

**§ 21.7070**

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

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

- (i) The date the veteran's training became medically feasible, or
- (ii) The veteran's delimiting date as determined by § 21.7050 of this part.

(Authority: 38 U.S.C. 3031(d); Pub. L. 98-525)  
[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 20133, May 2, 1991; 64 FR 23773, May 4, 1999]

ENTITLEMENT

**§ 21.7070 Entitlement.**

An eligible servicemember or veteran is entitled to a monthly benefit for periods of time during which he or she is enrolled in, and satisfactorily pursuing, an approved program of education.

(Authority: 38 U.S.C. 3014; Pub. L. 98-525)

**§ 21.7072 Entitlement to basic educational assistance.**

The provisions of this section apply to all veterans and servicemembers except to those to whom § 21.7073 applies.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c), and (d) of this section and in § 21.7073, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance).

(Authority: 38 U.S.C. 3013; Pub. L. 98-525) (Nov. 18, 1988).

(b) *Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship, or involuntarily for the convenience of the Government as a result of a reduction in force.* (1) Except as provided in § 21.7073, when the provisions of paragraph (b) of this section are met, an eligible individual is entitled to one

month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's continuous active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's qualifying obligated period of active duty. In the case of a veteran to whom the definition of continuous active duty found in either § 21.7020(b)(6)(iii) or § 21.7020(b)(6)(iv) applies, the length of the continuous active duty will be the aggregate length of the periods of active duty referred to in those paragraphs. Except as provided in § 21.7073, VA will apply paragraph (b) of this section when the individual:

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044,

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985 (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her qualifying obligated period of active duty is less than 3 years), and

(iii) Is discharged or released from active duty either—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected,

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

(D) Involuntarily for convenience of the government 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, or;

(E) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department

## Department of Veterans Affairs

## §21.7072

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. 3011(f), 3013(a))

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

- (i) Excess leave,
- (ii) Noncreditable time, and
- (iii) Not-on-duty time.

(Authority: 38 U.S.C. 3013(a); Pub. L. 98-525)

(c) *Entitlement based on service in the Selected Reserve.* (1) Except as provided in §21.7073, when the provisions of paragraph (c) of this section are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. chapter 34, is part of the individual's qualifying obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985 (other than a month in which the individual serves on active duty). Except as provided in §21.7073, VA will apply the provisions of paragraph (c) of this section when the individual—

- (i) Establishes eligibility through meeting the eligibility requirements of §21.7042 or §21.7044, and
- (ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in §21.7042(b) and §21.7044(b).

(Authority: 38 U.S.C. 3013(b))

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the

extent of a veteran's or servicemember's entitlement:

- (i) Excess leave,
- (ii) Noncreditable time, and
- (iii) Not-on-duty time.

(4) A veteran described in this paragraph is not entitled to any basic educational assistance for service in the Selected Reserve in excess of the number of months of service in the Selected Reserve which is evenly divisible by four.

(5) VA will consider a veteran to be entitled to 36 months of basic educational assistance when he or she—

- (i) Initially enters on active duty after June 30, 1985;
- (ii) Is attempting to establish eligibility through service in the Selected Reserve;
- (iii) Has completed the active duty service required in §21.7042 of this part; and
- (iv) Is participating in the Selected Reserve, but has not participated for the length of time required in §21.7042 of this part.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

(d) *Entitlement affected by failure to complete required Selected Reserve service.* If a veteran attempts to establish eligibility through a combination of active duty service and service in the Selected Reserves, but fails to do so, his or her entitlement shall be the number of months to which he or she is entitled on the basis of his or her active duty service.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

(e) *Repayment of an education loan affects entitlement.* A period of service counted for the purpose of repayment under section 902 of the Department of Defense Authorization Act, 1981, of an education loan may not also be counted for the purposes of determining the number of months of the veteran's or servicemember's entitlement to basic educational assistance. Therefore, in determining a veteran's or servicemember's entitlement, VA will—

- (1) Determine his or her entitlement as provided in paragraph (a), (b), (c) or (d) of this section, as appropriate, and

**§ 21.7073**

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

(2) Subtract from the figure determined in paragraph (e)(1) of this section the number of months of service counted for the purposes of repayment of an educational loan under section 902 of the Department of Defense Authorization Act, 1981.

(Authority: 38 U.S.C. 3033(b); Pub. L. 98-525)

(f) *Limitation on entitlement.* Except as provided in § 21.7076(e) and § 21.7135(s) of this part no one is entitled to more than 36 months of full-time basic educational assistance (or its equivalent in part-time educational assistance).

(Authority: 38 U.S.C. 3013(c), 3013(f); Pub. L. 98-525, Pub. L. 102-127)(Oct. 10, 1991)

[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 20134, May 2, 1991; 58 FR 26241, May 3, 1993; 59 FR 24052, May 10, 1994; 61 FR 6788, Feb. 22, 1996; 68 FR 34330, June 9, 2003]

**§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.**

(a) *Individuals who establish eligibility during the open period.* (1) The provisions of this paragraph apply to a veteran or servicemember who:

(i) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(ii) Has less than \$1,200 deducted from his or her military pay; and

(iii) Before completing the period of service which the individual was obligated to serve on December 1, 1988, the individual:

(A) Is discharged or released from active duty for a service-connected disability, a medical condition which preexisted that service, or hardship; or

(B) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department 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.

(C) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(D) Is involuntarily discharged or released from active duty for convenience of the Government as a result of a reduction in force, as determined by the Secretary 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. 3018(b)(3))

(2) A veteran described in paragraph (a)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of:

(i) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is \$1,200, or

(ii) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 3013(c))

(b) *Individuals who establish eligibility following involuntary separation.* (1) The provisions of this paragraph apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

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

(2) A veteran described in paragraph (b)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(i) 36 months, or

(ii) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013)

[59 FR 24053, May 10, 1994, as amended at 65 FR 67266, Nov. 9, 2000]