

Department of Veterans Affairs**§ 21.7020****§ 21.6521 Employment of qualified veterans.**

(a) *Provisions of the IEAP (Individualized Employment Assistance Plan).* Each IEAP of a qualified veteran shall require that the:

(1) Case manager maintain close contact with qualified veterans who become employed to help assure adjustment to employment;

(2) Veteran discuss any plan to leave employment during the trial work period with the case manager.

(Authority: 38 U.S.C. 1163(c))

(b) *Coordination with the Veterans Service Center.* The VR&E Division will inform the Veterans Service Center in writing upon employment of the participating qualified veteran during a program of either vocational rehabilitation services or counseling and employment services and when such employment has continued for 12 consecutive months. See § 3.343(c)(2) of this title.

(Authority: 38 U.S.C. 1163(a))

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 71 FR 28587, May 17, 2006]

§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 3104(a) (2) and (5).

(a) *Dates of entry.* A qualified veteran, not eligible to receive Chapter 31 benefits, may not enter or pursue a program of counseling and employment services under 38 U.S.C. 3104(a) (2) and (5), before February 1, 1985, or later than December 31, 1992.

(Authority: 38 U.S.C. 1163; Pub. L. 100-687; Pub. L. 102-291)

(b) *Reentry.* The provisions of paragraph (a) of this section are also applicable to veterans being provided additional counseling and employment services following a redetermination of eligibility and entitlement to such services.

(Authority: 38 U.S.C. 1163; Pub. L. 100-687; Pub. L. 102-291)

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17273, Apr. 24, 1990; 58 FR 41637, Aug. 5, 1993]

§ 21.6525 [Reserved]**Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)**

AUTHORITY: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

SOURCE: 53 FR 1757, Jan. 22, 1988, unless otherwise noted.

§ 21.7000 Establishment of educational assistance program.

(a) *Establishment.* An educational assistance program for certain veterans and servicemembers is established.

(Authority: 38 U.S.C. 3001(1); Pub. L. 98-525)

(b) *Purpose.* The purpose of this program is as stated in 38 U.S.C. 3001.

(Authority: 38 U.S.C. 3001)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28383, July 11, 1990; 61 FR 26116, May 24, 1996]

DEFINITIONS**§ 21.7020 Definitions.**

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. chapter 30, the following definitions apply.

(a) *Definitions of participants—*(1) *Servicemember.* The term *servicemember* means anyone who:

(i) Meets the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Is on active duty with the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service or National Oceanographic and Atmospheric Administration.

(Authority: 38 U.S.C. 3016; Pub. L. 98-525)

(2) *Veteran.* The term *veteran* means anyone who—

(i) Meets the eligibility requirements of § 21.7042, § 21.7044, or § 21.7045, and

(ii) Is not on active duty. The term *veteran* includes an individual who is

§21.7020

actively participating in the Selected Reserve.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

(b) *Other definitions—(1) Active duty.*

(i) The term *active duty* means—

(A) Full-time duty in the Armed Forces, other than active duty for training.

(B) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service,

(C) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and

(D) Authorized travel to or from such duty or service.

(ii) The term *active duty* does not include any period during which an individual:

(A) Was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,

(B) Served as a cadet or midshipman at one of the service academies, or

(C) Served under the provisions of 10 U.S.C. 511(d) pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(Authority: 38 U.S.C. 101(21), 3002(6); Pub. L. 98-525)

(iii) When referring to individuals who, before November 30, 1989, had never served on active duty (as that term is defined by §3.6b of this title), the term “active duty” when used in this subpart includes full-time National Guard duty first performed after November 29, 1989, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the servicemember’s status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing or training the National Guard.

(Authority: 38 U.S.C. 3002(7); Pub. L. 101-510, sec. 563(b)) (Nov. 5, 1990)

38 CFR Ch. I (7-1-10 Edition)

(iv) When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by §3.6(b) of this chapter) and who made the election described in §21.7042(a)(7) or (b)(10), the term *active duty* when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330)

(2) *Attendance* The term *attendance* means the presence of a veteran or servicemember—

(i) In the class where the approved course is being taught in which he or she is enrolled, or

(ii) At a training establishment, or

(iii) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or servicemember is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 3034, 3680(g))

(3) *Audited course.* The term *audited course* has the same meaning as provided in §21.4200(i) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)

(4) *Basic educational assistance.* The term *basic educational assistance* means a monetary benefit payable to all individuals who meet basic requirements for eligibility under chapter 30, title 38 U.S.C., for pursuit of a program of education.

