

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20230015007

APPLICANT REQUESTS:

- to backdate his request to transfer Post-9/11 GI Bill education benefits to dependents (TEB) from the original date of submission on 13 September 2023 to 31 May 2023 so he can satisfy the 4-year service requirements
- personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Online DD Form 149 and signature page
- Personal Statement

FACTS:

1. The applicant states that he is requesting to backdate his request to transfer Post-9/11 GI Bill education benefits to dependents (TEB) from the original date of 20230913 to a corrected date of 20230531. There are extenuating circumstances that justify this request, mainly the U.S. Army Human Resources Command (AHRC) Retirement Branch's unreasonable delay in rendering a decision on his previously submitted retirement request, that caused a delay in the TEB submission. The commensurate delay subsequently resulted in AHRC Education Branch denying his TEB request. This is an egregious bureaucratic injustice that he asks the Board to rectify.

a. AHRC Retirements Branch took an unreasonable amount of time over the course of 11 months to render a decision that denied his request to retire, causing his transfer education benefits eligibility window to lapse by a mere 3 months. He originally submitted his retirement request via email on 7 November 2022. After several administrative returns, AHRC accepted this request on or about 1 December 2022, but then disapproved it without appropriate consideration on 14 February 2023. In spite of the fact that his original request specifically sought to waive an existing service obligation, AHRC stated that he needed to submit a separate waiver and instructed him to resubmit the entire request again.

b. He submitted the request a second time on 21 February 2023 with the attached waiver but was also required to process it through the newly implemented IPPS-A system. The IPPS-A system suffered severe delays, and Retirements Branch failed to respond to repeated status queries. 7 months later, on 13 September 2023 he received notification that his retirement request had been disapproved. He immediately requested to transfer 9/11 GI Bill benefits to his dependents on the same day. He had been waiting for the results of his retirement request because, if he hadn't, he would have incurred a service obligation that could have voided his ongoing retirement request. AHRC subsequently disapproved his transfer benefits request indicating the opportunity closed on 1 June 2023, at a point when he had then been waiting 7 months for AHRC's properly considered retirement decision. AHRC Education Branch then declined to backdate his request stating that they did not have the authority.

c. They instructed him to appeal to this Board. This ordeal has been an injustice which AHRC has declined to correct. He asks this Board to rectify the issue. Please backdate his request to transfer education benefits a mere 3 months to 31 May 2023, which is the last date he would have submitted his request to AHRC if Retirements Branch had resolved the retirement request in reasonable time. Naturally, he will serve the associated 4-year service obligation.

2. The applicant provides an additional personal statement explaining the circumstances and events, as stated above, in more details. The statement is available to the Board for review.

3. The applicant was appointed as a commissioned officer of the Army and executed an oath of office on 21 May 1999. He entered active duty on 24 May 1999.

a. His service record shows he was married on 31 August 2012 and divorced on 17 September 2018. He remarried on 14 March 2022.

b. He served in a variety of stateside or overseas assignments, including Korea, three tours in Iraq, Germany, and France, and he attained the rank of lieutenant colonel (LTC) in August 2016.

c. Based on the applicant's date of entry (24 May 1999) and his rank (LTC), his mandatory retirement date (MRD) is 1 June 2027.

4. The U.S. Army Human Resources Command (AHRC) provided an advisory opinion on 13 August 2024 in the processing of this case. An AHRC advisory official recommended disapproval of the applicant's request for the Post 9/11 GI Bill (PGIB) Transfer of Education Benefits (TEB). Service Members (SM) earn the PGIB because of their qualifying Active Duty (AD) service. However, the ability to TEB to eligible dependents is neither a reward for service nor a transition benefit but a retention

