

## Department of Veterans Affairs

## § 21.7080

(ii) Failed to receive credit or lost training time toward completion of the individual's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against the entitlement of an individual described in paragraph (e)(1) of this section shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time.

(Authority: 38 U.S.C. 3013(f); Pub. L. 102-127)(Oct. 10, 1991))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28385, July 11, 1990; 56 FR 20134, May 2, 1991; 56 FR 26035, June 6, 1991; 56 FR 31332, July 10, 1991; 57 FR 15024, Apr. 24, 1992; 58 FR 26241, May 3, 1993; 68 FR 35179, June 12, 2003; 72 FR 16980, Apr. 5, 2007; 73 FR 65264, Nov. 3, 2008]

### TRANSFER OF ENTITLEMENT TO BASIC EDUCATIONAL ASSISTANCE TO DEPENDENTS

#### § 21.7080 Transfer of entitlement.

An individual entitled to educational assistance under the Montgomery GI Bill—Active Duty (38 U.S.C. chapter 30) program based on his or her own active duty service, and who is approved by a service department to transfer a portion of his or her entitlement, may transfer up to a total of 18 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available.

(a) *Application of sections in subpart K to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.7020—Definitions.

(Authority: 38 U.S.C. 3020)

(2) *Claims and Applications.* Section 21.7030—Applications, claims, and time limits.

(Authority: 38 U.S.C. 3020)

(3) *Eligibility.* (i) Section 21.7050—Ending dates of eligibility, only paragraphs (h) and (i); and

(ii) Section 21.7051—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3020)

(4) *Entitlement.* (i) Section 21.7070—Entitlement;

(ii) Section 21.7075—Entitlement to tuition assistance top-up; and

(iii) Section 21.7076—Entitlement charges.

(Authority: 38 U.S.C. 3020)

(5) *Counseling.* (i) Section 21.7100—Counseling; and

(ii) Section 21.7103—Travel expenses.

(Authority: 38 U.S.C. 3020)

(6) *Programs of Education.* (i) Section 21.7110—Selection of program of education;

(ii) Section 21.7112—Programs of education combining two or more types of courses; and

(iii) Section 21.7114—Change of program.

(Authority: 38 U.S.C. 3020)

(7) *Courses.* (i) Section 21.7120—Courses included in programs of education;

(ii) Section 21.7122—Courses precluded; and

(iii) Section 21.7124—Overcharges.

(Authority: 38 U.S.C. 3020)

(8) *Payments—Educational Assistance.* (i) Section 21.7130—Educational Assistance;

(ii) Section 21.7131—Commencing dates, except for paragraphs (d), (g), (l), (m), (n), (o), and (p) of § 21.7131;

(iii) Section 21.7133—Suspension or discontinuance of payments;

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(iv) Section 21.7135—Discontinuance dates, except for paragraphs (q), (s) and (u) of § 21.7135;

(v) Section 21.7139—Conditions which result in reduced rates or no payment, except for paragraph (c) of § 21.7139. VA will apply the rules in paragraph (d) of § 21.7139 to dependents, who are on active duty;

(vi) Section 21.7140—Certifications and release of payments;

(vii) Section 21.7141—Tutorial assistance;

(viii) Section 21.7142—Accelerated payments;

(ix) Section 21.7143—Nonduplication of educational assistance; and

(x) Section 21.7144—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent.

(Authority: 38 U.S.C. 3020)

(9) *Pursuit of courses.* (i) Section 21.7150—Pursuit;

(ii) Section 21.7151—Advance payment and accelerated payment certifications;

(iii) Section 21.7152—Certification of enrollment;

(iv) Section 21.7153—Progress and conduct;

(v) Section 21.7154—Pursuit and absences;

(vi) Section 21.7156—Other required reports;

(vii) Section 21.7158—False, late, or missing reports; and

(viii) Section 21.7159—Reporting fee.

(Authority: 38 U.S.C. 3020)

(10) *Course Assessment.* (i) Section 21.7170—Course measurement; and

(ii) Section 21.7172—Measurement of concurrent enrollments.

(Authority: 38 U.S.C. 3020)

(11) *State approving agencies.* Section 21.7200—State approving agencies.

(Authority: 38 U.S.C. 3020)

(12) *Approval of courses.* (i) Section 21.7220—Course approval; and

(ii) Section 21.7222—Courses and enrollments which may not be approved.

(Authority: 38 U.S.C. 3020)

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(13) *Administrative.* (i) Section 21.7301—Delegations of authority;

(ii) Section 21.7302—Finality of decisions;

(iii) Section 21.7303—Revision of decisions;

(iv) Section 21.7305—Conflicting interests;

(v) Section 21.7307—Examination of records;

(vi) Section 21.7310—Civil rights; and

(vii) Section 21.7320—Procedural protection; reduction following loss of dependent.

