

## § 21.5023

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.

(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.

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### (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

(ii) The provisions of § 3.13(c) of this chapter are met.

(3) The provisions of § 3.12 of this chapter as to character of discharge and § 3.13 of this chapter as to conditional discharges are applicable.

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