Education Service

Chapter 33 Eligibility Periods and Section 112 of

Public Law 115-48

Training Update



June 2018

Version 1.0

| Topic | Description |
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| Time Estimate: | 45 minutes |
| Purpose of the Lesson: | Provide guidance to the Regional Processing Office (RPOs) and other impacted Education Service Employees communicating changes and to ensure a common understanding of benefit eligibility periods for Chapter 33 claims by differentiating those affected by Section 112 of PL 115-48, the Colmery Act, Forever GI Bill. |
| Prerequisite Training Requirements: | None |
| Target Audience: | Entry-level, intermediate, or journey-level Veterans Claims Examiners (VCE), Education Case Managers (ECM), Education Call Center Technicians (ECCT), their supervisors and other Education Service Employees with duties requiring a basic understanding of benefit eligibility. |
| Lesson References: | * [38 USC 3301 Definitions](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3301%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3301)&f=treesort&edition=prelim&num=0&jumpTo=true) * [38 USC 3311 Educational assistance for service in the Armed Forces commencing on or after September 11, 2001: entitlement](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3311%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3311)&f=treesort&edition=prelim&num=0&jumpTo=true) * [38 USC 3319 Authority to transfer unused education benefits to family members](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section3319&num=0&edition=prelim) * [38 USC 3321 Time limitation for use of and eligibility for entitlement](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3321%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3321)&f=treesort&edition=prelim&num=0&jumpTo=true) * [CFR 21.9530 Eligibility time limit](https://www.ecfr.gov/cgi-bin/text-idx?SID=ee9c16e5e75a6ecf23469e8bf4e5fa13&mc=true&node=pt38.2.21&rgn=div5" \l "se38.2.21_19530) * [CFR 21.9570 Transfer of Entitlement](https://www.ecfr.gov/cgi-bin/text-idx?SID=ee9c16e5e75a6ecf23469e8bf4e5fa13&mc=true&node=pt38.2.21&rgn=div5#se38.2.21_19570) * [M22-4, Part I, Chapter 2](https://vbaw.vba.va.gov/bl/22/ref/m22-4/Part%20I/ch02.htm) Definitions |
| Lesson Objectives: | * Properly identify periods of eligibility * Correctly identify claimants whose period to use entitlement will not expire. |
| What You Need: | This Training Update |
| Post Training Requirements: | Upon reviewing the included Training Update, participants are required to complete an online lesson assessment and survey in Talent Management System (TMS).  To demonstrate successful completion of the lesson participants must pass the assessment with a score of 100%.  Participants must also complete the online survey to earn credit for completion of the lesson. |

**Training Update: Chapter 33 Eligibility Periods**

**Purpose:** To provide an in depth condensed overview of eligibility periods for each Chapter 33 beneficiary type.

**Background:**The passage of the “Forever GI Bill” or Section 112 of Public Law 115-48 (The Colmery Act) on August 16, 2017, significantly altered Post-9/11 GI Bill benefit eligibility for certain individuals. For those individuals, the time limitation for use of and eligibility for entitlement shall not expire.

**Periods of Eligibility, Terminology, and Definitions** ([M22-4, Part I, Chapter 2](https://vbaw.vba.va.gov/bl/22/ref/m22-4/Part%20I/ch02.htm))**:**

Period of Eligibility The timeframe in which benefit entitlement may be used.

Delimiting Date The first day after a claimant's period of eligibility expires. Benefits are not payable on or after the delimiting date.

Servicemember (or Serviceperson) An individual who is currently serving on active duty as defined in [38 USC 3301(1)](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3301%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3301)&f=treesort&edition=prelim&num=0&jumpTo=true)

A Servicemember’s period of eligibility begins following 90 days of creditable service following the completion of initial entry or skill level training or other excluded service. Eligibility once established while on active duty, continues until separated from service. Servicemembers do not have a delimiting date nor can it be presumed eligibility will not expire. Section 112 does not apply to Servicemembers. Following separation, a period of eligibility must be determined as a Veteran.

