

Prepared Statement

of

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Before the

Senate Committee on Veterans Affairs

“Pending Benefits Legislation”

May 13, 2015

Good afternoon, Chairman Isakson, Ranking Member Blumenthal, and esteemed members of the Committee. I am pleased to appear before you today to discuss pending benefits legislation.

Per the agenda for today's hearing, the committee requested the Department of Defense's view on a series of bills and proposals. Since both funding and administration of the Post-9/11 GI Bill fall under the purview of the Department of Veterans Affairs, I will focus my comments only on those proposals that will affect the Department of Defense and generally defer to the Departments of Labor and Veterans Affairs to provide responses on those with no significant DoD impacts. This statement will follow the order on the printed agenda.

S. 602, GI Bill Fairness Act of 2015

The committee asked for comments on S. 602, "GI Bill Fairness Act of 2015", a bill that would consider active duty performed under the authority of title 10, United States Code, section 12301(h), as qualifying active duty for the purposes of Post-9/11 GI Bill Education Benefits. Reserve component members wounded in combat are often given orders to active duty under this provision to receive authorized medical care; to be medically evaluated for disability; or to complete a required health care study. However, as currently written, section 3301(1)(B), of title 38, United States Code, does not include active duty performed under 12301(h) as qualifying active duty for purposes of Post-9/11 GI Bill educational assistance.

Currently, when a member of the Reserve Component on active duty sustains an injury due to military operations, the Service member is not discharged, but remains in the Selected Reserve on active duty under 12301(h), title 10, United States Code. None of the time spent in recovery under this status is qualifying time for purposes of the Post-9/11 GI Bill. In this case, the Service member would return to Selected Reserve status with less qualifying time than those who served an entire period of active duty without an intervening injury. As a result, the Service member would not receive an educational benefit equivalent to the other members of his or her cohort. In effect, the Service member is being penalized for having being wounded or injured in theater. This legislation would correct this inequity by simply extending eligibility for the Post-9/11 GI Bill to service under 12301(h).

DoD recognizes the inequity of not including this active duty time for purposes of Post-9/11 GI Bill benefits, and has included a provision similar to this bill in our FY16 legislative proposal package as section 514. However, the DoD proposal would include only active duty

performed after enactment. In contrast, S. 602 would be retroactive; categorizing all duty performed under 12301(h) since September 11, 2001, as qualifying active duty for purposes of the Post-9/11 GI Bill. We estimate that approximately 5,000 Reserve Component members performed active duty under 12301(h) each year since September 11, 2001. Accordingly, we believe that S. 602 would generate an additional cost to the Department of Veterans Affairs. Given that both the funding and administration of the Post-9/11 GI Bill fall under the purview of the Department of Veterans Affairs, we would defer to that agency to determine the costs and effects of the bill on their Department.

Draft Bill, 21ST Century Veterans Benefits Delivery Act

Section 101, “Improvements To Transition Assistance Program”, of this bill states that an individual subject to the requirement under subsection (c), which requires participation in the program (defined as employment assistance, job training assistance and other transitional services), may not satisfy such requirement by participating in the program carried out under this section solely through an internet website. The Department of Defense does not support that portion of the language. The Administration should have flexibility in determining what methods and tools, to include Internet websites, should be used to deliver transition services to eligible transitioning Service members and their spouses. This language would take away the flexibility to make such decisions. The Department of Defense and our interagency partners have agreed to allow Service members who are subject to a short-notice separation or are geographically remote and isolated, to use the Department of Veterans Affairs Benefits module (part of full Transition Assistance Program (TAP) virtual curriculum) and the Department of Labor Employment Workshop through Joint Knowledge Online, which connects to other Department of Defense systems for mandatory attendance tracking. Implementation of this restrictive language would end that initiative and the millions of dollars invested in our on-line curriculum would be lost. The Department of Defense must have the flexibility to meet the needs of our Service members; we strongly advocate that the Congress not deprive the Secretary of Defense of this flexibility.

