

## Department of Veterans Affairs

## §21.5296

child is not required to be counseled before selecting a program of education.

(Authority: Pub. L. 96-342, sec. 903, Pub. L. 97-306, Pub. L. 99-576)

(iv) In §§21.5132 through 21.5138 references to payment to the individual apply equally to payment to the spouse or child.

(Authority: Sec. 903, Pub. L. 96-342; Pub. L. 97-306, 96 Stat. 1429)

(3) Except as amended in paragraph (d)(2) of this section the following sections apply without change to this portion of the pilot program:

- (i) Sections 21.5001 through 21.5023,
- (ii) Section 21.5030(c),
- (iii) Sections 21.5070 through 21.5130,
- (iv) Section 21.5131, and
- (v) Sections 21.5132 through 21.5300.

(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

(4) Section 21.5131 (a) and (b) does not apply to this portion of the pilot program.

(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

[47 FR 51748, Nov. 17, 1982; 48 FR 50530, Nov. 2, 1983; 49 FR 2110, Jan. 18, 1984; 53 FR 34499, Sept. 7, 1988; 72 FR 16979, Apr. 5, 2007]

### §21.5296 Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by §21.5041 provided—

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 3232; Pub. L. 99-576, Pub. L. 100-689)

(b) *Application.* (1) Only the veteran may apply for an extended period of eligibility pursuant to this section. A

spouse or child to whom entitlement may be or has been transferred may not apply for, nor receive, an extension based upon disability of either the veteran or the spouse or child.

(2) The veteran must apply for the extended period of eligibility in time for VA to receive the application by the later of the following dates:

(i) One year from the last date of the delimiting period otherwise applicable to the veteran under §21.5041, or

(ii) One year from the termination date of the period of the veteran's mental or physical disability.

(3) No application for an extended period of eligibility should be submitted and none will be processed during any period when the veteran has transferred entitlement to a spouse or child, since eligibility cannot be fully determined as provided in paragraph (c)(4)(ii) of this section.

(Authority: 38 U.S.C. 3232; Pub. L. 99-576)

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 3232; Pub. L. 99-576, Pub. L. 100-689)

(1) Evidence must be presented which clearly establishes that the veteran's disability made pursuant of his or her program medically infeasible during the veteran's original period of eligibility as determined by §21.5041. A period of disability following the end of the original disability period will not be a basis for extension.

(2) VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(3) Except as provided in paragraph (c)(4) of this section, a veteran's transfer of entitlement to a spouse or child

during a period for which the veteran's disability prevented his or her pursuit of a program of education will not affect the veteran's entitlement to an extension of eligibility under this section.

(4) Since the act of entitlement transfer to a spouse or child indicates that the veteran did not intend to personally use his or her educational assistance during the specified transfer period, a veteran who becomes disabled after transferring entitlement will not be entitled to an extended period of eligibility based on any period of the disability which coincides with the specified transfer period unless—

(i) The transferee or transferees did not use any entitlement during this period, and

(ii) The veteran can clearly demonstrate that, notwithstanding his or her decision to transfer entitlement, the veteran would have used the entitlement during all or part of the transfer period and was prevented from doing so solely by reason of his or her disability.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(d) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.5041 of this part, and

(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(e) *Determining the length of extended periods of eligibility.* A veteran's extended period of eligibility shall be based on the qualifying period of disability, and determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.5041 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(f) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(g) *No transfer of entitlement for use during the extended period of eligibility.*

(1) The veteran may only transfer entitlement to a spouse or child for use during the original period of eligibility as determined by § 21.5041 of this part.

(2) If the veteran has established an extended period of eligibility with VA, only the veteran may use remaining entitlement during that period.

(3) If the veteran transfers his or her entitlement after having received an extension of eligibility, but before the last day of the delimiting period as determined by § 21.5041 of this part, the

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eligibility of the spouse or child to use entitlement ends on the veteran's otherwise applicable delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 3232; Pub. L. 99-576)

[53 FR 34499, Sept. 7, 1988, as amended at 55 FR 31584, Aug. 3, 1990]

### Subpart H—Educational Assistance Test Program

AUTHORITY: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96-342, 94 Stat. 1111-1114, unless otherwise noted.

SOURCE: 51 FR 27026, July 29, 1986, unless otherwise noted.

#### § 21.5701 Establishment of educational assistance test program.

(a) *Establishment.* The Departments of Army, Navy and Air Force have established an educational assistance test program.

(Authority: 10 U.S.C. 2141(a))

(b) *Purpose.* The purpose of this program is to encourage enlistments and reenlistments for service on active duty in the Armed Forces of the United States during the period from October 1, 1980, through September 30, 1981.

(Authority: 10 U.S.C. 2141(a))

(c) *Funding.* The Department of Defense is bearing the costs of this program. Participants in the program do not bear any of the costs.

(Authority: 10 U.S.C. 2141(a))

#### § 21.5703 Overview.

This program provides subsistence allowance and educational assistance to selected veterans and servicemembers and, in some cases, to dependents of these veterans and servicemembers.

(Authority: 10 U.S.C. 2141(b))

#### § 21.5705 Transfer of authority.

The Secretary of Defense delegates the authority to administer the benefit payment portion of this program to the Secretary of Veterans Affairs and his or her designees. See § 21.5901.

(Authority: 10 U.S.C. 2141(b))

## GENERAL

### § 21.5720 Definitions.

For the purpose of regulations in the §§ 21.5700, 21.5800 and 21.5900 series and payment of benefits under the educational assistance and subsistence allowance program, the following definitions apply:

(a) *Veteran.* This term means a person who—

(1) Is not on active duty.

(2) Served as a member of the Air Force, Army, Navy or Marine Corps.

(3) Enlisted or reenlisted after November 30, 1980, and before October 1, 1981, specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149; Pub. L. 96-342; and

(4) Meets the eligibility requirements for the program as stated in § 21.5740.

(Authority: 10 U.S.C. 2141(a))

(b) *Accredited institution.* This term means a civilian college or university or a trade, technical or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that—

(1) Provides education on a postsecondary level (including accredited programs conducted at overseas locations) and

(2) Is accredited by—

(i) A nationally recognized accrediting agency or association, or

(ii) An accrediting agency or association recognized by the Secretary of Education.

(Authority: 10 U.S.C. 2143(c))

(c) *Dependent child.* This means an unmarried legitimate child (including an adopted child or a stepchild) who either—

(1) Has not passed his or her 21st birthday; or

(2) Is incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and is, or was at the time of the veteran's or servicemember's death, in fact, dependent on him or her for over one-half of his or her support; or

(3) Has not passed his or her 23rd birthday; is enrolled in a full-time course of study in an institution of