(Authority: 38 U.S.C. 3002(1); Pub. L. 98-525)

(5) *Break in service.* (i) Except as provided in paragraph (b)(5)(ii) of this section, the term *break in service* means a period of more than 90 days between the date when an individual is released from active duty or otherwise receives a complete separation from active duty service and the date he or she reenters on active duty.

Department of Veterans Affairs**§ 21.7020**

(ii) A period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians is not a break in service.

(Authority: 38 U.S.C. 3011, 3021)

(6) *Continuous active duty.* (i) The term *continuous active duty* means active duty served without interruption. An interruption in service will only be found when the individual receives a complete separation from active duty.

(ii) A period during which an individual on active duty is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians will not interrupt the continuity of the individual's active duty.

(iii) If an individual, during an obligated period of active-duty service, is separated from active duty to pursue a course of education at a service academy or a post-secondary school preparatory to enrollment at a service academy, no interruption in service will be found and the individual's service will be considered continuous active-duty service, provided he or she—

(A) Commences pursuit of a course of education at a service academy or post-secondary school,

(B) Fails to complete the course of education, and

(C) Immediately reenters on a period of active duty.

(iv) An individual who is discharged or released from active duty for a reason stated in paragraph (b)(6)(iv) of this section after serving not more than 12 months of an obligated period of active duty, and who subsequently reenlists or reenters on a period of active duty, will not be considered to have an interruption in service. Except as provided in paragraph (b)(6)(vi) of this section, the individual's service during the two periods will be considered continuous active-duty service for the aggregate length of the two service periods. However, the individual's discharge or release from the earlier obligated period of service must have been:

(A) For a service-connected disability;

(B) For hardship;

(C) For a medical condition which preexisted such active-duty service and is not service connected;

(D) For a physical or mental condition not characterized as a disability and not resulting from the individual's own willful misconduct which interfered with the individual's performance of duty as determined by the Secretary concerned; or

(E) Involuntary, for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned.

(v) VA will not consider an individual to have an interruption of service when he or she:

(A) Serves a period of active duty without interruption (without a complete separation from active duty), as an enlisted member or warrant officer;

(B) While serving on such active duty is assigned to officer training school; and

(C) Following successful completion of the officer training school is discharged to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.

(vi) If the second period of active-duty service referred to in paragraph (b)(6)(iv) or (b)(6)(v) of this section is of such nature or character that, when aggregated with the earlier period of service referred to in that paragraph, it would cause the individual to be divested of entitlement to educational assistance otherwise established by the earlier period of active duty, the two periods of service will not be aggregated and will not be considered a single period of continuous active duty.

(vii) Time lost will not be considered to interrupt the continuity of service. For the purpose of this section, "time lost" includes excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3011, 3012)

(7) *Cost of course.* The term *cost of course* means the total cost for tuition and fees for a course which an educational institution charges to non-veterans whose circumstances are similar to veterans enrolled in the same course. *Cost of course* does not include the cost of supplies which the student

§21.7020

is required to purchase at his or her own expense.

(Authority: 38 U.S.C. 3032; Pub. L. 98-525)

(8) *Deficiency course*. The term *deficiency course* means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a postsecondary program of education.

(Authority: 38 U.S.C. 3034; Pub. L. 98-525)

(9) *Dependent*. The term *dependent* means:

- (i) A spouse as defined in §3.50(a) of this chapter,
- (ii) A child who meets the requirements of §3.57 of this chapter, or
- (iii) A parent who meets the requirements of §3.59 of this chapter.

(Authority: 38 U.S.C. 3015(d); Pub. L. 98-525)

(10) *Divisions of the school year*. The term *divisions of the school year* has the same meaning as provided in §21.4200(b) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)

(11) *Drop-add period*. The term *drop-add period* has the same meaning as provided in §21.4200(1) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)

(12) *Educational assistance*. The term *educational assistance* means basic educational assistance, supplemental educational assistance, and all additional amounts payable, commonly called *kickers*.

(Authority: 38 U.S.C. 3002; Pub. L. 98-525)

(13) *Educational objective*. An educational objective is one that leads to the awarding of a diploma, degree or certificate which reflects educational attainment.

(Authority: 38 U.S.C. 3002(3), 3452(b); Pub. L. 98-525)

(14) *Enrollment*. The term *enrollment* has the same meaning as provided in §21.4200(n) of this part.