incentive (much like a specialty skills bonus) requiring the fulfillment of a by-law mandatory four-year Additional Service Obligation (ASO). Eligibility to participate in the TEB retention incentive is based on service in an AD or Selected Reserve Duty Status, on or after August 1, 2009; having at least 90 days of qualifying AD service; attaining a minimum of six years of qualifying service; having no current negative action flags; and being able to commit to the four-year ASO. The only way to request PGIB TEB is via the Defense Manpower Data Center (DMDC)-maintained milConnect website at <https://milconnect.dmdc.osd.mil>. If approved to participate in the retention incentive, the milConnect system will assign the SM an Obligation End Date (OED), which is automatically calculated from the initial request and signifies the four-year ASO end date. Additionally, SMs must allocate a minimum of one month of benefits to each eligible dependent before leaving the Service, otherwise they will lose eligibility to do so after transitioning. Finally, SMs must honorably complete the ASO, or they will lose TEB eligibility. The Post 9/11 GI Bill TEB retention incentive is an integral part of the Army's talent management initiative, so is used for the express purpose of recruitment and retention. Consequently, Public Law (PL) 110-252 makes no provisions for waiving these requirements. AHRC do not recommend administrative relief based on the following:

a. Soldiers receive counseling on all GI Bills, including the PGIB benefit and its TEB incentive at various venues throughout their career (in/out-processing at Education Centers), upon demobilization or release from Active Duty (REFRAD), and during the last year before separation or retirement (Soldier for Life (SFL) -Transition Assistance Program (TAP)). Soldiers have had access to and received counseling on GI Bill benefits through SFL-TAP (i.e., ACAP XXI or TAP XXI) since 2002 on-line and in-person. Eligibility criteria could have also been obtained by consulting Department of Defense Type Directive Memorandum 09-003: PGIB, Attachment 2, paragraph 3a(3), dated June 22, 2009; paragraph 17a(4) of the U.S. Army PGIB Policy Memorandum dated July 10, 2009; Army Regulation (AR) 621-202, Army Educational Incentives and Entitlements, dated 13 December 2023, Department of Defense (DoD), Department of the Army (DA), and AHRC websites; and Social Media posts across multiple platforms.

b. A Soldier should not be granted relief based on unawareness of the law, program rules, or procedures unless they left the service during the implementation phase (first 90 days) of the program. The DoD, DA, and Department of Veterans Affairs (DVA) initiated a comprehensive publicity campaign plan that generated major communications through military, public, and social media venues on the Post 9/11 GI Bill and subsequent transfer of education benefits. This information was available to the applicant since the implementation of the TEB program. In short, the applicant could have used the DoD, Army and DVA resources available to him to ensure his compliance with all program participation requirements, to include committing to and fulfilling the by-law mandatory four-year ASO.

c. The applicant was eligible to transfer his Post 9/11 GI Bill education benefits to his eligible dependents upon his first marriage on 31 August 2012 and again at the time of his second marriage on 14 March 2022 because he had already attained the required minimum of six years of service. However, AHRC records indicate that he never submitted a TEB request until 13 September 2023, which was rejected by their office on 18 September 2023 due to insufficient retainability to commit to the by-law required four-year ASO. Upon rejecting his TEB request, their office sent the applicant an email to inform him of the TEB rejection, which included the reason for rejection and information on how to possibly become eligible for TEB. At the time of his TEB request, the applicant had a Mandatory Retirement Date (MRD) of 1 June 2027, which was less than four years from the date of his TEB request and prevented him from meeting the program's by-law required four-year ASO. As of the date of this letter, the applicant's MRD remains 1 June 2027. Should the applicant receive a MRD extension, or should he be promoted, he is eligible to submit a new TEB request, provided he is able to meet all the TEB program participation requirements at the time of this new TEB request.

d. Since the implementation of the TEB program, the milConnect website has been the system of record for all TEB-related transactions and the ONLY DoD-wide approved means to request TEB, and upon approval of such a request, manage the allocation of the transferred benefits. Additionally, milConnect creates a date/time stamp every time a Soldier accesses the website and when submitting a transaction. On 23 July 2024, AHRC requested the applicant's access history to the milConnect website (Enclosure Two). His access history reflects that prior to his TEB request date of 13 September 2023, he accessed the milConnect website on multiple occasions, starting in 2013 without ever submitting a TEB request. In his letter to the Members of the Board, dated 24 October 2023, the applicant stated that "24-year career in the Army with 3 years deployed in combat and 11 years overseas service delayed my desire to start a family". As previously indicated, a review of the applicant's records shows that he was previously married and was eligible to request TEB to his then spouse. He could have submitted a TEB request at any point during this first marriage, 31 August 2012 until 17 September 2018, and during his second marriage, from 14 March 2022 until 31 May 2023, while he was still able to commit to the four-year ASO, however he never did so prior to 23 September 2023.

e. In his packet to ABCMR, the applicant requested to have his TEB request date backdated from 13 September 2023 to 31 May 2023 in order to meet his MRD and fulfill the four-year ASO. Army Regulation (AR) 621-202. Army Educational Incentives and Entitlements Chapter 4-15a. (2) states a Soldier must, "agree to serve 4 additional years from the date of request, regardless of the number of months transferred. Soldiers who are not eligible to commit to 4 additional years of service from the TEB request date are not eligible to transfer benefits." As previously noted, milConnect is the system of record for all TEB-related transaction, and a submission of a TEB request via the milConnect website is required. The applicant did not submit a TEB request on 31 May 2023 via the

only DoD-wide approved means to request TEB. The date of submission via the milConnect website is the officially recorded start date of a potential additional service obligation. As evidenced by his milConnect access history, he never even attempted to access milConnect in May of 2023. The applicant's reasoning for his backdate request is predicated on his claim that the AHRC Retirement Branch "took an unreasonable amount of time" to deny his retirement request. Furthermore, he stated that "I had been waiting for the results of my retirement request because, if I hadn't, I would have incurred a service obligation that could have voided my ongoing retirement request." This is an inaccurate characterization. Please note submitting a retirement request in itself will not prevent the Soldier from requesting TEB as long as the retirement has not yet been approved.

f. While an approved TEB would have resulted in the rejection of a retirement packet due to the incurred 4-year ASO; likewise, a previously approved retirement packet would have resulted in the rejection of a TEB request due to an approved retirement date. The applicant submitted his first retirement packet on 22 November 2022 with a requested retirement date of 31 August 2023 which was rejected due to an incurred Active-Duty Service Obligation for Advanced Civil Schooling through 18 May 2027. A second retirement packet submitted on 20 February 2023 with a retirement date of 30 April 2024 was rejected for the same reason. Had either retirement packet been approved, any potential TEB requests from the applicant would have been rejected due to his inability to complete the by law required ASO prior to any of those requested retirement dates. As laid out in paragraph 2.a. of this Advisory Opinion, LTC Tier had a myriad of resources available to him throughout his military career, which would have enabled him to educate himself on the TEB program participation requirements and assist him in making timely sound educational decisions. Therefore, in accordance with 38 USC § 3319 (b) since the applicant is unable to enter "into an agreement to serve at least four more years as a member of the uniformed services," his TEB request will remain in rejected status and cannot be backdated.

g. In the applicant's Letter to the Board, he stated, "the difference between the date of my request and AHRC's eligible-to-approve date was a little more than 90 days, while the substantial service obligation at stake is 4 years." As discussed in paragraph 2e. the applicant never submitted an official TEB request on 31 May 2023, let alone even accessed the milConnect website. Backdating his TEB request to this date would credit the applicant for an action he never actually took. 38 USC § 3319 (b) requires at least four more years (48 months) of service from the date of approval of the request. Despite his claim that he would be willing to serve the four ASO from the 13 September 2023 TEB request, the applicant is barred from doing so by his MRD of 1 June 2027, which is less than the at least 48 months required by the law. Additionally, the applicant infers that the Education Incentives Branch rejected his TEB request based on 38 USC § 3319 (j)(3). This section of the law was added in direct response to a proposed rule from the Secretary of Defense, effective 12 July 2019, that would have prevented SM's with

more than 16 years of Service to request TEB. This rule was banned in the NDAA FY2020 and added to 38 USC as §3319 j. (3). The applicant's TEB request was not rejected based on the maximum number of years of service, but on his inability to agree to and serve the by-law required four year (48 months) ASO.