Section 101 also requires the Secretary of Defense, in collaboration with the Secretaries of Labor, Homeland Security, and Veterans Affairs to establish a process to allow a representative of a Veteran Service Organization (VSO) to be present at the benefits portion of the program under Section 1144, title 10, United States Code (the program under Section 1144

pertains to employment assistance, job training assistance and other transitional services) relating to the submission of claims to the Secretary of Veteran Affairs. The Department of Defense does not support this provision. The Department of Defense recognizes and appreciates the tremendous support VSOs provide to Service members who file claims with the VA. However, we believe that process best occurs outside the standard TAP classroom in a one-on-one private conversation between the Service member and the VSO representative. The redesigned TAP focus is to make Service members career ready by meeting Career Readiness Standards. The preparation occurs in the classroom with the delivery of Transition GPS (Goals, Plans, Success) curriculum. The Department of Veterans Affairs provides two robust classes: VA Benefits I, which focus on VA Benefits, and VA Benefits II, which introduces Service members to, and walks them through, the process of filing a claim for Department of Veterans Affairs benefits. It would be more appropriate at the conclusion of VA Benefits II briefing for the Department of Veterans Affairs instructor delivering the briefing to introduce the VSO representative who can assist Service members with their claims. The VSO representative can connect with Service members at the end of the class. At that time the VSO representative can set up one-on-one appointments to assist those Service members planning to file a claim.

Finally, the Department of Defense opposes that provision in section 101 that requires the Secretary of Defense to provide a report to Congress that assesses the compliance of facilities of the Department of Defense per the Secretary's Memorandum title "Installation Access and Support Services for Nonprofit Non-Federal Entities" dated December 23, 2014. This would require a tracking and reporting system to capture how many Veterans and Military Service organizations and other Nonprofit Non-Federal Entities are on each installation and the number of installations in compliance with the Secretary's Memorandums. This will pose a significant burden/hardship upon the installation staff and cause a diversion of already limited and stretched transition resources from the primary mission of the redesigned TAP.

Military Compensation and Retirement Modernization Commission Report

The committee requested input from the Department of Defense on the legislative proposals in two of the recommendations in the recently released Military Compensation and Retirement Modernization Commission Report: Recommendation 11: Safeguard education benefits for Service members by reducing redundancy and ensuring the fiscal sustainability of education programs, and Recommendation 12: Better prepare Service members for transition to

civilian life by expanding education and granting states more flexibility to administer the Jobs for Veterans State Grants Program. I would like to state up front that the Department of Defense worked closely with the Commission in evaluating its recommendations, and included experts from the Departments of Labor and Veterans Affairs, as well as the Office of Management and Budget, in our working groups designed to formulate DoD's response to the President.

Recommendation 11: Safeguard education benefits for Service members by reducing redundancy and ensuring the fiscal sustainability of education programs

The Department agrees with the Commission's objectives of safeguarding education benefits for Service members by reducing redundancy and ensuring the fiscal sustainability of education programs. We support sun-setting both the Montgomery GI Bill (chapter 30 of title 38, United States Code, also known as MGIB-AD) and the Reserve Education Assistance Program (REAP), with a view to maintaining the Post-9/11 GI Bill as the primary education benefit. The Commission and the Department also agree that in order to keep faith with our Service members, we must grandfather those who already have the benefits that will be phased out. Further, the Department and the Commission agree on how best to achieve the objective of collecting, tracking, and reporting on Service member, Veteran, or dependent education related data. The Commission recommends requiring that Tuition Assistance be used for "professional development" courses only. DoD has already issued policy guidance to the Services to this effect where all signatories of the Department of Defense Education Partnership Memorandum of Understanding must provide an approved education plan for each Tuition Assistance recipient. This plan provides the roadmap for their educational goal development to include supporting courses.

The Department would like to ensure that once the MGIB-AD sunsets, Service members will be able to combine Post-9/11 GI Bill benefits with Tuition Assistance (commonly referred to as "top up") using the same "top up" usage method as currently available under the MGIB-AD.

The Department submitted a legislative proposal to Congress on May 1 that would sunset the MGIB-AD and REAP, grandfather Service members currently receiving those benefits, and provide a "top up" benefit.

Without data enabling the Department of Defense to understand the potential effects on retention, the Department of Defense--and the Joint Chiefs are particularly concerned on this point--cannot support the recommendation to sunset the Post-9/11 GI Bill housing stipend for

dependents, or the recommendation to increase the eligibility requirements for transferring Post-9/11 GI Bill benefits. To this end, the Department of Defense has sponsored a study with RAND National Defense Research Institute to review education benefits for Service members, including the benefits of the Post-9/11 GI Bill and their impacts on retention (with a focus on impacts of transferability). We anticipate the study to be completed in the summer of 2016, allowing the Department of Defense to evaluate the potential effects of altering the features of the benefit on retention.

