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the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even through he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in subdivision (i) of this subparagraph.

(10) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (8) or (9) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3011, 3012, 3016; Pub. L. 98–525, Pub. L. 100–689) (July 1, 1985)

(11) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service.

(Authority: 38 U.S.C. 3012(a)(1)(B))

(c) *Restrictions on establishing eligibility*. Except as provided in paragraph (d) of this section, an individual, who would otherwise be eligible for educational assistance under paragraphs (a) or (b) of this section, is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces—

(1) Upon graduation from—

(i) The United States Military Academy, or

(ii) The United States Naval Academy, or

(iii) The United States Air Force Academy, or

(iv) The Coast Guard Academy; or

(2) Upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

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

(d) *Exception to restrictions on establishing eligibility*. Paragraph (c) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a) or (b) of this section before receiving a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990; 56 FR 20132, May 2, 1991; 57 FR 29026, June 30, 1992; 59 FR 24050, 24051, May 10, 1994; 61 FR 6786, Feb. 22, 1996; 61 FR 26116, May 24, 1996; 62 FR 55761, Oct. 28, 1997; 65 FR 20745, Apr. 18, 2000; 65 FR 67266, Nov. 9, 2000; 68 FR 34329, June 9, 2003; 73 FR 2427, Jan. 15, 2008]

§21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in §21.7042 or §21.7044 nevertheless will be eligible for educational assistance as provided in this subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) or (e) of this section.

(a) *Service requirements*. The individual must meet one of the following sets of service requirements.

(1) The individual—

(i) If not a member of the Coast Guard, must be on active duty or full-time National Guard duty either on September 30, 1990, or after November 29, 1993, or if a member of the Coast Guard, must be on active duty after September 30, 1994, and

(ii) After February 2, 1991, must be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge; or

(2) The individual must—

(i) Be separated from active military, naval, or air service with an honorable discharge, and

(ii) Receive voluntary separation incentives under 10 U.S.C. 1174a or 1175.

(Authority: 10 U.S.C. 1141; 38 U.S.C. 3018A)

(b) *Additional requirements for those individuals voluntarily separated after October 23, 1992, or involuntarily separated.* An individual who meets the requirements of paragraph (a)(1) of this section; or an individual who meets the requirements of paragraph (a)(2) of this section and who either was not a member of the Coast Guard and was separated after October 22, 1992, or who was a member of the Coast Guard and was separated after September 30, 1994, must meet the following additional requirements in order to establish eligibility for educational assistance:

(1) *Required election.* (i) If, under § 21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the election must be made:

(A) Before the involuntary or voluntary separation as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; and

(ii) If the individual is a participant (as defined in § 21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before the individual is involuntarily or voluntarily separated as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; or

(iii) If the individual is not described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before the individual is involuntarily or voluntarily separated as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) *Reduction in basic pay.* The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b)(1) of this section is required by 38 U.S.C. 3018B to be reduced by $1,200.

(i) If for any reason the basic pay of an individual who received an involuntary separation is not so reduced by $1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(ii) If the individual is voluntarily separated, such reduction of the individual's basic pay by $1,200 is a precondition to establishing eligibility. Hence, educational assistance under 38 U.S.C. ch. 30 may not be paid to such an individual when the reduction does not occur.

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance is denied due to failure to meet the requirements of paragraph (b)(3)(i) of this section at the time of his or her application for educational assistance, the veteran may

reapply if the requirements are subsequently met.

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

(c) *Additional requirements for individuals who are voluntarily discharged before October 23, 1992.* If an individual meets the requirements of paragraph (a)(2) of this section and is voluntarily discharged before October 23, 1992, he or she must also meet the following requirements in order to establish eligibility for educational assistance.

(1) *Required election.* (i) If, under §21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the new election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs; and

(ii) If the individual is a participant (as defined in §21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(iii) If the individual is not described in either paragraph (c)(1)(i) or (ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(2) *$1,200 collection.* VA must collect $1,200 from the individual before awarding educational assistance under 38 U.S.C. ch. 30. Collection of $1,200 is a precondition to establishing eligibility.

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance under subpart K of this part is denied due to failure to meet the requirements of paragraph (c)(3)(i) of this section at the time of his or her application for educational assistance, the veteran will be permitted to apply at a later date.

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

(d) *Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program*—(1) *Making an election.* To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must—

(i) Have elected to do so before October 9, 1997;

(ii) Have been a participant (as that term is defined in §21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;

(iii) Have been on active duty on October 9, 1996; and

(iv) Receive an honorable discharge.