(Authority: 38 U.S.C. 3034, 3680(g); Pub. L. 98-525)

38 CFR Ch. I (7-1-10 Edition)

(15) *Enrollment period*. The term *enrollment period* has the same meaning as provided in §21.4200(p) of this part.

(Authority: 38 U.S.C. 3034, 3680(g); Pub. L. 98-525)

(16) *Holiday vacation*. The term *holiday vacation* means a customary, reasonable vacation period connected with a Federal or State legal holiday which is identified as a holiday vacation in the educational institution's approved literature. Generally, VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)

(17) *In residence on a standard quarter- or semester-hour basis*. The term *in residence on a standard quarter- or semester-hour basis* has the same meaning as provided in §21.4200(r) of this part.

(Authority: 38 U.S.C. 3034, 3688(c); Pub. L. 98-525)

(18) *Institution of higher learning*. The term *institution of higher learning* has the same meaning as provided in §21.4200(h) of this part.

(Authority: 38 U.S.C. 3034, 3688; Pub. L. 98-525)

(19) *Mitigating circumstances*. (i) The term *mitigating circumstances* means circumstances beyond the veteran's or servicemember's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the veteran or servicemember,

(B) An illness or death in the veteran's or servicemember's family,

(C) An unavoidable change in the veteran's conditions of employment,

(D) An unavoidable geographical transfer resulting from the veteran's employment,

Department of Veterans Affairs**§ 21.7020**

(E) Immediate family or financial obligations beyond the control of the veteran which require him or her to suspend pursuit of the program of education to obtain employment.

(F) Discontinuance of the course by the educational institution,

(G) Unanticipated active duty for training,

(H) Unanticipated difficulties in caring for the veteran's or eligible person's child or children.

(ii) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the veteran received educational assistance under title 38, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent.

(Authority: 38 U.S.C. 3034, 3680(a)(1); Pub. L. 100-689) (June 1, 1989)

(20) *Nonpunitive grade.* The term *nonpunitive grade* has the same meaning as provided in § 21.4200(j) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)

(21) *Normal commuting distance.* The term *normal commuting distance* has the same meaning as provided in § 21.4200(m) of this part.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)

(22) *Professional or vocational objective.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, these courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3002(3); Pub. L. 98-525)

(23) *Program of education.* A program of education—

(i) Is any unit course or subject or combination of courses or subjects which is pursued by a veteran or servicemember at an educational institution, and which is required by the Secretary of the Small Business Adminis-

tration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution. The combination generally is accepted as necessary to meet requirements for a predetermined educational, professional or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field;

(iii) Includes an approved full-time program of apprenticeship or of other on-job training;

(iv) Effective November 30, 1999, includes a preparatory course for a test that is required or used for admission to—

(A) An institution of higher education; or

(B) A graduate school; and

(v) Includes a licensing or certification test, the passing of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(24) *Punitive grade.* The term *punitive grade* has the same meaning as provided in § 21.4200(k) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)

(25) *Pursuit.* (i) The term *pursuit* means to work, while enrolled, towards the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria of title 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses (including teacher training courses and similar courses which VA considers to be resident training),

(B) Independent study courses,

(C) Correspondence courses,

§21.7020

(D) An apprenticeship or other on-job training program,

(E) A graduate program of research in absentia,

(F) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses,

(G) A flight training course beginning on or after September 30, 1990, or

(H) A licensing or certification test taken on or after March 1, 2001.

(ii) VA will consider a veteran who qualifies for payment during an interval between terms or school closing, or who qualifies for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(Authority: 38 U.S.C. 3002, 3034, 3452, 3680(g), 3689; Pub. L. 98-525)

(26) *Refresher course.* The term "refresher course" means—

(i) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the period of the individual's active military service.

(Authority: 38 U.S.C. 3034(a))

(27) *Remedial course.* The term *remedial course* means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(Authority: 38 U.S.C. 3034, 38 U.S.C. 3491(a)(2); Pub. L. 98-525)

(28) *Secretary.* The term *Secretary* means the Secretary of Defense with respect to members of the Armed Forces under the jurisdiction of the Secretary of a military department, and 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. 3002(5); Pub. L. 98-525)

38 CFR Ch. I (7-1-10 Edition)

(29) *School, educational institution, institution.* The terms *school*, *educational institution*, and *institution* mean—

(i) Any vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university or scientific or technical institution;

(ii) Any public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma or their equivalents; and

(iii) An entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330)

(30) *School year.* The term *school year* means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 38 U.S.C. 3034; Pub. L. 98-525)

(31) *Selected Reserve.* The term *Selected Reserve* means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b), 10 U.S.C.