h. It is not within the purview of this office to comment on the timeframe it took AHRC Retirement Branch to process his retirement requests or the issues that the applicant had with their office. However, as explained above, an approved retirement packet would have resulted in the rejection of a TEB request from the applicant. Furthermore, the applicant was aware of the Active-Duty Service Obligation (ADSO) that he incurred after participating in the Army sponsored civilian education program. Regardless of this ADSO, he attempted to retire twice and only after his second attempt was rejected, did he submit a TEB request.

i. The applicant's military service may make his dependents eligible for other types of assistance. There are numerous agencies that may assist. Additionally, the applicant's Post 9/11 GI Bill benefits are available for his use.

5. The applicant was provided with a copy of this advisory opinion. In his response, he stated it is disappointing but unsurprising to see the respondent from AHRC's Education Incentives Branch (EIB) recommend. This bureaucratic intransigence is exactly the reason he has been forced to pursue the approach to appeal to the Board in the first place. His rebuttal below explains why the Board should discount the respondent's advice. While he restates some of the relevant points from his original complaint below, He does not reiterate the full explanation.

a. There are four reasons why EIB's respondent has rendered the wrong conclusion and justifies you to discount the advice.

(1) First, the advisory does not contest the thrust of his complaint, that AHRC took an unreasonable amount of time to process his preceding retirement request. This unreasonable delay impeded his subsequent request to transfer education benefits (TEB) and his only child should not be denied a valuable benefit due to AHRC's failure to process a routine administrative action in reasonable time.

(2) Second, the respondent does not recognize that the TEB succeeded its purpose to incentivize his continued service, satisfying in-spirit that he earned the TEB. The TEB factored in career decisions to encourage him to stay in the Army for more than a decade after meeting eligibility, yet the advisory cites the administrative mechanism to request the TEB as the reason to deny it. The timeliness to request through MilConnect is the issue, by a matter of approximately 90 days.

(3) Third, the advisory states that his TEB request "cannot be backdated" (para. 2f.), but this is untrue. It merely requires AHRC to concede that he would have requested TEB earlier if AHRC had decided his retirement request earlier.

(4) Fourth, the respondent asserts that he could have requested TEB during his first marriage or at an earlier point in his current marriage, which reveals the advisory's strict adherence to a letter-of-the-law rationale at expense of applying spirit-of-the-law and doing what is morally right. For these reasons he implores the Board members to overturn EIB's decision. Right this injustice. At stake is a benefit he has earned the right to transfer to his only child, with approximate value of \$60,000, but the advisory seeks to deny out of administrative technicality rather than substantively failing to meet eligibility.

b. The first, and solely sufficient, reason to backdate his TEB request to 20230531 is the same as he previously described, and the advisory does not contest: AHRC unreasonably delayed their decision on his retirement request for 11 months. This, in turn, caused him to withhold his administrative TEB request approximately 90 days past the supposed disqualifying date. The advisory does not dispute this fact. Moreover, despite stating otherwise, the advisory confirms that the two efforts could not be pursued in parallel. The advisory concedes that, if his TEB had been approved first, AHRC would have denied his retirement request due to the TEB service obligation and, of course, an approved retirement would have resulted in denied TEB (i.e., para. 2f.). He assures the Board that he would have submitted his TEB request prior to 20230531 if AHRC had given the retirement request proper consideration on his first attempt. Instead, AHRC made him resubmit the retirement request a second time with a separate waiver request, even though the substance of the waiver, where he formally offered to financially repay the Army for the costs of sending him to graduate school, had already been addressed in the text of the first request. If AHRC had resolved the total process in the usual 6 months he would not need to pursue the appeal process in front of the Board now. Instead as a result of AHRC's unreasonable delay the EIB advisory office judges that his TEB eligibility has lapsed due to insufficient military service time remaining. AHRC's fault in delaying decision on his retirement should, alone, justify backdating his TEB request. Again, he asks the Board to note that he is simply asking to backdate a request by approximately 90 days due to AHRC's unreasonable delay, when talking about a 4-year service commitment of what will be no less than a 28-year career.

