

## § 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

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(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(1).

(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

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an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

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

(a) *Eligibility based solely on active duty.* An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions and requirements.

(1) The individual must after June 30, 1985, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) Except as provided in paragraph (a)(5) of this section, the individual must—

(i) If his or her obligated period of active duty is three years or more, serve at least three years of continuous active duty in the Armed Forces; or

(ii) If his or her obligated period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) The individual, before applying for educational assistance, must either—

(i) Complete the requirements of a secondary school diploma (or an equivalency certificate), or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree; and

(Authority: 38 U.S.C. 3011, 3016)

(4) After completing the service requirements of this paragraph the individual must—

(i) Continue on active duty, or

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

(iii) Be released after service on active duty characterized by the Secretary concerned as honorable service, and

(A) Be placed on the retired list, or

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

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

(iv) 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.

(5) An individual who does not meet the requirements of paragraph (a)(2) of this section is eligible for basic educational assistance when he or she is discharged or released from active duty—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted service on active duty and which VA determines is not service connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government—

(A) After completing at least 20 continuous months of active duty of an obligated period of active duty that is less than three years, or

(B) After completing 30 continuous months of active duty of an obligated period of active duty that is at least three years, or

(v) Involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by 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. 3011)

(6) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so

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before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104-275, 110 Stat. 3329-3330)

(b) *Eligibility based on active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must, after June 30, 1985, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) The individual, before applying for educational assistance, must either—

(i) Complete the requirements of a high school diploma (or an equivalency certificate),

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(Authority: 38 U.S.C. 3011, 3012, 3016)

(3) Except as provided in paragraph (b)(6) of this section, the individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(7) of this section, after completion of active duty service, the individual must serve at least four continuous years of service in the Selected Reserve. An individual whose release from active duty service occurs after December 17, 1989, must begin this service in the Selected Reserve within one year from the date of his or her release from active duty. During this period of service in the Selected Reserve the individual must satisfactorily participate

in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 3012(a)(1); Pub. L. 100-689, Pub. L. 101-237)

(5) The individual must, after completion of all service described in this paragraph

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

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when the individual is discharged or released from the Armed Forces during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) In the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, or

(v) Involuntarily, for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when

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it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98-525, Pub. L. 99-576, Pub. L. 100-689, Pub. L. 101-510) (Oct. 19, 1984)

(7) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty service required by this paragraph the individual serves a continuous period of service in the Selected Reserve and is discharged or released from service in the Selected Reserve—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) After a minimum of 30 months of such service for the convenience of the Government, or

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by 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. 3011; Pub. L. 98-525, Pub. L. 99-576, Pub. L. 100-689, Pub. L. 101-510) (Oct. 19, 1984)

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the

Selected Reserve as described in subparagraph (b)(4) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability;

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected; or

(C) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by 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. 3012(b)(1)(B)(i))

(iii) Before completing four years service in the Selected Reserve, the individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four-year service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16133(b)(1); 38 U.S.C. 3012(b)(1)(B); sec. 4421(b) and (c), Pub. L. 102-484, 106 Stat. 2718)

(8) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time

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during which the individual is considered to have continuous service in the Selected Reserve even though 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 paragraph (b)(8)(i) of this section.

(9) 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) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525, Pub. L. 100-689) (July 1, 1985, Oct. 1, 1987)

(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104-275, 110 Stat. 3329-3330)

(c) *Eligibility based on withdrawal of election not to enroll.* As stated in paragraph (f) of this section, a veteran or servicemember who elects not to enroll in this educational assistance program is generally not eligible for educational assistance. However, such a person may establish eligibility by meeting the requirements of this paragraph.

(1) The individual must withdraw an election not to enroll. Only someone who meets the provisions of this subparagraph may make this withdrawal. Such a withdrawal is irrevocable. The withdrawal may only be made during the period beginning on December 1, 1988, and ending on June 30, 1989, by a servicemember who—

(i) Must have first become a member of the Armed Forces or first entered on active duty as a member of the Armed

Forces during the period beginning July 1, 1985, and ending June 30, 1988;

(ii) As of the day of withdrawal of the election must have served continuously on active duty without a break in service since the date the individual first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces;

(iii) Must be serving on active duty on the day he or she withdraws the election;

(iv) Withdraws the election in the form prescribed by the Secretary of Defense or in the case of the Coast Guard by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The individual must continue to serve the period of service that the individual was obligated to serve on December 1, 1988.