Veteran A person who served in the active military, naval, or air service. [Not currently on active duty as defined in [38 USC 3301(1)](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3301%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3301)&f=treesort&edition=prelim&num=0&jumpTo=true)]

A Veteran must have 90 days of creditable Honorable active duty service or have been discharged for a service connected disability after 30 days of creditable service. ([38 USC 3311(2)](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3311%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3311)&f=treesort&edition=prelim&num=0&jumpTo=true)) Discharges prior to January 4, 2011 for a medical condition the preexisted service (EPTS), a condition that interfered with duty (CIWD), or a hardship (HDSP) characterized as Under Honorable Conditions (General) as well as honorable are creditable. Provided eligible, eligibility as a Veteran begins the day following release or discharge and continues for 15 years from last service period of at least 90 days if before January 1, 2013. These Veterans will have a delimiting date that is 15 years and 1 day from the date discharged. Eligible Veterans discharged or released from a qualifying service period of at least 90 days on or after January 1, 2013, do not have a delimiting date as Section 112 applies and their eligibility period will not expire.

**NOTE:** Under Chapter 33, only service characterized as *Honorable* or *Under Honorable Conditions* (general) will be used to determine the period of eligibility subsequent to at least a 90 day period of honorable service.

**Exception**: If an individual established eligibility by using aggregate service, the last period of qualifying service used to meet the minimum service requirement (90 days) will be used to establish the individuals delimiting date.

**Example:** Dates of qualifying service: 09/27/2011 - 11/25/2011, 01/25/2012 - 04/01/2012, and 01/06/2014 - 02/04/2014. The individual was not released for service-connected disability.

The delimiting date for this example is established using the 4/01/2012 release because this was the last qualifying period of service of at least 90 days. This claimant has a delimiting date because the last qualifying release was before January 1, 2013, therefore Section 112 does not apply. The delimiting date in the LTS will be 04/02/2027.

**NOTE:** Although the last period of service in this example (01/06/2014 - 02/04/2014) may be included to calculate aggregate service to determine the benefit level, it cannot be used to extend or determine the delimiting date because it is only 30 days.

**Upgraded Discharges:** Individuals receiving an upgraded discharge by a service board of military corrections may be able to establish eligibility under the Post-9/11 GI Bill with creditable service for use of benefits for 15 years effective from the date of the upgrade when the actual discharge date was prior to January 1, 2013. If the actual discharge date of the upgraded service period was on or after January 1, 2013, eligibility once established will not expire as Section 112 applies to these individuals.

TOE (Transfer of Entitlement)

TOE Sponsor A Servicemember or Veteran that transferred Post-9/11 GI Bill benefit entitlement to eligible dependents. ([38 USC 3319](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3319%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3319)&f=treesort&edition=prelim&num=0&jumpTo=true))

TOE Spouse Dependent spouse eligible for transferred Chapter 33 Education benefits.

A TOE Spouse is entitled to educational assistance in the same manner as the individual from whom the entitlement was transferred. Section 112 shall apply to an eligible spouse of a Veteran last released or discharged from a qualifying period of service on or after January 1, 2013. However, unused entitlement may be restricted to an earlier date or revoked altogether by the TOE sponsor. A VCE must continue to monitor the Veterans Information System (VIS) and update as necessary for any changes to end dates or entitlement amounts transferred from the TOE sponsor. ([38 USC 3321](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3321%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3321)&f=treesort&edition=prelim&num=0&jumpTo=true))

TOE Child Dependent child eligible for transferred Chapter 33 Education benefits.

Eligibility for a TOE child begins at age 18 or upon completion of high school or the equivalent whichever is sooner provided the service has approved benefit transfer and the TOE sponsor has completed 10 years of service. The ending of the eligibility period or delimiting date for a TOE child is the child’s 26th birthdate. Section 112 does not apply to a TOE child.

Fry Scholarship

Fry Spouse Dependent spouse eligible for Chapter 33 Education benefits based upon a line of duty death of Servicemember occurring after September 10, 2001.

