

## § 21.5022

(y) *Alternative teacher certification program.* The term *alternative teacher certification program* for the purposes of determining whether an entity offering such a program is a school, educational institution or institution, as defined in paragraph (d)(3) of this section, means a program leading to a teacher certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 38 U.S.C. 3202(2), 3452(c))

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51743, Nov. 17, 1982; 52 FR 3429, Feb. 4, 1987; 53 FR 34495, Sept. 7, 1988; 55 FR 31581, Aug. 3, 1990; 57 FR 38614, Aug. 26, 1992; 58 FR 34369, June 25, 1993; 61 FR 1526, Jan. 22, 1996; 65 FR 5786, Feb. 7, 2000]

### § 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* An individual may not receive educational assistance under 38 U.S.C. Chapter 32 concurrently with benefits under any of the following provisions of law:

- (1) 38 U.S.C. Chapter 31;
- (2) 38 U.S.C. Chapter 35;
- (3) 10 U.S.C. Chapter 107;
- (4) 10 U.S.C. Chapter 1606;
- (5) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note); or
- (6) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681(b))

(b) *Total eligibility under more than one program.* (1) No one may receive a combination of educational assistance benefits under 38 U.S.C. Chapter 32 and any of the following provisions of law for more than 48 months (or part-time equivalent):

- (i) 38 U.S.C. Chapter 30;
- (ii) 38 U.S.C. Chapter 35;
- (iii) 10 U.S.C. Chapter 107;
- (iv) 10 U.S.C. Chapter 1606;
- (v) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note);
- (vi) The Hostage Relief Act of 1980 (5 U.S.C. 5561 note); or
- (vii) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

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(2) No one may receive assistance under 38 U.S.C. Chapter 31 in combination with assistance under 38 U.S.C. Chapter 32 in excess of 48 months (or the part-time equivalent) unless VA determines that additional months of benefits under 38 U.S.C. Chapter 31 are necessary to accomplish the purposes of a rehabilitation program.

(Authority: 38 U.S.C. 3231, 3695)

[51 FR 12852, Apr. 16, 1986; 51 FR 16517, May 5, 1986, as amended at 53 FR 34495, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 29029, June 7, 1996]

### § 21.5023 Nonduplication; Federal programs.

An individual may not receive educational assistance allowance under 38 U.S.C. Chapter 32, if the individual is:

(a) On active duty and is pursuing a course of education which is being paid for, in whole or in part, by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or

(Authority: 38 U.S.C. 3241, 3681)

(b) Attending a course of education or training paid for, in whole or in part, under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3241, 3681)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51744, Nov. 17, 1982; 61 FR 7217, Feb. 27, 1996]

## CLAIMS AND APPLICATIONS

### § 21.5030 Applications, claims, and time limits.

(a) To become a participant an individual must apply to his or her Service Department on forms prescribed by the Service Department and/or the Secretary of Defense.

(b) Rules and regulations of the applicable Service Department and/or the Department of Defense shall determine if the application is timely.

(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

- (1) Section 21.1029—Definitions.
- (2) Section 21.1030—Claims.
- (3) Section 21.1031—VA responsibilities when a claim is filed.

## Department of Veterans Affairs

## § 21.5040

### (4) Section 21.1032—Time Limits

(Authority: 38 U.S.C. 3232, 3241, 3471; Pub. L. 94-502, Pub. L. 99-576)

[45 FR 31, Jan. 2, 1980, as amended at 48 FR 3368, Jan. 25, 1983; 53 FR 34495, Sept. 7, 1988; 64 FR 23772, May 4, 1999]

#### ELIGIBILITY

### § 21.5040 Basic eligibility.

(a) *Individuals not on active duty.* Whether an individual has basic eligibility under 38 U.S.C. Chapter 32 for educational assistance depends upon when he or she entered the military service, the length of that service, and the character of that service.

(Authority: 38 U.S.C. 3202).

(b) *Service requirements for all individuals not on active duty.* (1) An individual not on active duty:

(i) Must have entered the military service after December 31, 1976, and before July 1, 1985;

(Authority: 38 U.S.C. 3202, Pub. L. 99-576)

(ii) Must not have and except as provided in paragraph (g) of this section must not have had basic eligibility under 38 U.S.C. Chapter 34;

(iii) Must have received an unconditional discharge or release under conditions other than dishonorable from any period of service upon which eligibility is based;

(iv) Must either have:

(A) Served on active duty for a least 181 continuous days, or

(B) Been discharged or released from active duty for a service-connected disability.

(2) The Department of Veterans Affairs will consider that the veteran has an unconditional discharge or release if:

(i) The individual was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met.

(3) The provisions of § 3.12 of this chapter as to character of discharge and § 3.13 of this chapter as to conditional discharges are applicable.

(Authority: 38 U.S.C. 3202)

(c) *Additional active duty service requirements for some individuals not on active duty—Chapter 32.* (1) Unless exempted by paragraph (d) of this section, persons who originally enlist in a regular component of the Armed Forces after September 7, 1980, or who enter on active duty after October 16, 1981 (either as an enlisted member or an officer) to be eligible under 38 U.S.C. Chapter 32, must first complete the shorter of:

(i) 24 continuous months of active duty, or

(ii) The full period for which the individual was called or ordered to active duty.

(2) For the purpose of paragraph (c)(1) of this section the Department of Veterans Affairs considers that an enlisted person originally enlisted in a regular component of the Armed Forces on the date he or she entered on active duty even through he or she may have signed a delayed-entry contract on an earlier date.

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to credit for service as specified in § 3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(d) *Individuals exempt from additional active duty requirements.* (1) An individual who originally enlists in a regular component of the Armed Forces after September 7, 1980, or who enters on active duty after October 16, 1981 (either as an enlisted member or officer), will be eligible to receive benefits under 38 U.S.C. Chapter 32 based upon the ensuing period of active duty, and is exempt from the provisions of paragraph (c) of this section if he or she subsequently:

(i) Is discharged or released from active duty:

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or