

(b) The amount of such benefits payable under this section may not exceed \$100 per month, for a maximum of twelve months, or until a maximum of \$1,200 is utilized. This amount is in addition to the amount of educational assistance allowance payable to the individual under this chapter.

(c)(1) An individual's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the individual under this section in excess of \$600.

(2) An individual's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of \$600 that is equal to the amount of the monthly educational assistance allowance which the individual is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(Added Pub. L. 100-689, title I, §107(a)(1), Nov. 18, 1988, 102 Stat. 4167, §1419; renumbered §3019 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 1419 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted "3492" for "1692".

§ 3020. Authority to transfer unused education benefits to family members for career service members

(a) IN GENERAL.—Subject to the provisions of this section, the Secretary of Defense may authorize the Secretary concerned, to promote recruitment and retention of members of the Armed Forces, to permit an individual described in subsection (b) who is entitled to basic educational assistance under this subchapter to elect to transfer to one or more of the dependents specified in subsection (c) the unused portion of entitlement to such assistance, subject to the limitation under subsection (d).

(b) ELIGIBLE INDIVIDUALS.—An individual referred to in subsection (a) is any member of the Armed Forces—

(1) who, while serving on active duty or as a member of the Selected Reserve at the time of the approval by the Secretary concerned of the member's request to transfer entitlement to basic educational assistance under this section, has completed six years of service in the Armed Forces and enters into an agreement to serve at least four more years as a member of the Armed Forces; or

(2) as determined in regulations pursuant to subsection (k).

(c) ELIGIBLE DEPENDENTS.—An individual approved to transfer an entitlement to basic educational assistance under this section may transfer the individual's entitlement as follows:

(1) To the individual's spouse.

(2) To one or more of the individual's children.

(3) To a combination of the individuals referred to in paragraphs (1) and (2).

(d) LIMITATION ON MONTHS OF TRANSFER.—(1) An individual approved to transfer an entitlement to basic educational assistance under this section may transfer any unused entitlement to one or more of the dependents specified in subsection (c).

(2) The total number of months of entitlement transferred by an individual under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

(e) DESIGNATION OF TRANSFEREE.—An individual transferring an entitlement to basic educational assistance under this section shall—

(1) designate the dependent or dependents to whom such entitlement is being transferred;

(2) designate the number of months of such entitlement to be transferred to each such dependent; and

(3) specify the period for which the transfer shall be effective for each dependent designated under paragraph (1).

(f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—(1) Subject to the time limitation for use of entitlement under section 3031 of this title, an individual approved to transfer entitlement to basic educational assistance under this section may transfer such entitlement at any time after the approval of the individual's request to transfer such entitlement only while the individual is a member of the Armed Forces when the transfer is executed.

(2)(A) An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred as long as the individual is serving on active duty or as a member of the Selected Reserve.

(B) The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(g) COMMENCEMENT OF USE.—A dependent to whom entitlement to basic educational assistance is transferred under this section may not commence the use of the transferred entitlement until—

(1) in the case of entitlement transferred to a spouse, the completion by the individual making the transfer of six years of service in the Armed Forces; or

(2) in the case of entitlement transferred to a child, both—

(A) the completion by the individual making the transfer of 10 years of service in the Armed Forces; and

(B) either—

(i) the completion by the child of the requirements of a secondary school diploma (or equivalency certificate); or

(ii) the attainment by the child of 18 years of age.

(h) ADDITIONAL ADMINISTRATIVE MATTERS.—(1) The use of any entitlement to basic educational

assistance transferred under this section shall be charged against the entitlement of the individual making the transfer at the rate of one month for each month of transferred entitlement that is used.

(2) Except as provided under subsection (e)(2) and subject to paragraphs (5) and (6), a dependent to whom entitlement is transferred under this section is entitled to basic educational assistance under this subchapter in the same manner as the individual from whom the entitlement was transferred.

