



TEXAS HIGHER EDUCATION COORDINATING BOARD

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April 13, 2012

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The Honorable Greg Abbott
Attorney General
State of Texas
Office of the Attorney General
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FILE # ML-47017-12
I.D. # 47017

RQ-1053-GA

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Re: Request for opinion regarding the THECB's authority to promulgate rules that would allow a veteran who is entitled to both (1) the Montgomery GI Bill Chapter 30 and (2) the Post-9/11 Chapter 33 GI Bill federal benefit programs to be eligible to apply for the state's Hazlewood Act Exemption based on the federal benefit program for which the veteran chooses to apply, rather than on the federal benefits which the veteran is entitled to use.

Dear General Abbott:

The Texas Higher Education Coordinating Board ("THECB") seeks your assistance in interpreting THECB's authority under Section 54.341 of the Texas Education Code (Section 54.341, formerly Section 54.203, is also referred to herein as the "Hazlewood Act Exemption" or the "Exemption"). The Texas Veterans Commission has asked THECB to promulgate rules which would allow a veteran who is entitled to both (1) the Montgomery GI Bill Chapter 30 ("Chapter 30") and (2) the Post-9/11 Chapter 33 GI Bill ("Chapter 33") federal benefit programs to be eligible to apply for the state's Hazlewood Act Exemption based on the federal benefit program for which the veteran chooses to apply, rather than on the federal benefits which the veteran is entitled to use. The proposed rule changes from the Texas Veterans Commission are attached. *Exhibit 1.*

Section 54.341(i) of the Texas Education Code provides THECB with rulemaking authority "to provide for the efficient and uniform application" of the Hazlewood Act Exemption. THECB seeks an opinion to resolve whether its promulgation of such rules, as recommended by the Texas Veterans Commission, would be in conflict with Section 54.341(e) of the Texas Education Code.

In general, the Hazlewood Act Exemption requires public institutions of higher education to exempt eligible veterans from the payment of tuition, fees, and certain other charges at those institutions. The Hazlewood Act Exemption, however, requires that certain federal education benefits be considered in determining eligibility for and the amount of the Exemption. Specifically, the Hazlewood Act Exemption states in relevant part:

The exemption from tuition, fees, and other charges provided for by this section *does not apply to a person who at the time of registration is entitled to receive educational benefits under federal legislation that may be used only for the payment of tuition and fees if the value of those benefits received in a semester or other term is equal to or exceeds the value of the exemption for the same semester or other term.* If the value of federal benefits that may be used only for the payment of tuition and fees and are received in a semester or other term does not equal or exceed the value of the exemption for the same semester or other term, the person is entitled to receive both those federal benefits and the exemption in the same semester or other term. The combined amount of the federal benefit that may be used only for the payment of tuition and fees plus the amount of the exemption received in a semester or other term may not exceed the cost of tuition and fees for that semester or other term.

TEC § 54.341(e) (emphasis added).

Under Chapter 33, the federal government directly pays the educational institution concerned an amount to be applied to the eligible individual's tuition and fees at that institution. *See* 38 U.S.C. §3313(g). The Texas Veterans Commission requested clarification from the U.S. Department of Veterans Affairs concerning changes to the Post-9/11 GI Bill as a result of PL 111-377 and how such changes will affect the Texas Hazlewood Act exemption. *Exhibit 2.*

The United States Department of Veteran Affairs' ("VA") Office of the General Counsel, in response to such request for guidance, reached the following conclusion in its July 1, 2011 letter to the Texas Veterans Commission:

Our review of relevant Texas statutes confirm that, by its own terms, the waiver under the Hazelwood Act is not available to a student until he or she has exhausted certain Federal benefits, including those under chapter 33, and therefore [the Hazelwood Act Exemption] cannot be applied until after the payment of [chapter 33] benefits.

