

Department of Veterans Affairs

§ 21.5042

Chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 1606, but based upon a period of service which preceded the period for which an election was made, will not serve to make the election irrevocable.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101-237)
[48 FR 36577, Aug. 12, 1983, as amended at 51 FR 12852, Apr. 16, 1986; 53 FR 34496, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 20728, May 8, 1996; 61 FR 29029, June 7, 1996]

§ 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:

- (1) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or
- (2) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released—
 - (i) For a service-connected disability;
 - (ii) For a medical condition which preexisted such service and which VA determines is not service-connected;
 - (iii) For hardship; or
 - (iv) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3231; Pub. L. 94-502, Pub. L. 99-576, Pub. L. 101-237)

(b) *Use of entitlement.* The individual—

- (1) May use his or her entitlement at anytime during the 10-year period after the last discharge or release from active duty or other period as provided pursuant to § 21.5042 of this part;

(2) Is not required to use his or her entitlement in consecutive months.

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

[53 FR 34496, Sept. 7, 1988, as amended at 57 FR 38614, Aug. 26, 1992]

§ 21.5042 Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.5041 of this part provided—

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See § 21.5021(v).

(Authority: 38 U.S.C. 105, 3232, 3462; Pub. L. 99-576, Pub. L. 100-689)

(b) *Application.* The veteran must apply for the extended period of eligibility in time for VA to receive the application by the later of the following dates:

(1) One year from the last date of the delimiting period otherwise applicable to the veteran under § 21.5401 of this part, or

(2) One year from the termination date of the period of the veteran's mental or physical disability.

(Authority: 38 U.S.C. 3232, Pub. L. 99-576)

(c) *Qualifying period of disability.* (1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined