

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

(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a dependent to whom entitlement is transferred under this section is entitled to basic educational assistance under this chapter in the same manner as the member from whom the entitlement was transferred.

(3) The monthly rate of educational assistance payable to a dependent to whom entitlement is transferred under this section shall be the monthly amount payable under sections 16131 and 16131a to the member making the transfer.

(4) The death of a member transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) The involuntary separation or retirement of the member—

(A) because of a nondiscretionary provision of law for age or years of service;

(B) because of a policy prescribed by the Secretary concerned mandating such separation or retirement based solely on age or years of service for the prescribed pay grade of an enlisted member;

(C) under section 16133(b); or

(D) because of medical disqualification which is not the result of gross negligence or misconduct of the member,

shall not affect the use of entitlement by the dependent to whom the entitlement is transferred.

(6) A child to whom entitlement is transferred under this section may not use any entitlement

so transferred after attaining the age of 26 years.

(7) 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 member for purposes of such provisions.

(8) 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).

(i) OVERPAYMENT.—(1) In the event of an overpayment of basic educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the member making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of title 38.

(2) Except as provided in paragraph (3), if a member's eligibility is terminated under section 16134(2), the amount of any transferred entitlement under this section that is used by a dependent of the member as of the date of such termination shall be treated as an overpayment of basic educational assistance under paragraph (1).

(3) Paragraph (2) shall not apply in the case of a member who fails to complete service agreed to by the member—

(A) by reason of the death of the member; or

(B) for a reason referred to in section 16133(b).

(j) REGULATIONS.—The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section. Such regulations shall specify—

(1) the manner of authorizing the military departments to offer transfer of entitlements under this section;

(2) the eligibility criteria in accordance with subsection (b);

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

(4) the manner in which the provisions referred to in subsections (h)(4) and (5) shall be administered with respect to a dependent to whom entitlement is transferred under this section.

(Added Pub. L. 110-252, title V, § 5006(b), June 30, 2008, 122 Stat. 2381; amended Pub. L. 111-383, div. A, title X, § 1075(b)(55), Jan. 7, 2011, 124 Stat. 4372.)

Editorial Notes

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111-383, § 1075(b)(55)(A), substituted “agreement to serve” for “agreement to service”.

Subsec. (i)(2). Pub. L. 111-383, § 1075(b)(55)(B), struck out “whose” after “member’s”.

§ 16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to edu-

cational assistance under this chapter may use such person's entitlement expires on the date the person is separated from the Selected Reserve.

(b)(1) In the case of a person—

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, or the period beginning on October 1, 2007, and ending on September 30, 2014, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, 12304, 12304a, or 12304b of this title—

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

(5) In any case in which the Secretary concerned determines that a person entitled to educational assistance under this chapter has been prevented from using such person's entitlement due to an emergency situation, the Secretary concerned shall extend the period of entitlement prescribed in subsection (a) for a period equal to the number of months that the person was so prevented from using such entitlement, as determined by the Secretary.

(c) In this section, the term "emergency situation" has the meaning given such term in section 3601 of title 38.

(Added Pub. L. 95-79, title IV, § 402(a), July 30, 1977, 91 Stat. 329, § 2133; amended Pub. L. 96-107, title IV, § 402(b), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96-513, title V, § 511(70), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100-456, div. A, title XII, § 1233(g)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 100-689, title I, § 111(b)(5), Nov. 18, 1988, 102 Stat. 4173; Pub. L. 102-127, § 3, Oct. 10, 1991, 105

Stat. 622; Pub. L. 102-484, div. D, title XLIV, § 4419(a), Oct. 23, 1992, 106 Stat. 2717; Pub. L. 102-568, title III, § 320(a)(2), Oct. 29, 1992, 106 Stat. 4335; Pub. L. 103-160, div. A, title V, § 561(m), Nov. 30, 1993, 107 Stat. 1668; renumbered § 16133 and amended Pub. L. 103-337, div. A, title XVI, § 1663(b)(2), (5), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 105-85, div. A, title V, § 553(b), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105-261, div. A, title V, § 561(q), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106-398, § 1 [[div. A], title V, § 571(p)], Oct. 30, 2000, 114 Stat. 1654, 1654A-135; Pub. L. 107-314, div. A, title VI, § 641(a), Dec. 2, 2002, 116 Stat. 2576; Pub. L. 110-181, div. A, title V, § 529, Jan. 28, 2008, 122 Stat. 110; Pub. L. 110-252, title V, § 5006(d), June 30, 2008, 122 Stat. 2386; Pub. L. 114-315, title IV, § 416(b), Dec. 16, 2016, 130 Stat. 1565; Pub. L. 117-333, § 3(d), (e)(4), Jan. 5, 2023, 136 Stat. 6127, 6128.)

Editorial Notes

AMENDMENTS

2023—Subsec. (b)(5). Pub. L. 117-333, § 3(d), added par. (5).

Subsec. (c). Pub. L. 117-333, § 3(e)(4), added subsec. (c). 2016—Subsec. (b)(4). Pub. L. 114-315 substituted "12304, 12304a, or 12304b" for "or 12304" in introductory provisions.

2008—Subsec. (a). Pub. L. 110-252 substituted "on the date the person is separated from the Selected Reserve," for "(1) at the end of the 14-year period beginning on the date on which such person becomes entitled to such assistance, or (2) on the date the person is separated from the Selected Reserve, whichever occurs first."

Subsec. (b)(1)(B). Pub. L. 110-181 inserted "or the period beginning on October 1, 2007, and ending on September 30, 2014," after "December 31, 2001,".

2002—Subsec. (a)(1). Pub. L. 107-314 substituted "14-year" for "10-year".

2000—Subsec. (b)(1)(B). Pub. L. 106-398 substituted "December 31, 2001" for "September 30, 2001".