Lastly, the Department of Defense does not support the recommendation that would prohibit ex-Service members from receiving unemployment compensation (as authorized under chapter 85, subchapter II, of title 5, United States Code) while simultaneously receiving the living stipend as part of Post-9/11 GI Bill benefits. State-level unemployment compensation programs already provide guidance regarding students' status within the workforce and eligibility to receive benefits (as detailed in Congressional Research Service Report, (Unemployment Compensation (UC): Eligibility for Students Under State and Federal Laws, dated September 7, 2012). Eliminating concurrent receipt of educational benefits and Unemployment Compensation for Ex-Service Members (UCX) may be viewed as penalizing Service members who are pursuing courses at trade/vocational schools to acquire skills/certifications that would make them more employable. This Commission recommendation could also have a disproportionate impact on Reserve Component Service members because both separated and currently serving Reserve Component members may be affected.

Recommendation 12: Better prepare Service members for transition to civilian life by expanding education and granting states more flexibility to administer the Jobs for Veterans State Grants Program.

The Department of Defense supports the Commission's objective of better preparing Service members for transition to civilian life, but does not believe additional legislation is required. The Department of Defense has significantly re-designed the Transition Assistance Program over the last two years and implemented the VOW to Hire Heroes Act legislation enacted in 2011; these modifications significantly address the Commission's objectives.

The Department of Defense, together with the Departments of Labor and Veterans Affairs, has developed Transition Assistance Program curriculum to support Service members' educational goals. The Accessing Higher Education (AHE) track focuses transitioning Service

members on selecting an institution of higher education and achieving academic success. The Career Technical Training (CTT) track focuses on credentials earned during military service and higher education in select technical training schools and fields. The Department of Defense concurs with mandatory participation in the AHE or CTT track, for Service members who identify an interest in attending college or a career technical school after separation, with authorized exemptions. Contrary to the re-designed Transition Assistance Program, the Commission proposal does not enable transition planning according to the individual goals and needs of each transitioning Service member. The proposed legislation is a “one size fits all” approach and does not take into consideration the numerous other education benefits active duty Service members have, or are eligible for, prior to separating, such as tuition assistance and the GI Bills. These other benefits require an education plan and individual counseling with an education professional. Furthermore, the proposed legislation does not appear to consider how it might affect those Service members who enter on active duty with a college diploma, credential and/or license.

The Department of Veterans Affairs is developing a module specifically focused on the benefits, eligibility, and transferability of the Post-9/11 GI Bill as part of military career deliberations. The goals of the Commission’s recommendation will be met as a result of Service members attending the new Department of Veterans Affairs training for Post-9/11 GI Bill benefits prior to developing an education program plan or using their Post 9/11 GI Bill benefits. Expected implementation date for the new Post-9/11 GI Bill training is October 1, 2015.

The Commission’s legislative proposal to review and evaluate the core Transition Goals, Plans, Success (GPS) curriculum is aligned with the current Department of Defense and TAP Inter-agency Evaluation Strategy. New legislation is not required because an interagency annual review is a pillar of the Office of Management and Budget approved TAP Evaluation Strategy. This strategy requires analysis of metrics and benchmark performance criteria to enable the Department of Defense to provide programs and support to meet the needs of transitioning Service members. It necessitates an annual review of all curriculum components in concert with participant feedback to ensure curriculum and training resources support the achievement of career readiness standards and career success post military service.

The Transition Assistance Program Inter-agency Curriculum Working Group, comprised of members from each of the TAP Inter-agency partners, the Military Services, and relevant subject matter experts, conducts an annual review of the Transition GPS curriculum. The

Working Group develops changes based on content relevancy, participant assessments, Service member feedback, roles and responsibilities of partners, facilitator recommendations, and best practices and lessons learned as a result of staff assistance visits to installations. Proposed curriculum revisions are vetted and approved by the TAP Inter-agency Executive Council.

Department of Defense Legislative Proposals

The committee requested input on several of the Legislative Proposals included in the Department of Defense National Defense Authorization Act for Fiscal Year 2016 submission.

Section 514. Inclusion of duty performed by a reserve component member under a call or order to active duty for medical purposes as qualifying active duty time for purposes of Post-9/11 GI Bill education benefits.

Similar to S. 602, “GI Bill Fairness Act of 2015”, this section includes active duty performed under the authority of title 10, United States Code, section 12301(h), as qualifying active duty for the purposes of Post-9/11 GI Bill Education Benefits. As pointed out in my discussion of that bill, the Department’s proposal differs in that it is not retroactive to September 11, 2001. The Department of Defense urges adoption of this proposal.

