

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 110-181, div. A, title V, § 528(b)(3), Jan. 28, 2008, 122 Stat. 109, provided that: “The amendments made by this subsection [enacting this section] shall take effect on October 1, 2008, and shall only apply to initial enrollments in approved programs of education after such date.”

§ 16163. Eligibility for educational assistance

(a) **ELIGIBILITY.**—On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter if the member—

(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or

(2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(b) **DISABLED MEMBERS.**—Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.

(c) **WRITTEN NOTIFICATION.**—(1) Each member who becomes entitled to educational assistance under subsection (a) shall be given a statement in writing prior to release from active service that summarizes the provisions of this chapter and stating clearly and prominently the substance of section 16165 of this title as such section may apply to the member.

(2) At the request of the Secretary of Veterans Affairs, the Secretary concerned shall transmit a notice of entitlement for each such member to that Secretary.

(d) **BAR FROM DUAL ELIGIBILITY.**—A member who qualifies for educational assistance under this chapter may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall make an irrevocable election (in such form and manner as the Secretary of Veterans Affairs may prescribe) as to the program to which such service is to be credited.

(e) **BAR FROM DUPLICATION OF EDUCATIONAL ASSISTANCE ALLOWANCE.**—(1) Except as provided in paragraph (2), an individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 1606 of this title, chapter 30, 31, 32, 33, or 35 of title 38, or under the Hostage Relief Act of 1980 (Public Law 96-449; 5 U.S.C. 5561 note) may not receive assistance under more than one such program and shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) under which program the member elects to receive educational assistance.

(2) The restriction on duplication of educational assistance under paragraph (1) does not apply to the entitlement of educational assistance under section 16131(i) of this title.

(Added Pub. L. 108-375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1892; amended Pub. L. 109-163, div. A, title V, § 540(a), Jan. 6, 2006, 119 Stat. 3251; Pub. L. 110-252, title V, § 5003(b)(1)(C), June 30, 2008, 122 Stat. 2375; Pub. L. 111-84, div. A, title X, § 1073(a)(36), Oct. 28, 2009, 123 Stat. 2474.)

Editorial Notes

REFERENCES IN TEXT

The Hostage Relief Act of 1980, referred to in subsec. (e)(1), is Pub. L. 96-449, Oct. 14, 1980, 94 Stat. 1967, as amended, which was formerly set out as a note under section 5561 of Title 5, Government Organization and Employees.

AMENDMENTS

2009—Subsec. (e)(1). Pub. L. 111-84 substituted “such program” for “such programs”.

2008—Subsec. (e)(1). Pub. L. 110-252 inserted “33,” after “32.”

2006—Subsec. (e)(1). Pub. L. 109-163 substituted “Secretary of Veterans Affairs” for “Secretary concerned”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-252, title V, § 5003(d), June 30, 2008, 122 Stat. 2378, provided that: “This section [enacting chapter 33 of Title 38, Veterans’ Benefits, amending this section and sections 3033, 3485, 3688 to 3690, 3692, 3695, 3697, and 3697A of Title 38, and enacting provisions set out as a note under section 3301 of Title 38] and the amendments made by this section shall take effect on August 1, 2009.”

§ 16163a. Authority to transfer unused education benefits to family members

(a) **IN GENERAL.**—Subject to the provisions of this section, the Secretary concerned may permit, at such Secretary’s sole discretion, a member described in subsection (b) who is entitled to basic educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such member’s entitlement to such assistance, subject to the limitation under subsection (d).

(b) **ELIGIBLE MEMBERS.**—A member referred to in subsection (a) is a member of the armed forces who, at the time of the approval of the member’s request to transfer entitlement to basic 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 armed forces; or

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

(c) **ELIGIBLE DEPENDENTS.**—A member approved to transfer an entitlement to basic educational assistance under this section may transfer the member’s entitlement as follows:

(1) To the member’s spouse.

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

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

(d) **LIMITATION ON MONTHS OF TRANSFER.**—The total number of months of entitlement transferred by a member 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.**—A member transferring an entitlement to basic 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) Subject to the time limitation for use of entitlement under section 16164, a member approved to transfer entitlement to basic 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) A member transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. 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) 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 mem-

ber 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 16162 and 16162a 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) Notwithstanding section 16164(a)(2), a child to whom entitlement is transferred under this section may use the benefit without regard to the 10-year delimiting date, but may not use any entitlement so transferred after attaining the age of 26 years.

(6) 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.

