

Department of Veterans Affairs

§ 21.5022

political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

(bb) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test, but does not issue the license or certificate;

(ii) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51743, Nov. 17, 1982; 52 FR 3429, Feb. 4, 1987; 53 FR 34495, Sept. 7, 1988; 55 FR 31581, Aug. 3, 1990; 57 FR 38614, Aug. 26, 1992; 58 FR 34369, June 25, 1993; 61 FR 1526, Jan. 22, 1996; 65 FR 5786, Feb. 7, 2000; 72 FR 16977, Apr. 5, 2007]

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* (1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under—

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399).

(Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 38 U.S.C. 3033(a), 3322(a))

(b) *Total eligibility under more than one program.* (1) No one may receive a combination of educational assistance benefits under 38 U.S.C. Chapter 32 and any of the following provisions of law for more than 48 months (or part-time equivalent):

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(iv) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

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(vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399).

(2) No one may receive assistance under 38 U.S.C. Chapter 31 in combination with assistance under 38 U.S.C. Chapter 32 in excess of 48 months (or the part-time equivalent) unless VA determines that additional months of benefits under 38 U.S.C. Chapter 31 are necessary to accomplish the purposes of a rehabilitation program.

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

[51 FR 12852, Apr. 16, 1986; 51 FR 16517, May 5, 1986, as amended at 53 FR 34495, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 29029, June 7, 1996; 74 FR 14670, Mar. 31, 2009]

§ 21.5023 Nonduplication; Federal programs.

An individual may not receive educational assistance allowance under 38 U.S.C. Chapter 32, if the individual is:

(a) On active duty and is pursuing a course of education which is being paid for, in whole or in part, by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or

(Authority: 38 U.S.C. 3241, 3681)

(b) Attending a course of education or training paid for, in whole or in part, under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3241, 3681)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51744, Nov. 17, 1982; 61 FR 7217, Feb. 27, 1996]

CLAIMS AND APPLICATIONS

§ 21.5030 Applications, claims, and time limits.

(a) To become a participant an individual must apply to his or her Service Department on forms prescribed by the Service Department and/or the Secretary of Defense.

(b) Rules and regulations of the applicable Service Department and/or the Department of Defense shall determine if the application is timely.

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(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

(1) Section 21.1029—Definitions.

(2) Section 21.1030—Claims.

(3) Section 21.1031—VA responsibilities when a claim is filed.

(4) Section 21.1032—Time Limits

(Authority: 38 U.S.C. 3232, 3241, 3471; Pub. L. 94-502, Pub. L. 99-576)

[45 FR 31, Jan. 2, 1980, as amended at 48 FR 3368, Jan. 25, 1983; 53 FR 34495, Sept. 7, 1988; 64 FR 23772, May 4, 1999]

ELIGIBILITY

§ 21.5040 Basic eligibility.

(a) *Individuals not on active duty.* Whether an individual has basic eligibility under 38 U.S.C. Chapter 32 for educational assistance depends upon when he or she entered the military service, the length of that service, and the character of that service.

(Authority: 38 U.S.C. 3202).

(b) *Service requirements for all individuals not on active duty.* (1) An individual not on active duty:

(i) Must have entered the military service after December 31, 1976, and before July 1, 1985;

(Authority: 38 U.S.C. 3202, Pub. L. 99-576)

(ii) Must not have and except as provided in paragraph (g) of this section must not have had basic eligibility under 38 U.S.C. Chapter 34;

(iii) Must have received an unconditional discharge or release under conditions other than dishonorable from any period of service upon which eligibility is based;

(iv) Must either have:

(A) Served on active duty for a least 181 continuous days, or

(B) Been discharged or released from active duty for a service-connected disability.

(2) The Department of Veterans Affairs will consider that the veteran has an unconditional discharge or release if:

(i) The individual was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or