

**Analysis of
Rudisill v. McDonough
144 S. Ct. 945**

April 16, 2024

(Updated Jan. 8, 2025, with VA's implementation plan)

Prepared by Bergmann & Moore for
Department / Veteran Service Officers

The bottom line: VA has announced key policy decisions as to how it will implement the April 2024 decision by the U.S. Supreme Court in *Rudisill*. That decision ruled Veterans may now access up to 48 months of combined education benefits under both the Montgomery G.I. Bill and the Post-9/11 G.I. Bill. In order to qualify for these additional benefits Veterans must have served two or more separate periods of service. Veterans may use either one, in any order, up to a total 48-month aggregate cap. This Supreme Court opinion is good for Veterans because Veterans may use as many as 12 months of VA education benefit payments more than VA's prior interpretation of the law. VA's new implementation plan addresses several issues including notification, automatic eligibility decisions, and extension of eligibility.

What happened in the *Rudisill* Case: Veteran, Mr. Rudisill, served in the military during two separate periods. After his first period of service, he used a portion of his Montgomery G.I. Bill benefits. After rejoining military service and serving again, he became eligible for post-9/11 G.I. Bill benefits. When he applied for Post-9/11 GI Bill, VA told him that he must make an irrevocable (permanent) election to give up the remaining period of eligibility on his Montgomery G.I. Bill benefits and that his post-9/11 G.I. Bill benefits would be limited to the amount of time left under the Montgomery G.I. Bill program. Rudisill appealed his case in 2015, and he argued before the Board of Veterans' Appeals (Board) that he should be limited only by an overall 48-month cap set by Congress. The Board denied his appeal. Rudisill then appealed to the Court of Appeals for Veterans Claims (CAVC).

In 2019, the CAVC concluded VA's law is ambiguous, and that the ambiguity must be resolved in a Veteran-friendly manner. As a result, the CAVC concluded that Veterans with two separate periods of qualifying service may independently utilize both programs subject only to the 36-month cap on

each individual program and the 48-month cap overall. In 2021, a three-judge panel of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) agreed with the Veteran and the CAVC. However, in December 2022 a decision from the full Federal Circuit concluded that VA's law was not ambiguous and agreed with VA. The Veteran then appealed to the Supreme Court.

The Supreme Court held that the plain language of the statute (38 U.S.C. § 3695(a)) favors Mr. Rudisill. Therefore, he and Veterans like him may use both benefits up to an aggregate 48-month cap.

Why *Rudisill* is important: Before *Rudisill*, the VA capped a Veterans total benefit based on their first program they used, even if they were eligible for another program and making Veterans forfeit remaining benefits. Now, Veterans who qualify for both the Montgomery and the Post-9/11 GI education benefits under two different periods of service may receive a total of 48 months of benefits. This is as many as 12 months of payments more than VA's prior interpretation of the law.

How VA is implementing *Rudisill*: The decision in *Rudisill* did not address the numerous administrative issues created by the favorable interpretation. On January 3, VA announced how it would implement this decision. The plan involves several important aspects.

1. Automatic Redetermination for 660,000 Veterans

These Veterans will receive official notification their eligibility has been reviewed and have been granted an additional 12 months of benefits.

2. Application Notices for 380,000 Veterans

These 380,000 Veterans will receive letters that they may be eligible for an additional 12 months of benefits and encouraged to apply.

3. Utilization Window: Original Time + 90 Days

For all benefits restored, Veterans will have the amount of time that was remaining at the time of their original election plus 90 days to use the benefits. For example, if a Veteran chose to use the Post-9/11 GI Bill at a time when they had 5 years left to use the Montgomery GI Bill, they would be given 5 years plus 90 days to use any additional benefits.

4. When to Apply Matters

Whether the extension is granted automatically or through an application, **Veterans should avoid applying until they are ready to use the benefits** because the time period for using them will be calculated based upon the date of the new application.

5. How to Apply

Veterans should use [VA Form 22-1995](#) to apply when ready.

6. Deadline to Extend Eligibility

To receive an extended “delimiting date” (the time limit for using education benefits), Veterans must apply by October 1, 2030. Claims may still be submitted after that date, but the delimiting date will be based on the normal benefit expiration rules.

7. Online Resources:

VA has created a website dedicated to the implementation of this decision with more complete information: <https://benefits.va.gov/GIBILL/rudisill.asp>.

In addition to VA’s explicit announcement, it is important to know that VA’s approach is based on its position that *Rudisill* applies only to Veterans who had two separate periods of service, i.e., received two separate DD-214s. This issue is presently before the CAVC to decide in another case. If a Veteran has continuous service that creates multiple eligibilities, then they should follow up later this year to find out how the Court rules.

What Veteran Advocates Should Do

- **Help Veterans Check Their Status:** Ask Veterans if they have received a VA notice and whether they used both GI Bill programs if they have multiple periods of service.
- **Encourage a Timing Strategy:** Veterans like to apply for benefits as soon as they learn of eligibility. Remind them not to rush their application since the time starts ticking when they apply. Wait until they’re enrolled or preparing to enroll to apply for a *Rudisill* determination.
- **Assist with VA Form 22-1995:** It is not a complicated form, but to ensure it is completed accurately and fully, your assistance is valuable to the Veteran.
- **Track the October 1, 2030, Deadline:** Make sure eligible Veterans apply before this date if the time extension is needed.