

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Aug. 1, 2009, see section 5003(d) of Pub. L. 110-252, set out as an Effective Date of 2008 Amendment note under section 16163 of Title 10, Armed Forces.

§ 3319. Authority to transfer unused education benefits to family members

(a) IN GENERAL.—

(1) Subject to the provisions of this section, the Secretary concerned may permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).

(2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The Secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the national security interests of the United States.

(b) ELIGIBLE INDIVIDUALS.—An individual referred to in subsection (a) is any member of the uniformed services who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least—

(1) six years of service in the Armed Forces and enters into an agreement to serve at least four more years as a member of the uniformed services; or

(2) the years of service as determined in regulations pursuant to subsection (j).

(c) ELIGIBLE DEPENDENTS.—

(1) TRANSFER.—An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement to an eligible dependent or a combination of eligible dependents.

(2) DEFINITION OF ELIGIBLE DEPENDENT.—For purposes of this subsection, the term "eligible dependent" has the meaning given the term "dependent" under subparagraphs (A), (I), and (D) of section 1072(2) of title 10.

(d) LIMITATION ON MONTHS OF TRANSFER.—The total number of months of entitlement transferred by a individual under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

(e) DESIGNATION OF TRANSFEREE.—An individual transferring an entitlement to educational assistance under this section shall—

(1) designate the dependent or dependents to whom such entitlement is being transferred;

(2) designate the number of months of such entitlement to be transferred to each such dependent; and

(3) specify the period for which the transfer shall be effective for each dependent designated under paragraph (1).

(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—

(1) TIME FOR TRANSFER.—Subject to the time limitation for use of entitlement under section 3321, and except as provided in subsection (k) or (l), an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed.

(2) MODIFICATION OR REVOCATION.—

(A) IN GENERAL.—An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred.

(B) NOTICE.—The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) PROHIBITION ON TREATMENT OF TRANSFERRED ENTITLEMENT AS MARITAL PROPERTY.—Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to educational assistance is transferred under this section may not commence the use of the transferred entitlement until—

(1) in the case of entitlement transferred to a spouse, the completion by the individual making the transfer of at least—

(A) six years of service in the Armed Forces; or

(B) the years of service as determined in regulations pursuant to subsection (j); or

(2) in the case of entitlement transferred to a child, both—

(A) the completion by the individual making the transfer of at least—

(i) ten years of service in the Armed Forces; or

(ii) the years of service as determined in regulations pursuant to subsection (j); and

(B) either—

(i) the completion by the child of the requirements of a secondary school diploma (or equivalency certificate); or

(ii) the attainment by the child of 18 years of age.

(h) ADDITIONAL ADMINISTRATIVE MATTERS.—

(1) USE.—The use of any entitlement to educational assistance transferred under this section shall be charged against the entitlement of the individual making the transfer at the rate of one month for each month of transferred entitlement that is used.

(2) NATURE OF TRANSFERRED ENTITLEMENT.—Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6)—

(A) in the case of entitlement transferred to a spouse under this section, the spouse is entitled to educational assistance under this chapter in the same manner as the individual from whom the entitlement was transferred; or

(B) in the case of entitlement transferred to a child under this section, the child is en-

titled to educational assistance under this chapter in the same manner as the individual from whom the entitlement was transferred as if the individual were not on active duty.

(3) **RATE OF PAYMENT.**—The monthly rate of educational assistance payable to a dependent to whom entitlement referred to in paragraph (2) is transferred under this section shall be payable—

(A) in the case of a spouse, at the same rate as such entitlement would otherwise be payable under this chapter to the individual making the transfer; or

(B) in the case of a child, at the same rate as such entitlement would otherwise be payable under this chapter to the individual making the transfer as if the individual were not on active duty.

(4) **DEATH OF TRANSFEROR.**—The death of an individual transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) **LIMITATION ON AGE OF USE BY CHILD TRANSFEREES.**—

(A) **IN GENERAL.**—A child to whom entitlement is transferred under this section may use the benefits transferred without regard to the 15-year delimiting date specified in section 3321, but may not, except as provided in subparagraph (B),¹ use any benefits so transferred after attaining the age of 26 years.

(B) **PRIMARY CAREGIVERS OF SERIOUSLY INJURED MEMBERS OF THE ARMED FORCES AND VETERANS.**—

(i) **IN GENERAL.**—Subject to clause (ii), in the case of a child who, before attaining the age of 26 years, is prevented from pursuing a chosen program of education by reason of acting as the primary provider of personal care services for a veteran or member of the Armed Forces under section 1720G(a), the child may use the benefits beginning on the date specified in clause (iii) for a period whose length is specified in clause (iv).