(3)(A) Subject to subparagraph (B), the monthly rate of educational assistance payable to a dependent to whom entitlement is transferred under this section shall be the monthly amount payable under sections 3015 and 3022 of this title to the individual making the transfer.

(B) The monthly rate of assistance payable to a dependent under subparagraph (A) shall be subject to the provisions of section 3032 of this title, except that the provisions of subsection (a)(1) of that section shall not apply even if the individual making the transfer to the dependent under this section is on active duty during all or any part of enrollment period of the dependent in which such entitlement is used.

(4) The death of an individual transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(5) Notwithstanding section 3031 of this title, a child to whom entitlement is transferred under this section may use the benefit without regard to the 10-year delimiting date, but may not use any entitlement so transferred after attaining the age of 26 years.

(6) The administrative provisions of this chapter (including the provisions set forth in section 3034(a)(1) of this title) shall apply to the use of entitlement transferred under this section, except that the dependent to whom the entitlement is transferred shall be treated as the eligible veteran for purposes of such provisions.

(7) The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(i) OVERPAYMENT.—(1) In the event of an overpayment of basic educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of this title.

(2) Except as provided in paragraph (3), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(3) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of basic educational assistance under paragraph (1).

(3) Paragraph (2) shall not apply in the case of an individual who fails to complete service agreed to by the individual—

(A) by reason of the death of the individual; or

(B) for a reason referred to in section 3011(a)(1)(A)(ii)(I) of this title.

(j) APPROVALS OF TRANSFER SUBJECT TO AVAILABILITY OF APPROPRIATIONS.—The Secretary concerned may approve transfers of entitlement to basic educational assistance under this section in a fiscal year only to the extent that appropriations for military personnel are available in that fiscal year for purposes of making deposits in the Department of Defense Education Benefits Fund under section 2006 of title 10 in that fiscal year to cover the present value of future benefits payable from the Fund for the Department of Defense portion of payments of basic educational assistance attributable to increased usage of benefits as a result of such transfers of entitlement in that fiscal year.

(k) REGULATIONS.—The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section. Such regulations shall specify—

(1) the manner of authorizing the military departments to offer transfer of entitlements under this section;

(2) the eligibility criteria in accordance with subsection (b);

(3) the limitations on the amount of entitlement eligible to be transferred; and

(4) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

(l) SECRETARY CONCERNED DEFINED.—Notwithstanding section 101(25) of this title, in this section, the term “Secretary concerned” means—

(1) the Secretary of the Army with respect to matters concerning the Army;

(2) the Secretary of the Navy with respect to matters concerning the Navy or the Marine Corps;

(3) the Secretary of the Air Force with respect to matters concerning the Air Force; and

(4) the Secretary of Defense with respect to matters concerning the Coast Guard, or the Secretary of Homeland Security when it is not operating as a service in the Navy.

(Added Pub. L. 107–107, div. A, title VI, § 654(a)(1), Dec. 28, 2001, 115 Stat. 1153; amended Pub. L. 107–296, title XVII, § 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–314, div. A, title VI, § 643(a), Dec. 2, 2002, 116 Stat. 2577; Pub. L. 110–252, title V, § 5006(a), June 30, 2008, 122 Stat. 2380; Pub. L. 112–81, div. A, title X, § 1063(b), Dec. 31, 2011, 125 Stat. 1586.)

PRIOR PROVISIONS

A prior section 3020 was renumbered section 5120 of this title.

AMENDMENTS

2011—Subsecs. (l), (m). Pub. L. 112–81 redesignated subsec. (m) as (l) and struck out former subsec. (l) which required the Secretary of Defense to submit an annual report on approved transfers of entitlement to basic educational assistance.

2008—Pub. L. 110–252, § 5006(a)(1), substituted “Authority to transfer unused education benefits to family members for career service members” for “Transfer of entitlement to basic educational assistance: members of the Armed Forces with critical military skills” in section catchline.

Subsecs. (a), (b). Pub. L. 110-252, §5006(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which provided for transfers of entitlement to basic educational assistance from eligible members of the Armed Forces to certain dependents and described eligibility criteria for such members, respectively.

Subsec. (d). Pub. L. 110-252, §5006(a)(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "The total number of months of entitlement transferred by an individual under this section may not exceed 18 months."

Subsec. (f)(1). Pub. L. 110-252, §5006(a)(3), substituted "only while" for "without regard to whether".

Subsec. (f)(2)(A). Pub. L. 110-252, §5006(a)(4), inserted "as long as the individual is serving on active duty or as a member of the Selected Reserve" after "so transferred".

Subsec. (f)(3). Pub. L. 110-252, §5006(a)(5), added par. (3).

Subsec. (h)(5). Pub. L. 110-252, §5006(a)(6), inserted "may use the benefit without regard to the 10-year delimiting date, but" after "under this section".

Subsec. (k). Pub. L. 110-252, §5006(a)(7), added subsec. (k) and struck out former subsec. (k). Prior to amendment, text read as follows: "The Secretary of Defense shall prescribe regulations for purposes of this section. Such regulations shall specify the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2) and shall specify the manner of the applicability of the administrative provisions referred to in subsection (h)(5) to a dependent to whom entitlement is transferred under this section."

2002—Subsec. (h)(2). Pub. L. 107-314, §643(a)(1), substituted "paragraphs (5) and (6)" for "paragraphs (4) and (5)" and struck out "and at the same rate" after "in the same manner".

Subsec. (h)(3) to (7). Pub. L. 107-314, §643(a)(2), (3), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (m)(4). Pub. L. 107-296 substituted "of Homeland Security" for "of Transportation".

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-314, div. A, title VI, §643(c)(1), Dec. 2, 2002, 116 Stat. 2578, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 3020 of title 38, United States Code, by section 654(a)(1) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1153)."

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

PLAN FOR IMPLEMENTATION

Pub. L. 107-107, div. A, title VI, §654(c), Dec. 28, 2001, 115 Stat. 1157, provided that: "Not later than June 30, 2002, the Secretary of Defense shall submit to Congress a report describing the manner in which the Secretaries of the military departments and the Secretary of Transportation propose to exercise the authority granted by section 3020 of title 38, United States Code, as added by subsection (a). The report shall include the regulations prescribed under subsection (k) of that section for purposes of the exercise of the authority."

SUBCHAPTER III—SUPPLEMENTAL EDUCATIONAL ASSISTANCE

§ 3021. Supplemental educational assistance for additional service

(a) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic edu-

ational assistance under section 3011 or 3018 of this title who—

(1) serves five or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3011(a)(1) of this title without a break in such service; and

(2) after completion of the service described in clause (1) of this subsection—

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

(B) continues on active duty without a break in service; or

(C) is 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.

(b) The Secretary concerned, pursuant to regulations to be prescribed by the Secretary of Defense, may provide for the payment of supplemental educational assistance under this subchapter to any individual eligible for basic educational assistance under section 3012 or 3018 of this title who—

(1) serves two or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3012(a)(1) of this title and four or more consecutive years of duty in the Selected Reserve after the years of duty in the Selected Reserve counted under such section without a break in service; and

(2) after completion of the service described in clause (1) of this subsection—

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

(B) continues on active duty or in the Selected Reserve.

(c) Continuity of service of a member in the Selected Reserve for purposes of subsection (b)(1) of this section shall not be considered to be broken—

(1) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected Reserve of the member's Armed Force that the member is eligible to join or that has a vacancy; or

(2) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(d) A period of active duty or duty in the Selected Reserve that occurs before the period of duty by which the individual concerned qualifies for basic educational assistance may not be counted for purposes of this section.

(Added Pub. L. 98-525, title VII, §702(a)(1), Oct. 19, 1984, 98 Stat. 2558, §1421; amended Pub. L.