(3) The individual must:

(i) Complete the period of service that he or she was obligated to serve on December 1, 1988, which will include completion of a period of extension or reenlistment if an individual's initial obligated period of service was scheduled to end after November 30, 1988, but he or she extended an enlistment or reenlisted before December 1, 1988; or

(ii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been discharged or released from active duty for—

(A) A service-connected disability, or

(B) A medical condition which preexisted that period of service and which the Secretary determines is not service connected, or

(C) Hardship (10 U.S.C. 1173); or

(iii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been—

(A) Discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service if such period was less than three years, or 30 months, if that period was at least three years;

(B) Involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned in accordance

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with regulations prescribed by the Secretary of Defense; or

(C) Discharged or released from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense (or by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service of the Navy).

(4) Before applying for educational assistance, the individual—

(i) Must complete the requirements of a secondary school diploma (or an equivalency certificate) or

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

(5) Upon completion of the period of service he or she was obligated to serve on December 1, 1988, the individual must—

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

(ii) Continue on active duty; or

(iii) 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. 3018; Pub. L. 102-16) (Mar. 22, 1991)

(d) *Dual eligibility.* (1) An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligi-

bility established under paragraph (a) of this section.

(2) An individual must elect, in writing, whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual:

(A) Is a veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section; and

(B) Also is a reservist who has established eligibility for benefits under 10 U.S.C. chapter 1606 through meeting the requirements of § 21.7540; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505.

(3) An election under this paragraph (d) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the veteran either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(4) If a veteran is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (d)(1) through (d)(3) of this section.

(Authority: 10 U.S.C. 16132, 38 U.S.C. 3033(c))

(e) *Eligibility to receive educational assistance while serving a qualifying period of active duty.* (1) An individual on active duty who does not have sufficient active duty service to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she

(i) After June 30, 1985, either—

(A) First becomes a member of the Armed Forces, or

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(B) First enters on active duty as a member of the Armed Forces;

(ii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning training;

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) Subject to paragraph (e)(3) of this section, VA will consider an individual to have met the requirements of paragraph (b) of this section when he or she—

(i) Has met the active duty requirements of paragraph (b) of this section;

(ii) Is committed to serve 4 years in the Selected Reserve; and

(iii) Before beginning the training for which he or she wishes to receive educational assistance—

(A) Has completed the requirements of a high school diploma (or equivalency certificate), or

(B) Has successfully completed the equivalent of 12 semester hours or the equivalent in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3011, 3012, 3016)

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(Authority: 38 U.S.C. 3011, 3012, 3016; Pub. L. 98-525)

(f) *Restrictions on establishing eligibility.* (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as pro-

vided in paragraph (c) of this section or in § 21.7045(b) or (c) of this part.

(Authority: 38 U.S.C. 3018, 3018A; Pub. L. 100-689, Pub. L. 101-510) (Nov. 5, 1990)

(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon graduation from:

(i) The United States Military Academy;

(ii) The United States Naval Academy;

(iii) The United States Air Force Academy; or

(iv) The United States Coast Guard Academy.

(3) Except as provided in this paragraph and in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Senior Reserve Officers' Training Corps program) is not eligible for educational assistance under 38 U.S.C. chapter 30. This bar to eligibility under 38 U.S.C. chapter 30 does not apply to an individual who entered active duty after September 30, 1996, and received—

(i) \$2,000 or less in educational assistance under 10 U.S.C. 2107 for at least one year of the individual's participation in that program of educational assistance; or

(ii) \$3,400 or less in educational assistance under 10 U.S.C. 2107 for at least one year of the individual's participation in that program of educational assistance. This provision applies to payment of educational assistance under 38 U.S.C. chapter 30 for months after December 31, 2001.

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

(4) Paragraphs (f)(2) and (f)(3) of this section do not apply to a veteran who has met the requirements for educational assistance under paragraph (a), (b) or (c) of this section before receiving a commission in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the

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United States Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Senior Reserve Officers Training Corps Scholarship Program).

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

(g) *Reduction in basic pay.* (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by \$100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by \$100 for each month that the individual is entitled to basic pay.

(2) The basic pay of an individual who withdraws an election not to receive educational assistance under 38 U.S.C. ch. 30 as described in paragraph (c) of this section shall be reduced by

(i) \$1,200, or

(ii) In the case of an individual whose discharge or release from active duty prevents the reduction of the individual's basic pay by \$1,200, an amount less than \$1,200.

(3) The basic pay of any individual who makes the election described in paragraph (e)(1) of this section and who does not withdraw that election will not be subject to the reduction described in either paragraph (g)(1) or paragraph (g)(2) of this section.

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) 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 described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between \$1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104-275, 110 Stat. 3329-3330)

(5) If through administrative error, or other reason—

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between \$1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

(Authority: 38 U.S.C. 3002, 3011, 3012, 3018)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0594)

[53 FR 1757, Jan. 22, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.7042, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

Certain individuals with 38 U.S.C. chapter 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. chapter 30. 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