

secondary school diploma (or equivalency certificate).

(i) OVERPAYMENT.—(1) In the event of an overpayment of basic educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of this title.

(2) Except as provided in paragraph (3), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(3) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of basic educational assistance under paragraph (1).

(3) Paragraph (2) shall not apply in the case of an individual who fails to complete service agreed to by the individual—

(A) by reason of the death of the individual;

or

(B) for a reason referred to in section 3011(a)(1)(A)(ii)(I) of this title.

(j) APPROVALS OF TRANSFER SUBJECT TO AVAILABILITY OF APPROPRIATIONS.—The Secretary concerned may approve transfers of entitlement to basic educational assistance under this section in a fiscal year only to the extent that appropriations for military personnel are available in that fiscal year for purposes of making deposits in the Department of Defense Education Benefits Fund under section 2006 of title 10 in that fiscal year to cover the present value of future benefits payable from the Fund for the Department of Defense portion of payments of basic educational assistance attributable to increased usage of benefits as a result of such transfers of entitlement in that fiscal year.

(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations for purposes of this section. Such regulations shall specify the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2) and shall specify the manner of the applicability of the administrative provisions referred to in subsection (h)(5) to a dependent to whom entitlement is transferred under this section.

(l) ANNUAL REPORT.—(1) Not later than January 31 each year (beginning in 2003), the Secretary of Defense shall submit to the Committees on Armed Services and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the transfers of entitlement to basic educational assistance under this section that were approved by each Secretary concerned during the preceding fiscal year.

(2) Each report shall set forth—

(A) the number of transfers of entitlement under this section that were approved by such Secretary during the preceding fiscal year; or

(B) if no transfers of entitlement under this section were approved by such Secretary during that fiscal year, a justification for such Secretary's decision not to approve any such transfers of entitlement during that fiscal year.

(m) SECRETARY CONCERNED DEFINED.—Notwithstanding section 101(25) of this title, in this section, the term “Secretary concerned” means—

(1) the Secretary of the Army with respect to matters concerning the Army;

(2) the Secretary of the Navy with respect to matters concerning the Navy or the Marine Corps;

(3) the Secretary of the Air Force with respect to matters concerning the Air Force; and

(4) the Secretary of Defense with respect to matters concerning the Coast Guard, or the Secretary of Homeland Security when it is not operating as a service in the Navy.

(Added Pub. L. 107-107, div. A, title VI, § 654(a)(1), Dec. 28, 2001, 115 Stat. 1153; amended Pub. L. 107-296, title XVII, § 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107-314, div. A, title VI, § 643(a), Dec. 2, 2002, 116 Stat. 2577.)

PRIOR PROVISIONS

A prior section 3020 was renumbered section 5120 of this title.

AMENDMENTS

2002—Subsec. (h)(2). Pub. L. 107-314, § 643(a)(1), substituted “paragraphs (5) and (6)” for “paragraphs (4) and (5)” and struck out “and at the same rate” after “in the same manner”.

Subsec. (h)(3) to (7). Pub. L. 107-314, § 643(a)(2), (3), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (m)(4). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-314, div. A, title VI, § 643(c)(1), Dec. 2, 2002, 116 Stat. 2578, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 3020 of title 38, United States Code, by section 654(a)(1) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1153).”

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

PLAN FOR IMPLEMENTATION

Pub. L. 107-107, div. A, title VI, § 654(c), Dec. 28, 2001, 115 Stat. 1157, provided that: “Not later than June 30, 2002, the Secretary of Defense shall submit to Congress a report describing the manner in which the Secretaries of the military departments and the Secretary of Transportation propose to exercise the authority granted by section 3020 of title 38, United States Code, as added by subsection (a). The report shall include the regulations prescribed under subsection (k) of that section for purposes of the exercise of the authority.”