1998—Subsec. (b)(1)(B). Pub. L. 105-261 substituted "September 30, 2001" for "September 30, 1999".

1997—Subsec. (b)(4). Pub. L. 105-85 struck out "(A)" before "In the case of", redesignated clis. (i) and (ii) as subpars. (A) and (B), respectively, struck out ", during the Persian Gulf War," after "Ready Reserve who", and struck out former subpar. (B) which read as follows: "For the purposes of this paragraph, the term 'Persian Gulf War' shall have the meaning given such term in section 101(33) of title 38."

1994—Pub. L. 103-337, § 1663(b)(2), renumbered section 2133 of this title as this section.

Subsec. (b)(1)(B). Pub. L. 103-337, § 1663(b)(5)(A), substituted "10143(a)" for "268(b)".

Subsec. (b)(4)(A). Pub. L. 103-337, § 1663(b)(5)(B), substituted "12301(a), 12301(d), 12301(g), 12302, or 12304" for "672(a), (d), or (g), 673, or 673b".

1993—Subsec. (b)(1)(B). Pub. L. 103-160 substituted "September 30, 1999" for "September 30, 1995".

1992—Subsec. (b)(1). Pub. L. 102-484 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of a person separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection."

Subsec. (b)(2), (3). Pub. L. 102-568 substituted "section 3031(f) of title 38" for "section 1431(f) of title 38" in par. (2) and "section 3031(d) of title 38" for "section 1431(d) of title 38" in par. (3).

1991—Subsec. (b)(4). Pub. L. 102-127 added par. (4).

1988—Subsec. (a). Pub. L. 100-689, § 111(b)(5)(A), substituted “chapter” for “section”.

Subsec. (b). Pub. L. 100-689, § 111(b)(5)(B), added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and directed the substitution of “1431(f)” for “1431(e)” in par. (2) as redesignated, which could not be executed because such substitution was previously made by Pub. L. 100-456, prior to redesignation of par. (1) as (2), see below.

Pub. L. 100-456 substituted “section 1431(f)” for “section 1431(e)” in par. (1).

1984—Pub. L. 98-525 amended section generally, substituting provisions setting a time limit for the use of educational entitlement for provisions covering the termination of assistance and refund by members. See section 2134 of this title.

1980—Subsec. (a). Pub. L. 96-513 inserted “of this title” after “2131” and “2107”.

1979—Subsec. (b). Pub. L. 96-107 redesignated existing provisions as par. (1), inserted provisions respecting agreement for term of enlistment, substituted provisions relating to computation under par. (2) for provisions relating to computation under section 2131, and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VI, § 641(b), Dec. 2, 2002, 116 Stat. 2577, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to periods of entitlement to educational assistance under chapter 1606 of title 10, United States Code, that begin on or after October 1, 1992.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-107 applicable only to individuals enlisting in the Reserves after Sept. 30, 1979, see section 402(c) of Pub. L. 96-107, set out as a note under section 16131 of this title.

EXTENSION OF TIME LIMITATIONS FOR USE OF ENTITLEMENT: EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Pub. L. 116-140, § 6(d), Apr. 28, 2020, 134 Stat. 634, which provided for a temporary extension to use entitled educational assistance, was repealed by Pub. L. 117-333, § 3(f), Jan. 5, 2023, 136 Stat. 6128. See subsec. (b)(5) of this section.

§ 16134. Termination of assistance

Educational assistance may not be provided under this chapter—

(1) to a member receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers’ Training Corps program; or

(2) to a member who fails to participate satisfactorily in required training as a member of the Selected Reserve.

(Added Pub. L. 95-79, title IV, § 402(a), July 30, 1977, 91 Stat. 330, § 2134; amended Pub. L. 98-94, title XII, § 1268(14), Sept. 24, 1983, 97 Stat. 707; Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; renumbered § 16134, Pub. L. 103-337, div. A, title XVI, § 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.)

Editorial Notes

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2134 of this title as this section.

1984—Pub. L. 98-525 amended section generally, substituting provisions covering termination of educational assistance for provisions relating to reports to Congress. See section 16137 of this title.

1983—Pub. L. 98-94 struck out provision requiring the first report under this section to be submitted not later than Dec. 31, 1977.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 of this title.

§ 16135. Failure to participate satisfactorily; penalties

(a) PENALTIES.—At the option of the Secretary concerned, a member of the Selected Reserve of an armed force who does not participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter, and during which the member has received such assistance, may—

(1) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 16132 of this title, whichever is less; or

(2) be subject to the repayment provisions under section 303a(e) or 373 of title 37.

(b) EFFECT OF REPAYMENT.—Any repayment under section 303a(e) or 373 of title 37 shall not affect the period of obligation of a member to serve as a Reserve in the Selected Reserve.

(Added Pub. L. 95-79, title IV, § 402(a), July 30, 1977, 91 Stat. 330, § 2135; amended Pub. L. 95-485, title IV, § 402(b), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96-342, title IX, § 906(b), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100-689, title I, § 111(b)(6), Nov. 18, 1988, 102 Stat. 4173; renumbered § 16135 and amended Pub. L. 103-337, div. A, title XVI, § 1663(b)(2), (6), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104-106, div. A, title XV, § 1501(b)(35), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107-314, div. A, title VI, § 642, Dec. 2, 2002, 116 Stat. 2577; Pub. L. 109-163, div. A, title VI, § 687(c)(12), Jan. 6, 2006, 119 Stat. 3335; Pub. L. 115-91, div. A, title VI, § 618(a)(1)(N), Dec. 12, 2017, 131 Stat. 1426.)

Editorial Notes

AMENDMENTS

2017—Subsecs. (a)(2), (b). Pub. L. 115-91 inserted “or 373” before “of title 37”.