(2) *Election.* The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) *$1,200 collection.* An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from

the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

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

(e) *Alternate eligibility requirements for former participants in the Post-Vietnam Era Veterans' Educational Assistance Program*—(1) *Definition.* For the purpose of this paragraph a *participant* is a veteran or servicemember who:

(i) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, contributed to the fund described in § 21.5021(f), and either—

(A) Is making contributions by monthly payroll deduction to that fund;

(B) Has some or all of the contributions remaining in that fund;

(C) Has disenrolled, and received a refund of contributions; or

(D) Has used all of his or her entitlement to benefits under the Post-Vietnam Era Veterans' Educational Assistance Program; or

(ii) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, and has had the Secretary of Defense make contributions to the fund described in § 21.5021(f) for him or her.

(2) *Making an election.* To receive educational assistance under authority of this paragraph, a veteran or servicemember must:

(i) Have elected before November 1, 2001, to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program;

(ii) Have been a participant in the Post-Vietnam Era Veterans' Educational Assistance Program on or before October 9, 1996;

(iii) Have served continuously on active duty since October 9, 1996, through at least April 1, 2000;

(iv) Receive an honorable discharge when discharged or released from the period of active duty during which the servicemember made the election described in paragraph (e)(3) of this section.

(3) *Election.* The election to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before November 1, 2001, pursuant to procedures provided by the Secretary of the military department concerned.

(4) *$2,700 collection.* (i) An individual who has made the election described in paragraph (e)(3) of this section must have his or her basic pay reduced by $2,700 in a manner prescribed by the Secretary of the military department concerned. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, the Secretary of the military department concerned will collect from the individual an amount equal to the difference between $2,700 and the amount that the individual's basic pay has been reduced. The individual may choose how the $2,700 is to be collected. The Secretary of the military department concerned, according to the choice the individual makes, will collect this amount—

(A) From the individual; or

(B) By reducing the individual's retired or retainer pay.

(ii) The individual must pay $2,700 to the Secretary of the military department concerned, as provided for by that Secretary, during an 18-month period beginning on the date the individual made the election described in paragraph (e)(3) of this section.

(iii) Educational assistance under authority of paragraph (e) of this section to an individual who was discharged or released from active duty before the Secretary of the military department concerned had collected the full $2,700 described in paragraph (e)(4) of this

section is not payable until that Secretary either—

(A) Collects in full the $2,700; or

(B) Has made the first reduction in retired or retainer pay for the purpose of the $2,700 payment described in paragraph (e)(4) of this section. Thus, a veteran who is making the $2,700 payment through having retired or retainer pay reduced may be eligible before the Secretary of the military department concerned collects the full $2,700.

(5) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

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

[61 FR 6786, Feb. 22, 1996, as amended at 61 FR 29297, June 10, 1996; 65 FR 5787, Feb. 7, 2000; 65 FR 20745, Apr. 18, 2000; 68 FR 34329, June 9, 2003]

§ 21.7046 Eligibility for supplemental educational assistance.

The Secretary concerned, pursuant to regulations prescribed by that Secretary, has the discretion to provide for the payment of supplemental educational assistance to certain veterans and servicemembers eligible for basic educational assistance.

(a) *Service requirements: eligibility based only on active duty service.* The Secretary concerned may authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part based solely on active duty service only if the individual meets the provisions of this paragraph.

(1) An individual may establish eligibility for supplemental educational assistance by serving five or more consecutive years of active duty in the Armed Forces in addition to the years counted to qualify the individual for basic educational assistance without a break in any such service.

(2) After completion of the service described in paragraph (a)(1) of this section the individual must either—

(i) Continue on active duty without a break,

(ii) Be discharged from service with an honorable discharge,

(iii) Be placed on the retired list,

(iv) Be transferred to the Fleet Reserve or the Fleet Marine Corps Reserve,

(v) Be placed on the temporary disability retired list, or

(vi) Be 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.

(Authority: 38 U.S.C. 3021(a); Pub. L. 98–525)

(b) *Service requirements: eligibility based on service in the Selected Reserve.* The Secretary concerned (pursuant to regulations which he or she may prescribe) has the discretion to authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part through consideration of additional active duty service and additional service in the Selected Reserve only if the individual meets the provisions of this paragraph.

(1) The individual must serve—

(i) Two or more consecutive years of active duty in the Armed Forces in addition to the years on active duty counted to qualify the individual for basic educational assistance, and

(ii) Four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for basic educational assistance.

(2) The individual after completion of the service described in paragraph (b)(1) must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(iv) Be placed on the temporary disability retired list, or

(v) Continue on active duty, or

(vi) Continue in the Selected Reserve.