

**§ 21.5294**

**38 CFR Ch. I (7-1-04 Edition)**

(e) *Application of sections to this portion of the pilot program.* (1) The following sections apply to this portion of the pilot program with amendments as noted:

(i) In §21.5021(e) a participant includes someone whose contributions are being made by the Secretary of Defense.

(ii) In §21.5052(b) the Secretary of Defense may make contributions to the fund and may designate the amount of the contribution.

(iii) In §21.5052(d) the Secretary of Defense may increase or decrease the amount of the contribution.

(iv) In §§21.5064 and 21.5065 monthly contributions made by the Secretary of Defense will be returned to him or her instead of being refunded to the veteran.

(v) In §21.5071 the Department of Veterans Affairs will also credit the individual with 1 month of entitlement for each month the Secretary of Defense contributes to the fund on his or her behalf.

(vi) In §21.5138 the references to the individual's contributions include those contributions made on the individual's behalf by the Secretary of Defense.

(2) Except as amended in paragraph (e)(1) of this section §§21.5001 through 21.5041 and §§21.5050 through 21.5270 apply without change to this portion of the pilot program. See §21.5296.

(Authority: Pub. L., 96-342, sec. 903; 38 U.S.C. 3232, 3698(a)(2); Pub. L. 97-35, Pub. L. 99-576)

[47 FR 51747, Nov. 17, 1982, as amended at 49 FR 2109, Jan. 18, 1984; 53 FR 34499, Sept. 7, 1988; 61 FR 29030, June 7, 1996]

**§ 21.5294 Transfer of entitlement.**

(a) *Qualifying for a transfer of entitlement.* Some participants may transfer their entitlement to their spouse or child. To qualify for this portion of the pilot program the individual must:

(1) After June 30, 1981 and before October 1, 1981, reenlist in the Army;

(2) Be a participant;

(3) Possess a critical military specialty as determined by the Secretary of Defense; and

(4) Be chosen for his portion of the pilot program by the Secretary of Defense or his or her designee.

(Authority: Sec. 903, Pub. L. 96-342; 94 Stat. 1115)

(b) *Persons who may receive transferred entitlement.* An individual meeting the requirements of paragraph (a) of this section may transfer entitlement earned under §21.5071 for the purpose of allowing another person to receive educational assistance allowance. Entitlement may be transferred only:

(1) To a spouse or child of the participant,

(2) To one person at a time,

(3) If the participant is not receiving educational assistance allowance, and

(4) When the participant states in writing to the Department of Veterans Affairs that the entitlement should be transferred.

(Authority: Sec. 903(c), Pub. L. 96-342, 94 Stat. 1115)

(c) *Educational assistance allowance.*

(1) The individual must specify in writing to the Department of Veterans Affairs the period of time he or she wishes the spouse or child to receive educational assistance allowance on the basis of the transfer of entitlement. The Department of Veterans Affairs will not pay educational assistance allowance to a spouse or child for training completed either before or after the period specified by the participant.

(2) The commencing date of an award of educational assistance allowance to a spouse or child will be the earlier of the following dates:

(i) The date of the spouse's or child's entrance or reentrance under §21.4131;

(ii) The first day of the period authorized by the participant for the transfer of entitlement.

(3) The ending date of an award of educational assistance allowance to a spouse or child will be the earliest of the following dates:

(i) The ending date of the spouse's or child's course or period of enrollment as certified by the school or training establishment;

(Authority: 38 U.S.C. 3233; Pub. L. 99-576)

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(ii) The ending date of the participant's eligibility as determined under § 21.5041;

(iii) The ending date specified in § 21.4135;

(iv) The date of the death of the participant on whom the spouse's or child's entitlement is based;

(v) The last day of the period authorized by the participant for the transfer of entitlement.

(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

(d) *Application of VA regulations to this portion of the pilot program.*

(1) Sections 21.5030 (a) and (b), 21.5040, 21.5041 and 21.5050 through 21.5067 and § 21.5145 apply to the individual who is participating in this portion of the pilot program, but they do not apply to the individual's spouse or child, per se.

(Authority: Pub. L. 96-342, sec. 903; Pub. L. 99-576)

(2) The following sections apply to this portion of the pilot program with amendments as noted:

(i) In § 21.5022 the entitlement used by the spouse or child counts toward the 48-month limitation on receiving benefits under more than one program which is imposed on the individual.

(ii) In § 21.5072 the charge against the individual's entitlement will be made on the basis of payments made to the individual's spouse or child.

(iii) In § 21.5100 the individual's spouse or child may request counseling, but an incompetent spouse or child is not required to be counseled before selecting a program of education.

(Authority: Pub. L. 96-342, sec. 903, Pub. L. 97-306, Pub. L. 99-576)

(iv) In §§ 21.5132 through 21.5138 references to payment to the individual apply equally to payment to the spouse or child.

(Authority: Sec. 903, Pub. L. 96-342; Pub. L. 97-306, 96 Stat. 1429)

(3) Except as amended in paragraph (d)(2) of this section the following sections apply without change to this portion of the pilot program:

(i) Sections 21.5001 through 21.5023,

(ii) Section 21.5030(c),

(iii) Sections 21.5070 through 21.5130,

(iv) The introductory portion of § 21.5131,

(v) Sections 21.5132 through 21.5300.

(Authority: 38 U.S.C. 3698(a)(2))

(4) Section 21.5131 (a) and (b) does not apply to this portion of the pilot program.

(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

[47 FR 51748, Nov. 17, 1982; 48 FR 50530, Nov. 2, 1983; 49 FR 2110, Jan. 18, 1984; 53 FR 34499, Sept. 7, 1988]

### § 21.5296 Extended period of eligibility.

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

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

(b) *Application.* (1) Only the veteran may apply for an extended period of eligibility pursuant to this section. A spouse or child to whom entitlement may be or has been transferred may not apply for, nor receive, an extension based upon disability of either the veteran or the spouse or child.

(2) 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:

(i) One year from the last date of the delimiting period otherwise applicable to the veteran under § 21.5041, or

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

(3) No application for an extended period of eligibility should be submitted and none will be processed during any