

VETERANS' READMISSION
Proposed Regulations
August 21, 2009

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Proposed Regulations (pp. 42430-2)

Section 668.18 is added to subpart B of part 668 to read as follows:

Sec. 668.18 Readmission requirements for servicemembers.

(a) General. (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(ii) "Promptly readmit" means that the institution must readmit the student into the next class or classes in the student's program beginning after the student provides notice of his or her intent to reenroll, unless the student requests a later date of readmission or unusual circumstances require the institution to admit the student at a later date.

(iii) To readmit a person with the "same academic status" means that the institution admits the student--

(A) To the same program to which he or she was last admitted by the institution or, if that exact program is no longer offered, the program that is most similar to that program, unless the student requests or agrees to admission to a different program;

(B) At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;

(C) With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;

(D) With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had;

(E)(1) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing the same institutional charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(2) If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, assessing no more than the institutional charges that other students in the program are assessed for that academic year; and

(F) Waiving charges for equipment required in lieu of equipment the student paid for when the student was previously enrolled.

(iv)(A) If the institution determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the institution must make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost.

(B) The institution is not required to readmit the student on his or her return if--

(1) After reasonable efforts by the institution, the institution determines that the student is not prepared to resume the program at the point where he or she left off;

(2) After reasonable efforts by the institution, the institution determines that the student is unable to complete the program; or

(3) The institution determines that there are no reasonable efforts the institution can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program;

(C)(1) "Reasonable efforts" means actions that do not place an undue hardship on the institution.

(2) "Undue hardship" means an action requiring significant difficulty or expense.

(D) The institution carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section.

(b) Service in the uniformed services. For purposes of this section, service in the uniformed services means service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

(c) Readmission procedures. (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if--

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written notice of such service to an office designated by the institution, and provides such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that institution by reason of service in the uniformed services, including only the time the student spends actually performing service in the uniformed services, does not exceed five years; and

(iii) Except as provided in paragraph (f) of this section, the student gives oral or written notice of his or her intent to return to an office designated by the institution--

(A) For a student who completes a period of service in the uniformed services, not later than three years after the completion of the period of service; or

(B) For a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services, two years after the end of the period that is necessary for recovery from such illness or injury.

(2)(i) An institution must designate one or more offices at the institution that a student may contact to provide notification of service required by paragraph (c)(1)(i) of this section and notification of intent to return required by paragraph (c)(1)(iii) of this section.

(ii) An institution may not require that the notice provided by the student under paragraph (c)(1)(i) or (c)(1)(iii) of this section follow any particular format.

(iii) The notice provided by the student under paragraph (c)(1)(i) of this section--

(A) May not be subject to any rule for timeliness; timeliness must be determined by the facts in any particular case; and

(B) Does not need to indicate whether the student intends to return to the institution.

(iv) For purposes of paragraph (c)(1)(i) of this section, an "appropriate officer" is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) Exceptions to advance notice. (1) No notice is required under paragraph (c)(1)(i) of this section if the giving of such notice is precluded by military necessity, such as--

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or oral notice of service to the appropriate official at the institution in accordance with paragraph (c)(1) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

(e) Cumulative length of absence. For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service--

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is--

(i) Ordered to or retained on active duty under--

- (A) 10 U.S.C. 688 (involuntary active duty by a military retiree);
- (B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);
- (C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);
- (D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);
- (E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);
- (F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);
- (G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);
- (H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);
- (I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);
- (J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);
- (K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or
- (L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);
- (ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;
- (iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;
- (iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or
- (v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).
- (f) Notification of intent to reenroll. A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.
- (g) Documentation. (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that--
 - (i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and
 - (ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.
- (2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:
 - (A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) Termination of readmission eligibility. A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

(3) A dropping of a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

(Approved by the Office of Management and Budget under control number 1845-NEW1)

Authority: 20 U.S.C. 1088 et seq.)