Eligibility for all Fry spouse eligible claimants began on January 1, 2015, or date of election after January 1, 2015, therefore Section 112 applies and eligibility will not expire for all Fry Spouse beneficiaries. ([38 USC 3311](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3311%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3311)&f=treesort&edition=prelim&num=0&jumpTo=true), [38 USC 3321](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3321%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3321)&f=treesort&edition=prelim&num=0&jumpTo=true))

Fry Child Dependent child eligible for Chapter 33 Education benefits based upon a line of duty death of Servicemember occurring after September 10, 2001.

Eligibility for a Fry child begins at age 18 or upon completion of high school or the equivalent whichever is sooner. If a Fry child used benefits before, or turned 18 and the line of duty death is before January 1, 2013, then the period of eligibility or delimiting date for these individuals will be their 33rd birthdate. Eligibility will not expire for a Fry child that becomes eligible on or after January 1, 2013, based upon a line of duty death or 18th birthdate on or after this date, as Section 112 applies to these individuals.

**NOTE:** The actual period of eligibility for a claimant depends upon when the claimant applies for benefits and the following:

* Use of benefits is generally limited to one year prior to when VA receives the claim for benefits.
* In some instances, a claimant must also make an irrevocable election with an effective date.
* A valid election date may be no more than 1 year prior to the date the claim is received by VA.
* Then for transferred entitlement, benefits are limited to begin following approval by Department of Defense and are also subject to begin or end date restrictions established by the TOE sponsor.

**References:**

* [38 USC 3301 Definitions](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3301%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3301)&f=treesort&edition=prelim&num=0&jumpTo=true)
* [38 USC 3311 Educational assistance for service in the Armed Forces commencing on or after September 11, 2001: entitlement](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3311%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3311)&f=treesort&edition=prelim&num=0&jumpTo=true)
* [38 USC 3319 Authority to transfer unused education benefits to family members](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section3319&num=0&edition=prelim)
* [38 USC 3321 Time limitation for use of and eligibility for entitlement](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3321%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3321)&f=treesort&edition=prelim&num=0&jumpTo=true)
* [CFR 21.9530 Eligibility time limit](https://www.ecfr.gov/cgi-bin/text-idx?SID=ee9c16e5e75a6ecf23469e8bf4e5fa13&mc=true&node=pt38.2.21&rgn=div5" \l "se38.2.21_19530)
* [CFR 21.9570 Transfer of Entitlement](https://www.ecfr.gov/cgi-bin/text-idx?SID=ee9c16e5e75a6ecf23469e8bf4e5fa13&mc=true&node=pt38.2.21&rgn=div5#se38.2.21_19570)

**Summary:**

Section 112 of PL 115-48 applies to the following Chapter 33 beneficiaries:

* Veterans with last qualifying discharge on or after January 1, 2013,
* TOE Spouse of Veteran with last qualifying discharge on or after January 1, 2013 (*unless the Sponsor has established an end date*),
* Fry Child that first became eligible on or after January 1, 2013, and
* Every Fry Spouse

Section 112 of PL 115-48 does not apply to the following Chapter 33 beneficiaries:

* Servicemembers
* Veterans with last qualifying discharge prior to January 1, 2013,
* TOE Spouse of Veteran with last qualifying discharge prior to January 1, 2013,
* Fry Child that first became eligible prior to January 1, 2013, and
* Every TOE Child

A qualifying discharge is from:

* A period of active duty service as defined in 38 USC 3301,
* Service that is characterized as Honorable or Under Honorable Conditions
* A period of service of at least 90 days ([38 USC 3321](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3321%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3321)&f=treesort&edition=prelim&num=0&jumpTo=true))
  + Unless eligibility is established by using 90 days of aggregate service, or
  + Separated for a service connected discharge after serving 30 continuous days

Questions about this training should be directed through your supervisor and management or Training Coordinator to the [National Training Team](mailto:225A.VBACO@va.gov).