(Authority: 38 U.S.C. 3002(4); Pub. L. 98-525)

(32) *Standard class session.* The term *standard class session* has the same meaning as provided in §21.4200(g) of this part.

(Authority: 38 U.S.C. 3034; 3688(c); Pub. L. 98-525)

(33) *Standard college degree.* The term *standard college degree* has the same meaning as provided in §21.4200(e) of this part.

(Authority: 38 U.S.C. 3034, 3688; Pub. L. 98-525)

(34) *Supplemental educational assistance.* The term *supplemental educational assistance* means a benefit payable to a

Department of Veterans Affairs**§ 21.7020**

veteran or servicemember as a supplement to his or her basic educational assistance for pursuit of a program of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3002(2); Pub. L. 98-525)

(35) *Established charge*. The term *established charge* means the lesser of—

(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency, or

(ii) The actual cost to the service-member or veteran.

(Authority: 38 U.S.C. 3034, 3686(a)(1))

(36) *Date of affirmance*. The term *date of affirmance* means the date (after the expiration of ten days after a veteran or servicemember signs an enrollment agreement for a correspondence course), on which the veteran or servicemember signs and submits to VA a written agreement affirming the enrollment agreement.

(Authority: 38 U.S.C. 3034, 3686)

(37) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3002, 3452)

(38) *Disabling effects of chronic alcoholism*. (i) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

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

(39) *Cooperative course*. The term *cooperative course* means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion.

(Authority: 38 U.S.C. 3002, 3482(a); Pub. L. 100-689) (Jan. 1, 1989)

(40) *Open period*. The term “open period” means a period of time beginning on December 1, 1988, and ending on June 30, 1989.

(Authority: 38 U.S.C. 3018; Pub. L. 100-689) (Nov. 18, 1988)

(41) *Persian Gulf War*. The term “Persian Gulf War” means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33); Pub. L. 102-25)

(42) *Continuously enrolled*. The term *continuously enrolled* means being in an enrolled status at an educational institution for each day during the school year, and for consecutive school years. Continuity of enrollment is not broken by holiday vacations; vacation periods; periods during the school year between terms, quarters, or semesters; or by

§21.7020

nonenrollment during periods of enrollment outside the school year (e.g., summer sessions).

(Authority: Sec. 313(b), Pub. L. 102-568, 106 Stat. 4333)

(43) *Alternative teacher certification program.* The term *alternative teacher certification program*, for the purposes of determining whether an entity offering such a program is a school, educational institution or institution as defined in paragraph (b)(29)(iii) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 38 U.S.C. 3452(c))

(44) *Date of election.* The term *date of election* means:

(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and

(ii) For an election that must be submitted to VA, the date VA receives the written election.

(45) *Institution of higher education.* The term *institution of higher education* means either:

(i) An educational institution, located in a State, that—

(A) Admits as regular students only persons who have a high school diploma, or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the State in which the educational institution is located;

(B) Offers postsecondary level academic instruction that leads to an associate or baccalaureate degree; and

(C) Is empowered by the appropriate State education authority under State law to grant an associate or baccalaureate degree, or where there is no State law to authorize the granting of a degree, is accredited for associate or baccalaureate degree programs by a recognized accrediting agency; or

(ii) An educational institution, not located in a State, that—

(A) Offers a course leading to an undergraduate standard college degree or the equivalent; and

38 CFR Ch. I (7-1-10 Edition)

(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.

(Authority: 38 U.S.C. 3002(3))

(46) *Graduate school.* The term *graduate school* means either:

(i) An educational institution, located in a State, that—

(A) Admits as regular students only persons who have a baccalaureate degree or the equivalent in work experience;

(B) Offers postsecondary level academic instruction that leads to a master's degree, doctorate, or professional degree; and

(C) Is empowered by the appropriate State education authority under State law to grant a master's degree, doctorate, or professional degree, or, where there is no State law to authorize the granting of a degree, is accredited for master's degree, doctorate, or professional degree programs by a recognized accrediting agency; or

(ii) An educational institution, not located in a State, that—

(A) Offers a course leading to a master's degree, doctorate, or professional degree; and

(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.

(Authority: 38 U.S.C. 3002(3)).