SUBCHAPTER III—SUPPLEMENTAL EDUCATIONAL ASSISTANCE

§ 3021. Supplemental educational assistance for additional service

(a) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 3011 or 3018 of this title who—

(1) serves five or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3011(a)(1) of this title without a break in such service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty without a break in service; or

(C) is 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.

(b) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 3012 or 3018 of this title who—

(1) serves two or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3012(a)(1) of this title and four or more consecutive years of duty in the Selected Reserve after the years of duty in the Selected Reserve counted under such section without a break in service; and

(2) after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list; or

(B) continues on active duty or in the Selected Reserve.

(c) Continuity of service of a member in the Selected Reserve for purposes of subsection (b)(1) of this section shall not be considered to be broken—

(1) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected Reserve of the member's Armed Force that the member is eligible to join or that has a vacancy; or

(2) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(d) A period of active duty or duty in the Selected Reserve that occurs before the period of duty by which the individual concerned qualifies for basic educational assistance may not be counted for purposes of this section.

(Added Pub. L. 98-525, title VII, §702(a)(1), Oct. 19, 1984, 98 Stat. 2558, §1421; amended Pub. L. 99-576, title III, §321(5), (6), Oct. 28, 1986, 100 Stat.

3278; Pub. L. 100-689, title I, §103(b)(5), Nov. 18, 1988, 102 Stat. 4166; Pub. L. 101-237, title IV, §423(b)(4)(B), Dec. 18, 1989, 103 Stat. 2092; renumbered §3021 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

PRIOR PROVISIONS

Prior section 3021 was renumbered section 5121 of this title.

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 1421 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “3011 or 3018” for “1411 or 1418” in introductory provisions and “3011(a)(1)” for “1411(a)(1)” in par. (1).

Subsec. (b). Pub. L. 102-83, §5(c)(1), substituted “3012 or 3018” for “1412 or 1418” in introductory provisions and “3012(a)(1)” for “1412(a)(1)” in par. (1).

1989—Subsecs. (a), (b). Pub. L. 101-237 inserted “of Defense” after second reference to “Secretary”.

1988—Subsecs. (a), (b). Pub. L. 100-689 inserted reference to section 1418 of this title.

1986—Subsec. (a)(1). Pub. L. 99-576, §321(5), substituted “after” for “in addition to”.

Subsec. (b)(1). Pub. L. 99-576, §321(5), substituted “after” for “in addition to” in two places.

Subsec. (c)(1). Pub. L. 99-576, §321(6), substituted “the member’s” for “his”.

EFFECTIVE DATE

Section 702(b) of Pub. L. 98-525 provided that: “Subchapter III of chapter 30 of title 38, United States Code, as added by subsection (a), shall take effect on July 1, 1986.”

§ 3022. Amount of supplemental educational assistance

(a) The amount of payment of educational assistance under this chapter is subject to section 3032 of this title. Except as otherwise provided under subsection (b) of this section, supplemental educational assistance under section 3021 of this title shall be paid—

(1) at a monthly rate of \$300 for an approved program of education pursued on a full-time basis; or

(2) at an appropriately reduced rate, as determined under regulations which the Secretary shall prescribe, for an approved program of education pursued on less than a full-time basis.

(b) In the case of a member of the Armed Forces for whom the Secretary concerned has provided for the payment of supplemental educational assistance who has a skill or specialty designated by the Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, as a skill or specialty in which there is a critical shortage of personnel, the Secretary concerned, pursuant to such regulations, may increase the rate of the supplemental educational assistance allowance applicable to such individual to such rate in excess of the rate prescribed under subsection (a) of this section as the Secretary concerned considers appropriate, but the amount of any such increase may not exceed \$300 per month.

(Added Pub. L. 98-525, title VII, §702(a)(1), Oct. 19, 1984, 98 Stat. 2559, §1422; amended Pub. L. 100-689, title I, §111(a)(5)(B), Nov. 18, 1988, 102 Stat. 4171; Pub. L. 101-237, title IV, §423(b)(1)(A),