

§ 21.7075 Entitlement to tuition assistance top-up.

An individual who is entitled to educational assistance under 38 U.S.C. chapter 30 is also entitled to 36 months of tuition assistance top-up. This entitlement is parallel to, and does not replace, the entitlement to educational assistance available under § 21.7072. If the individual receives tuition assistance top-up, VA will make a charge against both the entitlement under § 21.7072 and the entitlement under this section. The charge will be as described in § 21.7076(b)(10).

(Authority: 38 U.S.C. 3013, 3014(b), 3032)

[72 FR 16980, Apr. 5, 2007, as amended at 72 FR 35662, June 29, 2007]

§ 21.7076 Entitlement charges.

(a) *Overview.* VA will make charges against entitlement as stated in this section.

(1) Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. chapter 30 as the assistance is paid.

(2) There will be a charge (for record purposes only) against the remaining entitlement, under 38 U.S.C. chapter 34, of an individual who is receiving the educational assistance under § 21.7137 of this part. The record-purpose charges against entitlement under 38 U.S.C. chapter 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chapters 30 and 34 to which the veteran or servicemember may be entitled. (*See* § 21.4020(a) of this part).

(3) Generally, VA will base those entitlement charges on the principle that a veteran or servicemember who trains full time for one day should be charged one day of entitlement. However, this general principle does not apply to a veteran or servicemember who:

- (i) Is pursuing correspondence training;
- (ii) Is pursuing flight training;
- (iii) Is pursuing an apprenticeship or other on-job training;
- (iv) Is paid an accelerated payment;
- (v) Is receiving educational assistance for taking an approved licensing or certification test; or
- (vi) Is receiving tuition assistance top-up.

(4) The provisions of this section apply to:

- (i) Veterans and servicemembers training under 38 U.S.C. chapter 30; and
- (ii) Veterans training under 38 U.S.C. chapter 31 who make a valid election under § 21.21 of this part to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3013, 3014(b), 3014A, 3689)

(b) *Determining entitlement charge.* This paragraph states how VA generally will determine the charge against the entitlement of a servicemember or veteran who is receiving educational assistance. However, when the circumstances described in paragraph (e) apply to a servicemember or veteran, VA will use that paragraph to determine an entitlement charge instead of this paragraph.

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-job training; those receiving tuition assistance top-up; those receiving educational assistance for taking an approved licensing or certification test; those receiving tutorial assistance; and those receiving an accelerated payment, VA will make a charge against entitlement:

(i) On the basis of total elapsed time (one day for each day of pursuit) if the servicemember or veteran is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or servicemember is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of the award to date of discontinuance. If the veteran or servicemember changes his or her training time after the commencing date of the award, VA will—

- (i) Divide the enrollment period into separate periods of time during which

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the veteran's or servicemember's training time remains constant, and.

(ii) Compute the elapsed time separately for each time period.

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

(3) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against chapter 30 entitlement of—

(i) .75 of a month in the case of payments made during the first six months of the veteran's pursuit of the program of apprenticeship or other on-job training,

(ii) .55 of a month in the case of payments made during the second six months of the veteran's pursuit of the program of apprenticeship or other on-job training, and

(iii) .35 of a month in the case of payments made following the first twelve months of the veteran's pursuit of apprenticeship or other on-job training.

(Authority: 38 U.S.C. 3032(c))

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a record purpose charge against chapter 34 entitlement, if any, of one month for each month of benefits paid to him or her.

(Authority: 38 U.S.C. 3015(e), 3032(c))

(5) When a veteran or servicemember is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of educational assistance otherwise applicable to him or her for full-time training (disregarding in the case of a servicemember the cost of course comparison).

(Authority: 38 U.S.C. 3032(d))

(6) When a veteran or servicemember is pursuing a program of education partly in residence and partly by cor-

respondence, VA will make a charge against entitlement—

(i) For the residence portion of the program as provided in paragraphs (b) (1) and (2) of this section, and

(ii) For the correspondence portion of the program as provided in paragraph (b)(5) of this section.

(Authority: 38 U.S.C. 3032(c), 3032(d))

(7) When a veteran or servicemember is paid an accelerated payment, VA will make a charge against entitlement for each accelerated payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month; and

(ii) Will be determined by dividing the amount of the accelerated payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. If the rate of basic educational assistance increases during the enrollment period, VA will charge entitlement for the periods covered by the initial rate and the increased rate, respectively.

(Authority: 38 U.S.C. 3014A)

(8) If an individual is paid tutorial assistance as provided in §21.7141, the following provisions will apply.

(i) There will be no charge to entitlement for the first \$600 of tutorial assistance paid to an individual under 38 U.S.C. ch. 30.

(ii) VA will make a charge against the period of entitlement of one month for each amount of tutorial assistance paid under 38 U.S.C. ch. 30, to the individual in excess of \$600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in §§21.7136, 21.7137 and 21.7138, as appropriate. When the amount of tutorial assistance paid to the individual in excess of \$600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3019; Pub. L. 100-689) (Nov. 18, 1988)

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(9) When a veteran or servicemember is pursuing a program of education through flight training, VA will make a charge against entitlement for each payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training.

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

(10) When a servicemember receives tuition assistance top-up, VA will make a charge against his or her entitlement as established under § 21.7072 equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember's monthly rate of basic educational assistance as calculated under § 21.7136. VA will make a charge against his or her tuition assistance top-up entitlement as established under § 21.7075 by subtracting from that entitlement the total number of months and days in the term, quarter, or semester for which the servicemember received tuition assistance.

(Authority: 38 U.S.C. 3014(b))

(11) When a veteran or servicemember receives educational assistance for taking an approved licensing or certification test, VA will make a charge against his or her entitlement equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember's monthly rate of basic educational assistance as calculated under § 21.7136, excluding any additional "kicker" that may be paid under § 21.7136(g).

(Authority: 38 U.S.C. 3032(f)(2))

(c) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived, and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting the portion of the debt attributable to interest, administrative costs of collection, court costs and marshal fees from the compromise offer,

(ii) Subtracting the amount determined in paragraph (c)(3)(i) of this section from the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement which represents the whole overpaid period.

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

(d) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran or servicemember is enrolled for the entire term, quarter or semester. VA will

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make a charge against entitlement for the entire period of certified enrollment, if the veteran or servicemember is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

- (1) Enrollment is terminated;
- (2) The veteran or servicemember cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;
- (3) The veteran or servicemember interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester;

(4) The veteran or servicemember requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the veteran or servicemember negotiated a check for educational assistance for the certified period is immaterial.

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

(e) *No entitlement charge for some individuals.* When the criteria described in this paragraph are met, VA will make no charges against entitlement as described in paragraph (b) of this section.

(1) VA will make no charge against an individual's entitlement when the individual—

- (i) Either—
 - (A) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10, U.S. Code; or
 - (B) While serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to a new duty location or assignment or to perform an increased amount of work.
- (ii) Failed to receive credit or lost training time toward completion of the individual's approved educational, pro-

fessional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against the entitlement of an individual described in paragraph (e)(1) of this section shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time.

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

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28385, July 11, 1990; 56 FR 20134, May 2, 1991; 56 FR 26035, June 6, 1991; 56 FR 31332, July 10, 1991; 57 FR 15024, Apr. 24, 1992; 58 FR 26241, May 3, 1993; 68 FR 35179, June 12, 2003; 72 FR 16980, Apr. 5, 2007]

TRANSFER OF ENTITLEMENT TO BASIC EDUCATIONAL ASSISTANCE TO DEPENDENTS

§ 21.7080 Transfer of entitlement.

An individual entitled to educational assistance under the Montgomery GI Bill—Active Duty (38 U.S.C. chapter 30) program based on his or her own active duty service, and who is approved by a service department to transfer a portion of his or her entitlement, may transfer up to a total of 18 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available.

(a) *Application of sections in subpart K to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.7020—Definitions.

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

(2) *Claims and Applications.* Section 21.7030—Applications, claims, and time limits.

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