Exhibit 3, page 2. Given the foregoing, THECB determined that Chapter 33 benefits fall within the scope of the Hazelwood Act Exemption's requirement that federal benefits "that may be used only for the payment of tuition and fees" be considered in determining eligibility for and the amount of any Hazelwood Act Exemption. Simply stated, given the fact that the Hazlewood statutory language uses the phrase "is *entitled* to receive" Chapter 33 benefits (rather than "has *elected* to receive" such benefits), THECB is concerned that it does not have discretion to promulgate rules that allow a person's eligibility for a Hazlewood Act Exemption to be based on which federal benefits a veteran elects to use. Instead, per the referenced statutory language, it appears that the Hazlewood Act Exemption must be based on the federal benefits a veteran is entitled to use—regardless of whether the veteran has elected to use them. Accordingly, both the VA and the THECB have determined that a veteran who is entitled to Chapter 33 benefits must apply for those benefits in order to establish his or her eligibility for the Exemption.

Chapter 30 educational assistance funds, on the other hand, are paid directly to the eligible individuals as regular monthly benefits and may be applied to expenses other than tuition and fees. *See* 38 U.S.C. §§3014, 3015; *see also* 38 C.F.R. §§21.7130, 21.7136 (rates of payment of educational assistance based upon service requirements), 21.7140(e).¹ Accordingly, THECB has determined that Chapter 30 benefits are not relevant to determining either eligibility for or the amount of any Hazlewood Act Exemption.

A veteran who is eligible for both Chapter 33 and Chapter 30 benefits cannot receive such benefits concurrently. 38 U.S.C. §3322; 38 C.F.R. §21.4022. Once such a veteran elects Chapter 33 benefits, his or her election is irrevocable and the veteran must certify that he or she is electing Chapter 33 benefits *in lieu* of his or her Chapter 30 benefits, or whatever remains of them. 38 C.F.R. § 21.9520 (c). Therefore, if in order to be considered for the Hazlewood Act Exemption a veteran is required to use his or her Chapter 33 benefits prior to exhausting his or her Chapter 30 benefits, then the veteran will be limited in the number of months of Chapter 33 benefits he or she can receive. As the VA further explains to applicants in its "Application for VA Education Benefits (VA Form 22-1990)" instructions:

¹ If an individual elects to do so and qualifies, Chapter 30 benefits allow for accelerated payments if the individual is enrolled in an educational program that leads to employment in a high technology occupation in a high technology industry. 38 U.S.C. §3014A. In those instances, eligible individuals will receive lump-sum payments rather than monthly payments of Chapter 30 benefits.

You may not receive more than a total of 48 months of benefits under two or more programs. If you elect chapter 33 in lieu of chapter 30, your months of entitlement under chapter 33 will be limited to the number of months of entitlement remaining under chapter 30 on the effective date of your election. However, if you completely exhaust your entitlement under chapter 30 before the effective date of your chapter 33 election, you may receive up to 12 additional months of benefits under chapter 33.

Instructions on Item 9F on VA Form 22-1990, attached hereto as *Exhibit 4*; see also 38 C.F.R. § 21.9550(a) (an eligible individual is entitled to a maximum of 36 months of Chapter 33 educational assistance), 38 C.F.R. § 21.7072 (with limited exceptions, an eligible individual is entitled to no more than 36 months of Chapter 30 educational assistance), 38 C.F.R. § 21.4020 (a) (indicating that the aggregate period for which any person may receive assistance under two or more of the following laws, including Chapters 30 and 33, may not exceed 48 months). As a result, veterans applying for the Hazlewood Act Exemption who are eligible for both Chapters 30 and 33 benefits are unlikely to be able to optimize their federal education assistance.

THECB seeks an opinion as to whether it has the authority under Section 54.341(e) of the Texas Education Code to promulgate rules that would allow a veteran who is entitled to both Chapter 30 and Chapter 33 benefits to be eligible to apply for the Hazlewood Act Exemption based on the federal benefit program to which the veteran chooses to apply, rather than on the federal benefits he or she is entitled to use. In other words, THECB seeks an opinion as to whether the Hazlewood Act Exemption permits THECB to promulgate rules which would allow a veteran applying for the Exemption who is otherwise entitled to Chapter 33 benefits to not first exhaust his or her Chapter 33 benefits. THECB hereby requests, pursuant to Section 402.042(a) of the Government Code, that you issue an opinion on this issue.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymund A. Paredes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Raymund A. Paredes