

**§ 21.7046**

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

section is not payable until that Secretary either—

- (A) Collects in full the \$2,700; or
- (B) Has made the first reduction in retired or retainer pay for the purpose of the \$2,700 payment described in paragraph (e)(4) of this section. Thus, a veteran who is making the \$2,700 payment through having retired or retainer pay reduced may be eligible before the Secretary of the military department concerned collects the full \$2,700.

(5) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

- (i) Completed the requirements of a secondary school diploma (or equivalency certificate); or
- (ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C(e))

[61 FR 6786, Feb. 22, 1996, as amended at 61 FR 29297, June 10, 1996; 65 FR 5787, Feb. 7, 2000; 65 FR 20745, Apr. 18, 2000; 68 FR 34329, June 9, 2003]

**§ 21.7046 Eligibility for supplemental educational assistance.**

The Secretary concerned, pursuant to regulations prescribed by that Secretary, has the discretion to provide for the payment of supplemental educational assistance to certain veterans and servicemembers eligible for basic educational assistance.

(a) *Service requirements: eligibility based only on active duty service.* The Secretary concerned may authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part based solely on active duty service only if the individual meets the provisions of this paragraph.

(1) An individual may establish eligibility for supplemental educational assistance by serving five or more consecutive years of active duty in the Armed Forces in addition to the years counted to qualify the individual for basic educational assistance without a break in any such service.

(2) After completion of the service described in paragraph (a)(1) of this section the individual must either—

- (i) Continue on active duty without a break,
- (ii) Be discharged from service with an honorable discharge,
- (iii) Be placed on the retired list,
- (iv) Be transferred to the Fleet Reserve or the Fleet Marine Corps Reserve,
- (v) Be placed on the temporary disability retired list, or
- (vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 3021(a); Pub. L. 98-525)

(b) *Service requirements: eligibility based on service in the Selected Reserve.* The Secretary concerned (pursuant to regulations which he or she may prescribe) has the discretion to authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part through consideration of additional active duty service and additional service in the Selected Reserve only if the individual meets the provisions of this paragraph.

- (1) The individual must serve—
  - (i) Two or more consecutive years of active duty in the Armed Forces in addition to the years on active duty counted to qualify the individual for basic educational assistance, and
  - (ii) Four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for basic educational assistance.

(2) The individual after completion of the service described in paragraph (b)(1) must—

- (i) Be discharged from service with an honorable discharge, or
- (ii) Be placed on the retired list, or
- (iii) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or
- (iv) Be placed on the temporary disability retired list, or
- (v) Continue on active duty, or
- (vi) Continue in the Selected Reserve.

(3) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy.

(4) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is not attached to a unit of the Selected Reserve for any reason (also to be prescribed by the Secretary concerned by regulation) other than those stated in paragraph (b)(3) of this section.

(5) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (3) or (4) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3021(a); Pub. L. 98-525)

**§ 21.7050 Ending dates of eligibility.**

The ending date of eligibility will be determined as follows:

(a) *Ten-year time limitation.* (1) Except as provided in paragraphs (c), (d), and (e) of this section and in §21.7051, VA will not provide basic educational assistance or supplemental educational assistance to a veteran or service member beyond 10 years from the later of—

(i) The date of the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service;

(ii) The date of the veteran's last discharge or release from a shorter period of active duty if the discharge or release is—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted such service and which VA determines is not service-connected, or

(C) For hardship, or

(D) Involuntary, for the 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 ac-

cordance 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; or

(iii) The date on which the veteran meets the requirement for four years service in the Selected Reserve found in §21.7042(b) and §21.7044(b).

(2) In determining whether a veteran was discharged or released from active duty for a medical condition which preexisted that active duty, VA will be bound by a decision made by a competent military authority.

(Authority: 38 U.S.C. 3031(a), 3031(g))

(b) *Reduction of ten-year eligibility period.* (1) Except as provided in paragraph (b)(2) of this section, a veteran who had eligibility for educational assistance under 38 U.S.C. ch. 34 and who is eligible for educational assistance under 38 U.S.C. ch. 30 as provided in §21.7044 of this part shall have his or her ten-year period of eligibility reduced by the number of days he or she was not on active duty during the period beginning on January 1, 1977, and ending on June 30, 1985.

(2) A veteran's ten-year period of eligibility shall not be reduced by any period in 1977 before the veteran began serving on active duty when the veteran qualified for educational assistance under 38 U.S.C. ch. 34 through service on active duty which—

(i) Commenced within 12 months of January 1, 1977, and

(ii) Resulted from a contract with the Armed Forces in a program such as the DEP (Delayed Enlistment Program) or an ROTC (Reserve Officers' Training Corps) program for which a person enlisted in, or was assigned to, a reserve component before January 1, 1977.

(Authority: 3031(e))

(c) *Time limit for some members of the Army and Air National Guard.* (1) If a veteran or servicemember establishes eligibility for the educational assistance payable under this subpart by making the election described in §21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of: