

of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of educational assistance allowance otherwise payable with respect to the person under section 16131 of this title.

(c)(1) The amount of the accelerated payment of educational assistance payable with respect to an eligible person making an election under subsection (a) for a program of education shall be the lesser of—

(A) the amount equal to 60 percent of the established charges for the program of education; or

(B) the aggregate amount of educational assistance allowance to which the person remains entitled under this chapter at the time of the payment.

(2)(A) In this subsection, except as provided in subparagraph (B), the term “established charges”, in the case of a program of education, means the actual charges (as determined pursuant to regulations prescribed by the Secretary of Veterans Affairs) for tuition and fees which similarly circumstanced individuals who are not eligible for benefits under this chapter and who are enrolled in the program of education would be required to pay. Established charges shall be determined on the following basis:

(i) In the case of an individual enrolled in a program of education offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the term, quarter, or semester.

(ii) In the case of an individual enrolled in a program of education not offered on a term, quarter, or semester basis, the tuition and fees charged the individual for the entire program of education.

(B) In this subsection, the term “established charges” does not include any fees or payments attributable to the purchase of a vehicle.

(3) The educational institution providing the program of education for which an accelerated payment of educational assistance allowance is elected by an eligible person under subsection (a) shall certify to the Secretary of Veterans Affairs the amount of the established charges for the program of education.

(d) An accelerated payment of educational assistance allowance made with respect to an eligible person under this section for a program of education shall be made not later than the last day of the month immediately following the month in which the Secretary of Veterans Affairs receives a certification from the educational institution regarding—

(1) the person’s enrollment in and pursuit of the program of education; and

(2) the amount of the established charges for the program of education.

(e)(1) Except as provided in paragraph (2), for each accelerated payment of educational assistance allowance made with respect to an eligible person under this section, the person’s entitlement to educational assistance under this chapter shall be charged the number of months (and any fraction thereof) determined by dividing the amount of the accelerated payment by the full-

time monthly rate of educational assistance allowance otherwise payable with respect to the person under section 16131 of this title as of the beginning date of the enrollment period for the program of education for which the accelerated payment is made.

(2) If the monthly rate of educational assistance allowance otherwise payable with respect to an eligible person under section 16131 of this title increases during the enrollment period of a program of education for which an accelerated payment of educational assistance allowance is made under this section, the charge to the person’s entitlement to educational assistance under this chapter shall be determined by prorating the entitlement chargeable, in the manner provided for under paragraph (1), for the periods covered by the initial rate and increased rate, respectively, in accordance with regulations prescribed by the Secretary of Veterans Affairs.

(f) The Secretary of Veterans Affairs shall prescribe regulations to carry out this section. The regulations shall include requirements, conditions, and methods for the request, issuance, delivery, certification of receipt and use, and recovery of overpayment of an accelerated payment of educational assistance allowance under this section. The regulations may include such elements of the regulations prescribed under section 3014A of title 38 as the Secretary of Veterans Affairs considers appropriate for purposes of this section.

(g) The aggregate amount of educational assistance payable under this section in any fiscal year for enrollments covered by subsection (b)(1) may not exceed \$4,000,000.

(Added Pub. L. 110–181, div. A, title V, § 528(a)(1), Jan. 28, 2008, 122 Stat. 105.)

EFFECTIVE DATE

Pub. L. 110–181, div. A, title V, § 528(a)(3), Jan. 28, 2008, 122 Stat. 107, provided that: “The amendments made by this subsection [enacting this section] shall take effect on October 1, 2008, and shall only apply to initial enrollments in approved programs of education after such date.”

§ 16132. Eligibility for educational assistance

(a) A person who—

(1) after June 30, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or an equivalency certificate);

is entitled to educational assistance under section 16131 of this title.

(b) Educational assistance may not be provided to a member under this chapter until the member has completed the initial period of active duty for training required of the member.

(c) Each person who becomes entitled to educational assistance under subsection (a) shall at the time the person becomes so entitled be given a statement in writing summarizing the provisions of this chapter and stating clearly and prominently the substance of sections 16134 and 16135 of this title as such sections may apply to the person. At the request of the Secretary of Veterans Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to that Secretary.

(d) A person who serves in the Selected Reserve may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited. However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(a)(1)(B) of this title.

(Added Pub. L. 95-79, title IV, §402(a), July 30, 1977, 91 Stat. 329, §2132; amended Pub. L. 95-485, title IV, §402(a), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96-513, title V, §511(69), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100-48, §4, June 1, 1987, 101 Stat. 331; Pub. L. 100-689, title I, §§110(b), 111(b)(2)-(4), Nov. 18, 1988, 102 Stat. 4170, 4173; Pub. L. 101-189, div. A, title VI, §§643(a), 645(a), (b)(2), Nov. 29, 1989, 103 Stat. 1458; Pub. L. 102-25, title VII, §701(f)(6), Apr. 6, 1991, 105 Stat. 115; renumbered §16132 and amended Pub. L. 103-337, div. A, title XVI, §1663(b)(2), (4), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104-106, div. A, title XV, §1501(b)(34), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106-419, title I, §102(d), Nov. 1, 2000, 114 Stat. 1825.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106-419 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “before completing initial active duty for training has completed the requirements of a secondary school diploma (or an equivalency certificate), or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension;”.

1996—Subsec. (c). Pub. L. 104-106 substituted “sections 16134” for “section 16134”.

1994—Pub. L. 103-337, §1663(b)(2), renumbered section 2132 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1663(b)(4)(A), substituted “16131” for “2131” in concluding provisions.

Subsec. (c). Pub. L. 103-337, §1663(b)(4)(B), substituted “section 16134 and 16135” for “sections 2134 and 2135”.

1991—Subsec. (d). Pub. L. 102-25 substituted “section 115(a)(1)(B)” for “section 115(b)(1)(A)(ii)”.

1989—Subsec. (c). Pub. L. 101-189, §645(a), substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs” and “to that Secretary” for “to the Administrator”.

Subsec. (d). Pub. L. 101-189, §645(a)(1), (b)(2), substituted “A person” for “An individual” and “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

Pub. L. 101-189, §643(a), inserted at end “However, a person may not receive credit under the program estab-

lished by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(b)(1)(A)(ii) of this title.”

1988—Subsec. (a)(2). Pub. L. 100-689, §111(b)(2), substituted “completed the requirements of” for “received”, and inserted before semicolon at end “, or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension”.

Subsec. (b). Pub. L. 100-689, §110(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Educational assistance may not be provided to a member under this chapter until the member—

“(1) has completed the initial period of active duty for training required of the member; and

“(2) has completed 180 days of service in the Selected Reserve.”

Subsec. (c). Pub. L. 100-689, §111(b)(3), inserted at end “At the request of the Administrator of Veterans’ Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to the Administrator.”

Subsec. (d). Pub. L. 100-689, §111(b)(4), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “A person who is entitled to educational assistance under chapter 30 of title 38 based on section 1412 of that title may not also be provided educational assistance under this chapter.”

1987—Subsec. (a)(1). Pub. L. 100-48 substituted “after June 30, 1985” for “during the period beginning on July 1, 1985, and ending on June 30, 1988”.

1984—Pub. L. 98-525 amended section generally, updating provisions covering eligibility for educational assistance to cover the period beginning July 1, 1985, and ending June 30, 1988.

1980—Pub. L. 96-513 inserted “of this title” after “section 2131” wherever appearing.

1978—Subsec. (b)(1). Pub. L. 95-485 substituted “not less than six years” for “automatically extended by two years” and “last day of the term” for “eighth anniversary”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

SAVINGS PROVISION

Pub. L. 101-189, div. A, title VI, §643(b), Nov. 29, 1989, 103 Stat. 1458, provided that: “The amendment made by subsection (a) [amending this section] shall not affect the eligibility for educational assistance of any person who before the date of the enactment of this Act [Nov. 29, 1989] is entitled to educational assistance under sec-

tion 2131(a) [now 16131(a)] of title 10, United States Code.”

§ 16132a. Authority to transfer unused education benefits to family members

(a) **IN GENERAL.**—Subject to regulation prescribed by the Secretary of Defense, the Secretary concerned may permit a member described in subsection (b) who is entitled to basic educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such member’s entitlement to such assistance, subject to the limitation under subsection (d).

(b) **ELIGIBLE MEMBERS.**—A member referred to in subsection (a) is a member of the Selected Reserve of the Ready Reserve who, at the time of the approval of the member’s request to transfer entitlement to basic educational assistance under this section, has completed—

(1) at least six years of service in the Selected Reserve and enters into an agreement to serve at least four more years as a member of the armed forces; or

(2) the years of service as determined in regulations pursuant to subsection (j).

(c) **ELIGIBLE DEPENDENTS.**—A member approved to transfer an entitlement to basic educational assistance under this section may transfer the member’s entitlement as follows:

(1) To the member’s spouse.

(2) To one or more of the member’s children.

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

(d) **LIMITATION ON MONTHS OF TRANSFER.**—The total number of months of entitlement transferred by a member 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.**—A member 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 16133, a member approved to transfer entitlement to basic educational assistance under this section may transfer such entitlement at any time after the approval of the member’s request to transfer such entitlement.

(2) A member transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. 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 member making the transfer of at least—

(A) six years of service in the armed forces; or

(B) the years of service as determined in regulations pursuant to subsection (j); or

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

(A) the completion by the member making the transfer of at least—

(i) ten years of service in the armed forces; or

(ii) the years of service as determined in regulations pursuant to subsection (j); 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 member 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 chapter in the same manner as the member from whom the entitlement was transferred.

(3) 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 16131 and 16131a to the member making the transfer.

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

(5) The involuntary separation or retirement of the member—

(A) because of a nondiscretionary provision of law for age or years of service;

(B) because of a policy prescribed by the Secretary concerned mandating such separation or retirement based solely on age or years of service for the prescribed pay grade of an enlisted member;

(C) under section 16133(b); or

(D) because of medical disqualification which is not the result of gross negligence or misconduct of the member,

shall not affect the use of entitlement by the dependent to whom the entitlement is transferred.

(6) A child to whom entitlement is transferred under this section may not use any entitlement so transferred after attaining the age of 26 years.