(ii) **INAPPLICABILITY FOR REVOCATION.**—Clause (i) shall not apply with respect to the period of an individual as a primary provider of personal care services if the period concludes with the revocation of the individual's designation as such a primary provider under section 1720G(a)(7)(D).

(iii) **DATE FOR COMMENCEMENT OF USE.**—The date specified in this clause for the beginning of the use of benefits by a child under clause (i) is the later of—

(I) the date on which the child ceases acting as the primary provider of personal care services for the veteran or member concerned as described in clause (i);

(II) the date on which it is reasonably feasible, as determined under regulations prescribed by the Secretary, for the child

to initiate or resume the use of benefits; or

(III) the date on which the child attains the age of 26 years.

(iv) **LENGTH OF USE.**—The length of the period specified in this clause for the use of benefits by a child under clause (i) is the length equal to the length of the period that—

(I) begins on the date on which the child begins acting as the primary provider of personal care services for the veteran or member concerned as described in clause (i); and

(II) ends on the later of—

(aa) the date on which the child ceases acting as the primary provider of personal care services for the veteran or member as described in clause (i); or

(bb) the date on which it is reasonably feasible, as so determined, for the child to initiate or resume the use of benefits.

(6) **SCOPE OF USE BY TRANSFEREES.**—The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(7) **ADDITIONAL ADMINISTRATIVE PROVISIONS.**—The administrative provisions of this chapter shall apply to the use of entitlement transferred under this section, except that the dependent to whom the entitlement is transferred shall be treated as the eligible individual for purposes of such provisions.

(i) **OVERPAYMENT.**—

(1) **JOINT AND SEVERAL LIABILITY.**—In the event of an overpayment of educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685.

(2) **FAILURE TO COMPLETE SERVICE AGREEMENT.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(1) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance under paragraph (1).

(B) **EXCEPTION.**—Subparagraph (A) shall not apply in the case of an individual who fails to complete service agreed to by the individual—

(i) by reason of the death of the individual; or

(ii) for a reason referred to in section 3311(c)(4).

(j) **REGULATIONS.**—(1) The Secretary of Defense, in coordination with the Secretary of Vet-

¹ See Extension of Time Limitations for Use of Entitlement: Transfer Period note below.

erans Affairs, shall prescribe regulations for purposes of this section.

(2) Such regulations shall specify—

(A) the manner of authorizing the transfer of entitlements under this section;

(B) the eligibility criteria in accordance with subsection (b); and

(C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

(3) The Secretary of Defense may not prescribe any regulation that would provide for a limitation on eligibility to transfer unused education benefits to family members based on a maximum number of years of service in the Armed Forces.

(k) **ADDITIONAL TRANSFER UPON DEATH OF DEPENDENT.**—In the case of a dependent to whom entitlement to educational assistance is transferred under this section who dies before using all of such entitlement, the individual who transferred the entitlement to the dependent may transfer any remaining entitlement to a different eligible dependent, notwithstanding whether the individual is serving as a member of the Armed Forces when such transfer is executed.

(l) **TRANSFER BY DEPENDENT.**—In the case of an individual who transfers entitlement to educational assistance under this section who dies before the dependent to whom entitlement to educational assistance is so transferred has used all of such entitlement, such dependent may transfer such entitlement to another eligible dependent in accordance with the provisions of this section.

(Added Pub. L. 110-252, title V, § 5003(a)(1), June 30, 2008, 122 Stat. 2369; amended Pub. L. 111-275, title X, § 1001(g)(7), Oct. 13, 2010, 124 Stat. 2896; Pub. L. 111-377, title I, §§ 110(a), (b), 112(b), title II, § 201(b), Jan. 4, 2011, 124 Stat. 4120, 4122, 4123; Pub. L. 114-58, title VI, § 601(19), Sept. 30, 2015, 129 Stat. 539; Pub. L. 115-48, title I, § 110(a), Aug. 16, 2017, 131 Stat. 981; Pub. L. 116-92, div. A, title V, § 578, Dec. 20, 2019, 133 Stat. 1406; Pub. L. 116-315, title I, § 1011(a), Jan. 5, 2021, 134 Stat. 4941.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 116-315 amended subsec. (c) generally. Prior to amendment, text read as follows: “An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual’s entitlement as follows:

“(1) To the individual’s spouse.