(7) 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) **JOINT AND SEVERAL LIABILITY.**—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) **FAILURE TO COMPLETE SERVICE AGREEMENT.**—Except as provided in paragraph (3), 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).

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

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

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

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

(k) SECRETARY CONCERNED DEFINED.—For purposes of this section, the term “Secretary concerned” has the meaning given in section 101(a)(9) in the case of a member of the armed forces.

(Added Pub. L. 110-252, title V, § 5006(c), June 30, 2008, 122 Stat. 2383; amended Pub. L. 111-383, div. A, title X, § 1075(b)(56), Jan. 7, 2011, 124 Stat. 4372.)

Editorial Notes

AMENDMENTS

2011—Subsec. (b)(2). Pub. L. 111-383 substituted “subsection (j)” for “section (j)”.

§ 16164. Time limitation for use of entitlement

(a) DURATION OF ENTITLEMENT.—Except as provided in subsection (b), a member remains entitled to educational assistance under this chapter—

(1) while the member is serving—

(A) in the Selected Reserve of the Ready Reserve, in the case of a member called or ordered to active service while serving in the Selected Reserve; or

(B) in the Ready Reserve, in the case of a member ordered to active duty while serving in the Ready Reserve (other than the Selected Reserve); and

(2) in the case of a person who separates from the Selected Reserve of the Ready Reserve after completion of a period of active service described in section 16163 of this title and completion of a service contract under honorable conditions, during the 10-year period beginning on the date on which the person separates from the Selected Reserve.

(b) DURATION OF ENTITLEMENT FOR DISABLED MEMBERS.—(1) In the case of a person who is separated from the Ready 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, such person’s entitlement to educational assistance expires at the end of the 10-year period beginning on the date on which such person became entitled to such assistance.

(2) The provisions of subsections (d) and (f) of section 3031 of title 38 shall apply to the period of entitlement prescribed by paragraph (1).

(Added Pub. L. 108-375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1892; amended Pub. L. 110-181, div. A, title V, § 530(a)(1), Jan. 28, 2008, 122 Stat. 110; Pub. L. 110-417, [div. A], title V, § 546(a), Oct. 14, 2008, 122 Stat. 4466.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 substituted “this chapter—” and pars. (1) and (2) for “this chapter while serving—

“(1) in the Selected Reserve of the Ready Reserve, in the case of a member called or ordered to active service while serving in the Selected Reserve; or

“(2) in the Ready Reserve, in the case of a member ordered to active duty while serving in the Ready Reserve (other than the Selected Reserve).”

Subsec. (a)(2). Pub. L. 110-417 substituted “honorable conditions” for “other than dishonorable conditions”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-417, [div. A], title V, § 546(b), Oct. 14, 2008, 122 Stat. 4466, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 14, 2008] and shall apply to a person described in section 16163 of title 10, United States Code, who—

“(1) separates from a reserve component on or after January 28, 2008, the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110-181]; and

“(2) as of the date of the enactment of this Act, has not used any of the person’s entitlement to educational assistance under chapter 1607 of such title.”

Pub. L. 110-181, div. A, title V, § 530(c), Jan. 28, 2008, 122 Stat. 110, provided that: “The amendments made by this section [amending this section and section 16165 of this title] shall take effect as of October 28, 2004, as if included in the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375), to which such amendments relate.”

§ 16165. Termination of assistance

(a) IN GENERAL.—Except as provided in subsection (b), educational assistance may not be provided under this chapter, or if being provided under this chapter, shall be terminated—

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

(2) when the member separates from the Ready Reserve as provided in section 16164(a)(1) of this title, or upon completion of the period provided for in section 16164(a)(2) of this title, as applicable.

(b) EXCEPTION.—Under regulations prescribed by the Secretary of Defense, educational assistance may be provided under this chapter to a member of the Selected Reserve of the Ready Reserve who incurs a break in service in the Selected Reserve if the member continues to serve in the Ready Reserve during and after such break in service.

(Added Pub. L. 108-375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1893; amended Pub. L. 109-163, div. A, title V, § 540(b), Jan. 6, 2006, 119 Stat. 3251; Pub. L. 110-181, div. A, title V, § 530(a)(2), (b), Jan. 28, 2008, 122 Stat. 110.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-181, § 530(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “when the member separates from the Ready Reserve, as provided for under section 16164(a)(1) or section 16164(a)(2), as applicable, of this title.”

Subsec. (b). Pub. L. 110-181, § 530(b), struck out “of not more than 90 days” after “in the Selected Reserve”.

2006—Pub. L. 109-163 designated existing provisions as subsec. (a), inserted heading, substituted “Except as