Section 522. Retention of entitlement to educational assistance during certain additional periods of active duty

This section would amend chapter 1606, (Montgomery GI Bill-Selected Reserve (MGIB-SR)) of title 10, United States Code. Specifically this proposal would add 10 United States Code 12304a and 12304b to the existing list of authorities in 10 United States Code 16131 under which a service member may regain lost payments. Further, both 10 United States Code 12304a and 12304b would be added to 10 United States Code 16133 under which a Service member may regain lost entitlement time for MGIB-SR benefits. The Department of Defense urges adoption of this proposal.

Section 542. Update to involuntary mobilization duty authorities exempt from five-year limit under the Uniformed Services Employment and Reemployment Rights Act.

This section would amend section 4312 of title 38, United States Code, to update the involuntary mobilization authorities exempted from the Uniformed Services Employment and

Reemployment Rights Act (USERRA) five-year limit. Adding references to sections 12304a and 12304b of title 10 will complete the list of current involuntary mobilization authorities exempted from that limit in section 4312 of title 38.

USERRA, codified in 38 U.S.C. 4301-4335, protects individuals performing, or who have performed or will perform, uniformed service from employment discrimination on the basis of their uniformed service. It provides for prompt reemployment when they return to civilian life. The Department of Defense urges adoption of this proposal.

Section 545. Required provision of pre-separation counseling.

This section would amend section 1142 and 1144 of Title 10, United States Code, to authorize Pre-separation, Employment Assistance and all other transition services prescribed in Department of Defense policy by the Secretary of Defense for ALL Active Component Service members of the Armed Forces and for ALL National Guard and Reserve Service members called or ordered to active duty or full-time operational support after completion of their first 180 continuous days or more under Title 10, United States Code, (other than for full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as service school by law or by the Secretary of the military department concerned), whose discharge or release from active duty is anticipated as of a specific date. The Department of Defense urges adoption of this proposal.

Section 1041. Transfer of functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense.

This section would repeal the statutory requirement for a Federal Advisory Committee Act (FACA) advisory board for the Radiation Dose Reconstruction Program. The Department of Defense believes that this advisory board has achieved its objectives, and that its functions can now be more effectively conducted through an interagency effort rather than through a FACA advisory board. The Department of Defense urges adoption of this proposal.

The final item on the agenda is a discussion of provisions derived from a series of pending bills. I will comment only on those that affect the Department of Defense.

S. 151. Filipino Veterans Promise Act.

This bill would require the Secretary of Defense to establish a process to determine whether individuals claiming certain service in the Philippines during World War II are eligible for certain benefits despite not being on the so-called "Missouri List". The Department does not support any further legislation concerning determining service eligibility for the WWII Filipino Guerilla Veterans. The Army has a program in place that is verifiable. This program, due to its thorough processes, is the foundation for the Army's position, past and current, for making final service determinations for eligibility. The Army maintains complete confidence that the records and files completed in 1948 provide the best and most accurate determinations that could have been made from that time until today.

S. 743. Honor America's Guard-Reserve Retirees Act of 2015

This bill amends title 38, United States Code, to recognize the service in the reserve components of the Armed Forces of certain persons by honoring them with status as Veterans under law, and for other purposes. The Department recognizes and values the service of these Service members who qualify for a Reserve retirement, but may not be Veterans, but opposes identifying these Service members with any type of honorary Veteran status. Although S. 743 defines this honorary status to be without eligibility for Veteran's benefits from the Department of Veterans Affairs, the Department of Defense believes this honorary status would create confusion about eligibility for the Department of Veterans Affairs benefits among the current and former Service members and could increase the potential for error in determining benefits entitlements.

Mr. Chairman this concludes my statement. As has been stated numerous times in hearings before this committee, post service education benefits have been a cornerstone of our military recruiting and retention efforts since 1985, and a major contributor to the continued success of the All-Volunteer Force. Money for education has been and remains at the forefront of reasons cited by young Americans for joining the military. From its inception we fully expected the Post-9/11 GI Bill to continue to have this impact and we are seeing that happen in the form of sustained recruiting success. I thank you and the members of this Committee for your outstanding and continuing support of the men and women of the Department of Defense. We look forward to working closely with you to strengthen the All-Volunteer force through a

balanced program of recruiting, retention, and vital education benefits, and to recognize the service of our Veterans.