“(2) To one or more of the individual’s children.

“(3) To a combination of the individuals referred to in paragraphs (1) and (2).”

2019—Subsec. (j)(3). Pub. L. 116-92 added par. (3).

2017—Subsec. (f)(1). Pub. L. 115-48, § 110(a)(1), inserted “, and except as provided in subsection (k) or (l),” after “section 3321”.

Subsecs. (k), (l). Pub. L. 115-48, § 110(a)(2), added subsecs. (k) and (l).

2015—Pub. L. 114-58 substituted “Armed Forces” for “armed forces” in subsecs. (b)(1), (f)(1), and (g)(1)(A), (2)(A)(i).

2011—Subsec. (a). Pub. L. 111-377, § 110(b), designated existing provisions as par. (1), substituted “Subject to the provisions of this section, the Secretary concerned

may permit” for “Subject to the provisions of this section, the Secretary of Defense may authorize the Secretary concerned, to promote recruitment and retention of members of the Armed Forces, to permit”, and added par. (2).

Subsec. (b). Pub. L. 111-377, § 110(a)(1), substituted “uniformed services” for “Armed Forces” in introductory provisions and par. (1).

Subsec. (b)(2). Pub. L. 111-377, § 112(b), which directed substitution of “to subsection (j)” for “to section (k)”, could not be executed because of prior amendment by Pub. L. 111-275. See 2010 Amendment note below.

Subsec. (h)(5). Pub. L. 111-377, § 201(b), amended par. (5) generally. Prior to amendment, text read as follows: “A child to whom entitlement is transferred under this section may use the benefit without regard to the 15-year delimiting date, but may not use any entitlement so transferred after attaining the age of 26 years.”

Subsec. (k). Pub. L. 111-377, § 110(a)(2), struck out subsec. (k). Text read as follows: “Notwithstanding section 101(25), in this section, the term ‘Secretary concerned’ means—

“(1) the Secretary of the Army with respect to matters concerning the Army;

“(2) the Secretary of the Navy with respect to matters concerning the Navy or the Marine Corps;

“(3) the Secretary of the Air Force with respect to matters concerning the Air Force; and

“(4) the Secretary of Defense with respect to matters concerning the Coast Guard, or the Secretary of Homeland Security when it is not operating as a service in the Navy.”

2010—Subsec. (b)(2). Pub. L. 111-275 substituted “subsection (j)” for “section (k)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-315, title I, § 1011(b), Jan. 5, 2021, 134 Stat. 4942, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to educational assistance payable under chapter 33 of title 38, United States Code, before, on, or after the date that is 90 days after the date of the enactment of this Act [Jan. 5, 2021].”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-48, title I, § 110(b), Aug. 16, 2017, 131 Stat. 981, provided that:

“(1) **ELIGIBLE DEATHS.**—The amendments made by this section [amending this section] shall apply with respect to deaths occurring on or after August 1, 2009.

“(2) **USE OF ENTITLEMENT.**—A dependent to whom entitlement to educational assistance is transferred under subsection (k) or (l) of section 3319 of title 38, United States Code, as added by subsection (a), may use such entitlement to pursue a course of education beginning on or after August 1, 2018.”

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-377, title I, § 110(c), Jan. 4, 2011, 124 Stat. 4120, provided that: “The amendments made by this section [amending this section] shall take effect on August 1, 2011.”

Amendment by section 201(b) of Pub. L. 111-377 effective Aug. 1, 2011, and applicable with respect to preventions and suspension of pursuit of programs of education that commence on or after that date, see section 201(d) of Pub. L. 111-377, set out as a note under section 3031 of this title.

EFFECTIVE DATE

Section effective Aug. 1, 2009, see section 5003(d) of Pub. L. 110-252, set out as an Effective Date of 2008 Amendment note under section 16163 of Title 10, Armed Forces.

EXTENSION OF TIME LIMITATIONS FOR USE OF ENTITLEMENT: TRANSFER PERIOD

Pub. L. 116-315, title I, § 1107(d)(2), Jan. 5, 2021, 134 Stat. 4966, provided that: “The subparagraph (C) tempo-

rarily added to section 3319(h)(5) of such title by section 6 of the Student Veteran Coronavirus Response Act of 2020 (Public Law 116-140) [set out as a note below] is amended by inserting 'or training establishment' after 'educational institution'."

