

**§ 21.7050**

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(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 servicemember 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 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;

(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); or

(iv) December 27, 2001, for individuals who become eligible for educational assistance under § 21.7044(a)(7) or (b)(4)(ii).

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

(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

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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:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in § 21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in § 21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104-275, 110 Stat. 3329-3330)

(d) *Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer.* If a veteran would not be eligible but for the provisions of § 21.7020(b)(6)(v), VA will not pay basic educational assistance or supplemental educational assistance to that veteran beyond 10 years after the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service, or November 30, 2009, whichever is later.

(Authority: 38 U.S.C. 3011(f), 3031(a)).

(e) *Some veterans have a later ending date.* (1) The ending date of the eligibility period of a veteran described in paragraph (e)(2) of this section is the later of:

(i) November 1, 2010; or

(ii) 10 years after the date of the veteran's last discharge from a period of active duty of 90 days or more.

(2) The ending date of a veteran's eligibility period will be the date described in paragraph (e)(1) of this section if the veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (e)(2)(i) through (e)(2)(iv) of this section and the veteran is enabled to establish eligibility by the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002

revision of the Code of Federal Regulations, title 38.)

(i) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance;

(ii) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(iii) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance;

(iv) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility for educational assistance, the veteran must before January 1, 1990, meet the requirements

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for a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3031 note; secs. 102(e), 103(e), Pub. L. 106-419, 114 Stat. 1825; 1826-27)

(f) *Correction of military records.* A veteran may become eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by competent military authority. When this occurs, the VA will not provide educational assistance later than 10 years from the date his or her dismissal or discharge was changed, corrected or modified (except as provided in § 21.7051 of this part).

(Authority: 38 U.S.C. 3031(e))

(g) *Periods excluded.* VA will not include in computing the 10-year period of eligibility for educational assistance under this section, any period during which the veteran after his or her last discharge or release from active duty—

(1) Was captured and held as a prisoner of war by a foreign government or power, or

(2) Immediately following the veteran's release from this detention during which he or she was hospitalized at a military, civilian or VA medical facility.

(Authority: 38 U.S.C. 3031(c); Pub. L. 98-525)

(h) *Time limitation for a spouse eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligi-

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ble for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(i) *Time limitation for a child eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080 is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(Authority: 38 U.S.C. 3020)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990; 56 FR 20133, May 2, 1991; 57 FR 15024, Apr. 24, 1992; 61 FR 6787, Feb. 22, 1996; 65 FR 5787, Feb. 7, 2000; 66 FR 39280, July 30, 2001; 68 FR 34330, June 9, 2003; 71 FR 75674, Dec. 18, 2006; 73 FR 2427, Jan. 15, 2008]