c. The second reason to discount the advisory official's recommendation is that their rationale does not appear to recognize that the TEB substantively factored in his career decisions to continue to serve the Army for more than a decade, but the advisory seeks to deny this benefit due to an administrative technicality. He was not interested in the Post 9/11 GI Bill itself, generous as it was, because he was content with the education he already had. Nor was he interested in passing the benefit to a spouse. However, he

was interested in the potential to pass this benefit to future children. Even when he had no family of his own, before he was married and before he had a child, the potential to have children and pass to them this benefit encouraged him to continue to serve. Nonetheless, upon his Mandatory Retirement Date (MRD), he will have served 18 years past the date that he met TEB eligibility. This is far more than the 4-year service obligation required. Even though he waited until he finally had a child in 2022 to formally request the TEB and although he attempted to retire before requesting it, he still held 6 months of TEB eligibility at the time he submitted his retirement request. He had always wanted the TEB, but he made the final decision to request it at the same time he requested to retire because time was finally running out. He had been passed over for promotion above-the-zone having been passed over in the primary-zone the year before. In fact, he was surprised that the Army did not force him to retire considering he had been passed over twice. Nonetheless, at that point, he decided that either the Army would allow him to retire, or he would lock in the TEB. He merely needed his retirement request to run its course first before requesting the TEB through MilConnect. To prove the immediate linkage between the two actions, note that he requested TEB on the very same day he received disapproval of his retirement request on 20230913. In short, the TEB achieved its goal to incentivize a soldier like him to continue to serve, he met the service requirements to earn the TEB at the time of its offering and long after, he has served far longer than the obligation incurred by TEB, he retained 6 months of eligibility to request TEB at the time he requested to retire, and he made the actual decision to TEB far enough in advance to retain eligibility. However, he delayed administratively submitting the TEB request in MilConnect for reasons he has already explained. Therefore, please grant his request to backdate the TEB because he earned the benefit by meeting its eligibility requirements and held sufficient time to incur the 4-year obligation at the time of his decision, despite the respondent's justification that his eligibility lapsed a mere 90 days before he administratively submitted the request.

d. The third reason to discount the advisory's recommendation is that they state his TEB request "cannot be backdated" (para. 2f.). Yes, it can. Administrative mistakes happen, even electronic date-stamps recorded by software can be corrected for various reasons, and the mistakes can be made right. It merely requires acknowledging the mistake and then deciding it must be corrected. The administrative mistake here is AHRC's unreasonable delay. Please do not allow the EIB office to deny his only child a valuable benefit because AHRC took 11 months to do what it usually completed in 6.

e. The fourth and final reason to discount the advisory's recommendation is that the alternative the respondent suggests that he could have requested TEB during his first marriage or at an earlier point in his current marriage, is morally questionable. The respondent proposes that he could have designated a beneficiary that he, as well as both his ex-wife and current wife, had no intention of using so that he could initiate the 4-year service obligation. Not only is there an element of dishonesty in this approach, but it would have required him to either revoke the designation at some future point or

otherwise underutilize the benefit. This reveals the respondent's rationale to strictly adhere to the letter-of-the-law at expense of applying the spirit-of-the-law. The spirit-of-the-law is to encourage military personnel to continue to serve. The TEB did that in his case.

f. To address some of the respondent's other assertions, the advisory official contended that any lack of familiarity with the process is not sufficient justification to accommodate his request (i.e., paras. 2a., 2b., and 2f.). He never claimed it was. However, this assertion does elicit an observation that, if EIB had better-informed those interested and attentive soldiers like him or had otherwise made it possible to designate beneficiaries not yet in existence, there would not be an aggrieved party to appeal to you in this case or in other cases like it. Ironically, the advisory lists several venues which he has been ineligible to attend to suggest that he should have learned the relevant TEB details in sufficient time to act (i.e., para 2a.), and then concludes that he is now ineligible for the TEB because he did not apply the lessons from those venues, he was ineligible to attend. The advisory ultimately advises that he should be denied the TEB because of his impending MRD (i.e., para. 2g.) Bear in mind the mandatory portion of the term to dispel suggestions that he seeks to extend his MRD. It would have been much better if the EIB office had accommodated his request earlier rather than obstinately opposing.

