

Department of Veterans Affairs

§ 21.7070

§ 21.7051 Extended period of eligibility.

(a) *Period of eligibility may be extended.* VA shall grant an extension of the applicable delimiting period, as otherwise determined by § 21.7050 of this part provided:

(1) The veteran applies for an extension within the time specified in § 21.1033(c).

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7020(b)(38)) It must be clearly established by medical evidence that such a program of education was medically infeasible. VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 98-525, Pub. L. 100-689) (Nov. 18, 1988)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7050 of this part, and

(2) Must either be—

(i) On or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(ii) On or before the commencing date of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course orga-

nized on a term, quarter or semester basis.

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

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course 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 eligibility period that his or her training became medically infeasible to the earliest of the following date.

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically infeasible,

(ii) The last date of the veteran's delimiting date as determined by § 21.7050 of this part, or

(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; 72 FR 16980, Apr. 5, 2007]

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

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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 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