§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) Child; age 18. A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation.

A person who is eligible for educational assistance under 38 U.S.C. chapter 33 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must choose which benefit he or she will receive for the particular period(s) of training during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);
(b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);
(c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans’ Educational Assistance);
(d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);
(e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);
(f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);
(g) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)
of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) Child; under 18 or helpless. Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.

(c) Child; election. An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors’ and Dependents’ Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

(2) An election based on erroneous information furnished by an authorized representative of the Department of Veterans Affairs is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of education under DEA may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran’s death.

(d) Spouse or surviving spouse. Educational assistance allowance may be paid for an eligible spouse or surviving spouse concurrently with pension, compensation or dependency and indemnity compensation.

(Authority: 38 U.S.C. 3562)

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0595)

CROSS REFERENCES: Discontinuance. See § 3.503(a)(8) of this chapter.

Concurrent payments. See § 3.707 of this chapter.

Certification. See § 3.807 of this chapter.