g. He has not been trying to play games through these actions. He has merely been trying to make the most out of benefits he has earned. Please note again that, as part of his retirement request, he formally offered to financially remunerate the Army's expenses paid towards his advanced schooling to compensate the unfinished portion of his service obligation. For reasons he does not understand, the Army first declined to promote him, then rejected his request to retire despite his remuneration offer, is forcing him to remain in service with a stigma as well as the humiliation of serving underneath officer cohorts he used to command and finally, but worst of all, is now seeking to deny his only child the benefit of service that it is forcing him to continue. The bureaucracy is failing the institution's purported values of Loyalty and Respect. He humbly asks the Board to overturn the latter injury with the modest remedy of backdating his TEB request to 20230531.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and Army Human Resources Command – Chief Education Incentive Program advisory opinion,

the Board notwithstanding the advising official recommendation for disapproval. The Board determined there is sufficient evidence to support the applicant's contentions to backdate his request to transfer his Post-9/11 GI Bill education benefits to dependents (TEB) from the original date of submission on 13 September 2023 to 31 May 2023 so he can satisfy the 4-year service requirements.

2. The Board recognizes the ability to transfer TEB to eligible dependents is neither a reward for service nor a transition benefit but a retention incentive requiring the fulfillment of a by-law mandatory four-year additional service obligation (ASO). The Board found there were delays within the IPPS-A system and evidence shows the retirements branch failed to respond to repeated status queries. 7 months later, on 13 September 2023. The Board noted, the applicant received notification that his retirement request had been disapproved. Whereas the applicant immediately requested to transfer 9/11 GI Bill benefits to his dependents on the same day. The Board agreed the applicant had been waiting for the results of his retirement request because, if he hadn't, he would have incurred a service obligation that could have voided his ongoing retirement request.

3. Evidence shows AHRC subsequently disapproved his transfer benefits request indicating the opportunity closed on 1 June 2023, at a point when he had then been waiting 7 months for AHRC's properly considered retirement decision. Furthermore, AHRC education branch then declined to backdate his request stating that they did not have the authority. The Board determined there was an excessive amount of time to process his preceding retirement request along with numerous delays which impeded the applicant's subsequent request to transfer education benefits. Based on this, the Board granted relief to backdate the applicant's request to transfer Post-9/11 GI Bill education benefits to dependents (TEB) from the original date of submission on 31 May 2023 so he can satisfy the 4-year service requirements.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

████	████	████	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant was approved to backdate his request to transfer Post-9/11 GI Bill education benefits to dependents (TEB) from the original date of submission on 31 May 2023 so he can satisfy the 4-year service requirements.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 38, U.S. Code, § 3319 Authority to transfer unused education benefits to family members.

a. In General—

(1) Subject to the provisions of this section, the Secretary concerned may permit an individual described in subsection (b) who is entitled to educational assistance under

this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).

(2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The Secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the national security interests of the United States.

b. Eligible Individuals.—An individual referred to in subsection (a) is any member of the uniformed services who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least—

(1) 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 uniformed services; or

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

c. Eligible Dependents.— (1)Transfer.— An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement to an eligible dependent or a combination of eligible dependents; and (2) Definition of eligible dependent.— For purposes of this subsection, the term “eligible dependent” has the meaning given the term “dependent” under subparagraphs (A), (I), and (D) of section 1072(2) of title 10.

d. Limitation on Months of Transfer.— 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 educational assistance under this section shall—

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

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

f. Time for Transfer; Revocation and Modification.—

(1) Time for transfer.— Subject to the time limitation for use of entitlement under section 3321, and except as provided in subsection (k) or (l), an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed.

(2) Modification or revocation.— (A) In general.— 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. (B) Notice.— 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) Prohibition on treatment of transferred entitlement as marital property. 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 educational assistance is transferred under this section may not commence the use of the transferred entitlement until certain time frames specified here.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//