority: 38 U.S.C. 3695)

[51 FR 27026, July 29, 1986, as amended at 61 FR 20729, May 8, 1996]

§ 21.5742 Entitlement.

(a) *Educational assistance.* A veteran or servicemember shall be entitled to one standard academic year (or the equivalent) of educational assistance for each year of service following the first enlistment beginning after November 30, 1980 (up to a maximum of four years). If the veteran or servicemember completes two years of active duty in the term of enlistment, but fails to complete the enlistment or fails to complete four years of active duty in an enlistment of more than four years, his or her entitlement to educational assistance shall be calculated as follows:

(1) VA shall determine the number of years, months and days in the veteran's qualifying period of service by subtracting the entry on duty date from the release from active duty date. Any deductible time under § 3.15 of this chapter (during the period of service on which eligibility is based) will be excluded from the calculation.

(2) VA shall convert the number of years determined in paragraph (a)(1) of this section to months by multiplying them by 12.

(3) VA shall convert the number of days determined in paragraph (a)(1) of this section to 0 months if there are 14 days or less, and to 1 month if there are more than 14 days.

(4) VA shall determine the number of total months by adding the number of months determined in paragraph (a)(1) of this section (exclusive of years and days) to the number of months determined in paragraph (a)(2) of this section, and the number of months in paragraph (a)(3).

38 CFR Ch. I (7-1-10 Edition)

(5) VA shall multiply the number of total months in paragraph (a)(4) of this section by 75.

(Authority: 10 U.S.C. 2142(a)(2))

(b) *Subsistence allowance.* A veteran or servicemember shall be entitled to nine months of subsistence allowance for each standard academic year of entitlement to educational assistance. For each period of entitlement to educational assistance which is shorter than a standard academic year, a veteran or servicemember will be entitled to one month of subsistence allowance for each month of entitlement to educational assistance. This entitlement shall not exceed nine months.

(Authority: 10 U.S.C. 2144)

[51 FR 27026, July 29, 1986, as amended at 51 FR 29471, Aug. 18, 1986]

§ 21.5743 Transfer of entitlement.

(a) *Entitlement may be transferred.* (1) A veteran or servicemember may transfer all or part of his or her entitlement to educational assistance and subsistence allowance to a spouse or dependent child. He or she may not transfer entitlement to more than one person at a time.

(2) The Secretary of the Navy may authorize a member or veteran of the Navy or Marine Corps to make a transfer described in paragraph (a)(1) of this section provided:

(i) The servicemember or veteran has entitlement to educational assistance as provided in § 21.5742;

(ii) The enlistment that established the servicemember's or veteran's entitlement was his or her second reenlistment as a member of the Armed Forces;

(iii) The servicemember or veteran has completed at least four years of active service of that second reenlistment; and

(iv) The servicemember's or veteran's second reenlistment was for a period of at least six years.

(3) No transfer, other than one described in paragraph (a)(2) of this section, may be made until the veteran or servicemember—

(i) Has completed the enlistment upon which his or her entitlement is