Pub. L. 116-140, §6(b)(2), Apr. 28, 2020, 134 Stat. 633, provided that: "During the covered period, the Secretary of Veterans Affairs shall apply section 3319(h)(5) of such title as if it were amended—

"(A) in subparagraph (A) by inserting 'or (C)' after 'subparagraph (B)'; and

"(B) by adding at the end the following new subparagraph:

"(C) EMERGENCY SITUATIONS.—In any case in which the Secretary determines that an individual to whom entitlement is transferred under this section has been prevented from pursuing the individual's chosen program of education before the individual attains the age of 26 years because the educational institution closed (temporarily or permanently) under an established policy based on an Executive order of the President or due to an emergency situation, the Secretary shall extend the period during which the individual may use such entitlement for a period equal to the number of months that the individual was so prevented from pursuing the program of education, as determined by the Secretary."

[The term "covered period" as used in section 6(b)(2) of Pub. L. 116-140, set out above, means Mar. 1, 2020, to June 1, 2022, see section 2 of Pub. L. 116-140, set out as a note under section 3031 of this title.]

§ 3320. Edith Nourse Rogers STEM Scholarship

(a) IN GENERAL.—Subject to the limitation under subsection (f), the Secretary shall provide additional benefits to eligible individuals selected by the Secretary under this section. Such benefits shall be known as the "Edith Nourse Rogers STEM Scholarship".

(b) ELIGIBILITY.—For purposes of this section, an eligible individual is an individual—

(1) who is or was entitled to educational assistance under section 3311 of this title;

(2) who has used all of the educational assistance to which the individual is entitled under this chapter or will, based on the individual's rate of usage, use all of such assistance within 180 days of applying for benefits under this section;

(3) who applies for assistance under this section; and

(4) who—

(A) is an individual who—

(i) is enrolled in a program of education leading to a post-secondary degree that, in accordance with the guidelines of the applicable regional or national accrediting agency, requires at least the standard 120 semester (or 180 quarter) credit hours for completion in a standard, undergraduate college degree, or a dual degree program that includes such an undergraduate college degree, in—

(I) biological or biomedical science;

(II) physical science;

(III) science technologies or technicians;

(IV) computer and information science and support services;

(V) mathematics or statistics;

(VI) engineering;

(VII) engineering technologies or an engineering-related field;

(VIII) a health profession or related program;

(IX) an agriculture science program or a natural resources science program; or

(X) other subjects and fields identified by the Secretary as meeting national needs;

(ii) has completed at least 60 standard semester (or 90 quarter) credit hours in a field referred to in clause (i); or

(B) is an individual who has earned a post-secondary degree in a field referred to in subparagraph (A)(i) and is enrolled in a covered clinical training program for health care professionals or a program of education leading to a teaching certification; or

(C) is an individual who has earned a graduate degree in a field referred to in subparagraph (A)(i) and is enrolled in a covered clinical training program for health care professionals.

(c) PRIORITY.—(1) If the Secretary determines that there are insufficient funds available in a fiscal year to provide additional benefits under this section to all eligible individuals, the Secretary may give priority to the following eligible individuals:

(A) Individuals who require the most credit hours described in subsection (b)(4).

(B) Individuals who are entitled to educational assistance under this chapter by reason of paragraph (1), (2), (8), (9), (10), or (11) of section 3311(b) of this title.

(2) The Secretary shall give priority to individuals under paragraph (1) in the following order:

(A) Individuals who are enrolled in a program of education leading to an undergraduate degree in a field referred to in subsection (b)(4)(A)(i).

(B) Individuals who are enrolled in a program of education leading to a teaching certificate.

(C) Individuals who are enrolled in a dual-degree program leading to both an undergraduate and graduate degree in a field referred to in subsection (b)(4)(A)(i).

(D) Individuals who have earned an undergraduate degree and are enrolled in a covered clinical training program for health care professionals.

(E) Individuals who have earned a graduate degree and are enrolled in a covered clinical training program for health care professionals.

(d) AMOUNT OF ASSISTANCE.—(1) The Secretary shall pay to each eligible individual who receives additional benefits under this section the monthly amount payable under section 3313 of this title for not more than 9 months of the program of education in which the individual is enrolled (adjusted with respect to the individual pursuant to section 3313(c), as appropriate), except that the aggregate amount paid to an individual under this section may not exceed \$30,000.

(2) The Secretary may not pay to such an individual an amount in addition to the amount payable under paragraph (1) by reason of section 3317 of this title.

(3) An individual who receives additional benefits under this section may also receive amounts payable by a college or university pursuant to section 3317 of this title.