(Authority: 38 U.S.C. 3020)

(b) *Proof of transfer of entitlement option.* An individual transferring entitlement, or the dependent to whom entitlement is transferred, must submit to VA—

(1) A copy of DD Form 2366–2, entitled “Montgomery GI Bill Act of 1984 (MGIB) Transferability Program”; or

(2) Any other document issued and signed by the transferor’s service department that shows the transferor is authorized to transfer entitlement.

(Authority: 38 U.S.C. 3020)

(c) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to—

(i) The individual’s spouse;

(ii) One or more of the individual’s children; or

(iii) A combination of the individuals referred to in paragraphs (c)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter.

(3) A child must meet the definition of child in § 3.57 of this chapter. The transferor must make the required designation shown in § 21.7080(e)(1) before the child attains age 23.

(4) A stepchild, who meets VA’s definition of child in § 3.57 of this chapter and is temporarily not living with the transferor, remains a member of the transferor’s household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3020)

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(d) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her service department to transfer entitlement may do so at any time after such approval up until the transferor's ending date of eligibility as determined under §21.7050.

(Authority: 38 U.S.C. 3020)

(e) *Designating dependents, designating the amount to transfer, and period of transfer.* (1) An individual transferring entitlement under this section must—

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on a copy of DD Form 2366-2, Montgomery GI Bill Act of 1984 Transferability Program, or on any document signed by the transferor that shows the information required in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(Authority: 38 U.S.C. 3020)

(f) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of—

(i) Eighteen months of his or her entitlement; or

(ii) The amount of entitlement he or she has available.

(2) Subject to the limitations in paragraph (f)(1) of this section, the transferor may transfer up to the maximum amount of transferable entitlement—

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3020)

(g) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially ap-

proved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the service department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3020)

(h) *Modifying a transfer of entitlement.*

(1) A transferor may modify the designations he or she made under paragraph (e) of this section at any time. Any modification made will apply only to any unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the service department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3020)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by the dependents.

(Authority: 38 U.S.C. 3020)

(j) *Secondary school diploma (or equivalency certificate).* Children, who have attained age 18, and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3020)

(k) *Rate of payment of educational assistance.* VA will apply the rules in §21.7136 or §21.7137 (and the rules in §21.7138 when applicable) to determine

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the educational assistance rate that would apply to the transferor. VA will pay the dependent the monthly rate of educational assistance that would be payable to the transferor except that VA will—

(1) Exclude the transferor's kicker for service in the Selected Reserve (§§21.7136(g) and 21.7137(e)) if the transferor is eligible for such kicker;

(2) Include the dependent's Selected Reserve kicker, if the dependent is eligible for a kicker from the Selected Reserve based on the dependent's own Selected Reserve service; and

(3) Disregard the fact that either the transferor or the dependent is on (or both are on) active duty and pay the veteran rate rather than the rate applicable to individuals on active duty.

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3020(h))

(1) *Restriction on payment of educational assistance to a dependent pursuing an on-the-job training or apprenticeship program while transferor is on active duty.* A dependent is not entitled to educational assistance for training pursued in an on-the-job training or apprenticeship program during periods the transferor is on active duty.

(Authority: 38 U.S.C. 3002(3), 3020(h))

(m) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) The dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of active duty service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless the transferor did not complete the active duty service due to—

- (i) His or her death;
- (ii) A service-connected disability;
- (iii) A medical condition which preexisted such service on active duty and which the Secretary of VA determines is not service-connected;
- (iv) A hardship; or
- (v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct, but that did interfere with the individual's performance of duty, as determined by

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the Secretary of each service department.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraphs (m)(1)(i) through (v) of this section.

(Authority: 38 U.S.C. 3020, 38 U.S.C. 3011(a)(1)(A)(ii))

(n) Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 30 based on his or her own active duty service. Dependents eligible for payment of educational assistance through transferred entitlement and who are eligible for payment under 38 U.S.C. chapter 30 based on their own active service—

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course.

(2) Are not subject to the 48 months limit on training provided for in §21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 30 as long as the only educational assistance paid is under 38 U.S.C. chapter 30. If the dependent is awarded educational assistance under another program listed in §21.4020 (other than 38 U.S.C. chapter 30), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3020, 3033, 3034(a), 3695)

[71 FR 75675, Dec. 18, 2006]

### COUNSELING

## §21.7100 Counseling.

A veteran or servicemember may receive counseling from VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is

- (1) To assist in selecting an objective;
- (2) To develop a suitable program of education;
- (3) To select an educational institution appropriate for the attainment of the educational objective;