(47) *High technology industry.* The term *high technology industry* has the same meaning as provided in § 21.4200(aa).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(48) *Employment in a high technology industry.* *Employment in a high technology industry* has the same meaning as provided in § 21.4200(bb).

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

(49) *High technology occupation.* The term *high technology occupation* has the

Department of Veterans Affairs**§ 21.7020**

same meaning as provided in § 21.4200(cc).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(50) *Computer specialist.* The term *computer specialist* has the same meaning as provided in § 21.4200(dd).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(51) *Accelerated payment.* An *accelerated payment* is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for an individual's enrollment for a term, quarter, or semester in an approved program of education leading to employment in a high technology industry. In the case of a program of education not offered on a term, quarter, or semester basis, the accelerated payment is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for the entire such program.

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

(52) *Certification test.* The term *certification test* means a test that an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(53) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

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

(A) 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;

(B) 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

(C) An organization or entity that administers a certification test for the

organization or entity that will issue a certificate 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.

(ii) This term does not include:

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

(B) 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. 3002(3), 3452(b), 3689)

(55) *Tuition assistance top-up.* The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

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

(56) *Fugitive felon.* The term *fugitive felon* has the same meaning as provided in § 21.4200(kk).

(Authority: 38 U.S.C. 5313B)

(57) *Felony.* The term *felony* has the same meaning as provided in § 21.4200(l).

(Authority: 38 U.S.C. 5313B)

(58) *Transferor.* The term *transferor* means an individual, who is—

(i) Entitled to educational assistance under the Montgomery GI Bill—Active Duty program based on his or her own active duty service; and

(ii) Approved by the service department to transfer a portion of his or her entitlement to his or her dependent or dependents.

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

§ 21.7030

(59) *Transferee.* The term *transferee* means an individual to whom entitlement has been transferred.

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

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28383, July 11, 1990; 56 FR 20130, May 2, 1991; 57 FR 15023, Apr. 24, 1992; 58 FR 26241, May 3, 1993; 59 FR 24051, May 10, 1994; 61 FR 6785, Feb. 22, 1996; 61 FR 29297, June 10, 1996; 62 FR 55761, Oct. 28, 1997; 64 FR 23772, May 4, 1999; 65 FR 5786, Feb. 7, 2000; 65 FR 67266, Nov. 9, 2000; 66 FR 39279, July 30, 2001; 68 FR 34328, June 9, 2003; 68 FR 35179, June 12, 2003; 70 FR 25787, May 16, 2005; 71 FR 75674, Dec. 18, 2006; 72 FR 16979, Apr. 5, 2007]

CLAIMS AND APPLICATIONS

§ 21.7030 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 38 U.S.C. chapter 30, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471, 5101, 5102, 5103)

[64 FR 23773, May 4, 1999]

§ 21.7032 Time limits for making elections.

(a) *Scope of this section.* The provisions of this section are applicable to certain elections to receive educational assistance under 38 U.S.C. ch. 30. For time limits governing formal and informal claims for educational assistance under 38 U.S.C. ch. 30, see § 21.1033.

(Authority: 38 U.S.C. 3018B)

(b) *Time limit for completing certain elections.* An individual who seeks to establish eligibility to receive educational assistance under § 21.7045 must—

(1) Within one year of the date of the VA letter or other written notice to the individual indicating that additional evidence is needed in order to complete the claim, submit that evidence to VA. This time limit may be extended if the individual is able to show good cause for an extension of the period to the date on which he or she actually submits the additional evidence; and

38 CFR Ch. I (7-1-10 Edition)

(2) Submit the \$1,200 VA is required pursuant to § 21.7045(c)(2) to collect before educational assistance can be awarded. A delay in submitting the \$1,200 may result in a later effective date for the award to the individual, and in no event will VA accept payment of the \$1,200 from the individual after the last date of eligibility as determined by § 21.7050 or § 21.7051. See § 21.7131(l).

(Authority: 38 U.S.C. 3018B)

[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 11671, Mar. 20, 1991; 58 FR 63530, Dec. 2, 1993; 61 FR 6785, Feb. 22, 1996; 64 FR 23773, May 4, 1999; 72 FR 16980, Apr. 5, 2007]

ELIGIBILITY

§ 21.7040 Categories of basic eligibility.

Eligibility for basic educational assistance can be established by:

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and

(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990]

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044, or § 21.7045 in order to be eligible for basic educational assistance. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether