Colonel Robert F. Norton, USA (Ret.), Deputy Director, Government Relations, MILITARY OFFICERS ASSOCIATION OF AMERICA

STATEMENT
of the

MILITARY OFFICERS ASSOCIATION OF AMERICA
on
Pending Economic Opportunity and Transition Legislation
before the
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Presented by

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MADAM CHAIR MURRAY, RANKING MEMBER BURR AND DISTINGUISHED MEMBERS OF THE COMMITTEE, on behalf of the over 370,000 members of The Military Officers Association of America (MOAA), I am pleased to present the Association's views on selected bills that are under consideration at today's hearing.

MOAA does not receive any grants or contracts from the federal government.

EDUCATIONAL BENEFITS PROGRAMS

S.1634 (Sen. Tester, D-MT). S. 1634 would amend title 38, United States Code, to improve the approval and disapproval of programs of education for purposes of educational benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

Basically, this bill would restore the major responsibilities of State Approving Agencies (SAAs) to what they were prior to enactment of P.L. 111-377.

Established after World War II to support the States' interest in supporting the original GI Bill, the SAAs previously conducted the following activities:
• Program Approval: Determine whether programs meet the requirements of law and are eligible for the use of veterans' benefits -- focusing on program quality and integrity.
• Compliance: Provide oversight of institutions to verify continued compliance with state and federal requirements, and the rendering of technical assistance and timely intervention.
• Technical Assistance: Offer counsel and assistance to veterans, school and job training officials, and local VA personnel in helping achieve the goals and objectives of the GI Bill.

• Outreach and Liaison Activities: Outreach to promote the increased usage of veterans' educational benefits and coordination with government, veteran and educational entities to facilitate the approval of programs and increase educational opportunities for veterans.

P.L. 111-377 narrowed the role of the SAAs almost exclusively to VA benefit payment issues – auditing schools to resolve under- and over-payment issues.

When the SAAs were established, the Department of Education did not exist and, thus, "program approval" was a vital function for reducing waste, fraud and abuse of GI Bill resources. That function remains particularly valuable today in our view with regards to non-degree vocational and technical training programs. Distinguishing the SAAs' mission in program review for academic programs from that of the Department of Education has not been accomplished in our view.

Moreover, the resources for the SAA program have remained static for years at $19 million per year. (Further discussed in the comments on S.2179).

MOAA supports modernizing the role of the SAAs. We believe that student veterans, schools and the integrity of the GI Bill will best be served by clarifying the SAAs' mission, restoring some of their earlier functions, raising their funding levels and adopting aspects of S.2179.

S.1852 (Merkley, D-OR). The Spouses of Heroes Education Act would authorize Post-9/11 GI Bill benefits under Chapter 33, 38 U.S. Code to the surviving spouses of those who died in the line-of-duty after September 10, 2011.

Congress established Post-9/11 GI Bill benefits for the dependent children of service members who died in the line-of-duty under the Gunnery Sergeant John D. Fry Scholarship program (P.L. 111-32).

Unfortunately, however, surviving spouses themselves are ineligible for "Fry Scholarships." At the time the legislation was being considered, no one stopped to think that the surviving spouses would need a robust benefit in order to attain the skills and education to provide for their children and prepare them for college.

Survivors and Dependents Educational Assistance (DEA) program benefits under Chapter 35, 38 USC simply do not afford surviving spouses a realistic opportunity to raise young (in most cases) children and go to school concurrently without shouldering burdensome debt while dealing with enormous life challenges.

For surviving spouses of the Iraq and Afghanistan conflicts, DEA translates to "college is unaffordable." For full-time college enrollment, a Survivor receives only $936 per month, no cost-of-living (housing) allowance, and no book stipend.

Today, the total potential DEA benefit is $43,065 compared to $53,028 under the Montgomery GI Bill. By comparison, the Fry Scholarships pay the full cost of enrollment at any public

college or university, a housing allowance based on a Sergeant's (E-5) "with dependents" housing rate for the zip code of the college, and up to $1000 annually for books.

Conservatively, the Fry Scholarship benefit is worth at least double the amount available under DEA. For example, an eligible child attending college near Fort Bragg, North Carolina would receive $1104 per month housing allowance for 36 months of full-time study, a total of $39,744 for living expenses alone. A surviving spouse would not get a penny towards her housing needs if attending college under DEA.

For full-time study in Seattle, Washington a Fry Scholarship participant would receive $55,620 for housing alone (assuming full-time study). A surviving spouse would get nothing towards housing.

MOAA strongly recommends the Committee support S.1852 to authorize P911 GI Bill benefits (Chapter 33, 38 USC) for Survivor Spouses of members who died in the line-of-duty after 10 September 2011 in lieu of Survivors and Dependents Educational Assistance (DEA) benefits. As an interim measure, if resources are not available, authorize DEA participants a housing allowance and book stipend.

S.2179 (Sen. Webb, D-VA). The Military and Veterans Educational Reform Act of 2012 would strengthen oversight of the new GI Bill; require all degree-granting programs to meet compliance measures under Title IV of the Higher Education Act of 1965; require State Approving Agencies (SAAs) to conduct annual audits of institutions that have VA programs; mandate one-on-one educational counseling for military members and veterans considering applying for military tuition assistance or GI Bill benefits; establish a complaint resolution process for individuals, and for other purposes.

S.2179 is consistent with recommendations that MOAA and other military / veterans groups made to the Administration in January 2012 to strengthen consumer education for military and veteran students applying to college or non-degree training and ensuring rigorous oversight of all institutions that receive military tuition assistance and GI Bill funding. A number of MOAA's recommendations are reflected in Presidential Executive Order 13607.

MOAA feels that the government should require institutions of higher learning to track and report costs, graduation rates, degrees granted and similar data for the use of military members and veterans contemplating enrolling in college. The Dept. of Education's "College Navigator" online also is a valuable resource in that regard. We recommend further modification of College Navigator to enable comparative 'shopping' of programs.

MOAA supports the concept of modernizing the role of the State Approving Agencies (SAAs) to meet the needs of 21st century GI Bill participants, as discussed above. P.L. 111-377 modified the SAAs' mission and responsibilities but made no adjustment in funding. The rules implementing the legislative change have not been published in the Federal Register. SAA funding poses a particular challenge because it is mandatory spending and can only be increased by raising taxes, finding offsets or deficit spending.

MOAA recommends the Committee hold a roundtable or separate hearing to discuss the role, mission and funding of the SAA program consistent with the change proposed in S. 2179.

MOAA strongly endorses the objective of one-on-one counseling to prospective military and veteran students contemplating using military tuition assistance or GI Bill benefits. MOAA does not have first-hand information about the value of VA contracted counseling under Section 3697, 38 US Code. Informally, some service organizations have reservations about contracted counseling.

Colleges already provide counseling through faculty advisors and others. With the expansion of "VetSuccess" programs on campus, we would suggest that tailoring that program might be the way to proceed. We also believe that basic counseling on choosing a school / program could be provided online via webinars and other technologies.

A practical concern on mandatory counseling is matching supply to demand. Since the start of The Post-9/11 GI Bill on 1 August 2009, the VA has paid 735,549 beneficiaries through fiscal year 2011. Another 650,000 or more beneficiaries are expected to enroll this year. If the mandatory counseling provision is adopted, MOAA recommends development of a range of options to ensure it is carried out. In line with the President's Executive Order, the Departments of Education, VA and DoD should lead this effort working with degree and non-degree providers, higher education groups and the military and veteran service organizations.

S.2206 (Sen. Lautenberg, D-NJ). The GI Educational Freedom Act of 2012 would, like S.2179, require educational or vocational counseling unless an eligible veteran opts out of such counseling. The bill also would repeal the $6 million fiscal year limitation for VA to contract out for counseling services and establish a system to collect, process and track complaints submitted by individuals enrolled in VA programs of education to report instances of waste, fraud and abuse.

MOAA supports S.2206.

S.2241 (Sen. Murray, D-WA). The GI Bill Consumer Awareness Act of 2012 would establish clear and consistent standards for reporting certain information about educational institutions and programs available to veterans and members of the Armed Forces, including student loan debt, transferability of credits, veteran enrollment, qualification for licensing and certification, and job placement rates. It also would require schools to have at least one employee who is knowledgeable about benefits available to service members and veterans; require the Depts. of VA and DoD to develop a joint policy on aggressive recruiting and marketing practices aimed at service members, veterans and other beneficiaries; and modify the educational and counseling provision to expand eligibility.

MOAA applauds this legislation. In common with S.2179 and S.2206, S. 2241 provides stronger government oversight, disclosure and consumer support for military members and veterans enrolled in or contemplating using military and veteran educational assistance programs. The bill is consistent with recommendations MOAA and other groups (discussed above) made to the Administration. The underlying intent of these recommendations is to protect the integrity and

credibility of the new GI Bill, stop waste, fraud and abuse, and ensure the greatest potential for successful outcomes for military and veteran students.

Strengthening oversight is a core feature of S.2241. This is consistent with our recommendation for a coordinated, Federal response to protecting the new GI Bill. Adding to that, S. 2241 would require information on employment-related outcomes from educational and training programs managed by the government.

A second key feature of S.2241 is counseling. Each of the bills before the Committee takes a slightly different approach. S.2241 would widen the circle of eligibility for counseling to all those currently serving on active duty of at least 180 days or has completed 180 days active duty. S.2241 would leave in place the authority for the VA to contract out educational counseling, unlike S.2206, which would repeal the $6 million cap for such counseling. S.2179, by contrast, would set a threshold of 20 eligible students on campus for such counseling.

As discussed earlier, MOAA strongly supports educational counseling. We believe academic counseling should primarily be in the hands of degree-granting schools. VetSuccess programs on campus should focus primarily on VA-benefit delivery, enrollment in VA care and help in accessing readjustment and mental health counseling.

The Student Veterans of America (SVA), higher education groups, veterans and other stakeholders should be consulted regarding educational counseling options.

MOAA recommends that the oversight, reporting, disclosure and counseling features of S.2179, S.2206 and S.2241 be integrated in a single measure and favorably reported out of the Committee.

REEMPLOYMENT AND CIVIL RELIEF PROTECTIONS

S.2299 (Sen. Murray). The Servicemembers Rights Enforcement Improvement Act of 2012 would amend the Servicemembers Civil Relief Act to improve the provision of civil relief to members of the uniformed services and to improve the enforcement of employment and reemployment rights of such members, and for other purposes.

S.2299 reflects a number of recommendations from the U.S. Department of Justice to strengthen enforcement of the USERRA and SCRA statutes. The bill would enable the Attorney General to investigate and file suit against a pattern or practice of USERRA violations by a state or private employer; allow the government to serve as a named plaintiff in USERRA suits and to issue civil investigative demands for relevant documentary material; and provide the Special Counsel with authority to subpoena relevant testimony and documents from Federal employees and agencies to carry out investigations.

This bill also would strengthen the statutory protections of SCRA as well as the mechanisms used to enforce them by: strengthening the protections that prevent judgments against a servicemember when they cannot appear in court because of military service; broadening the authority of the Attorney General to investigate allegations of SCRA violations; and establishing a private right of action for a violation of the SCRA to December 19, 2003.

Not long after the Sept. 11, 2001 attacks, MOAA testified before the Veterans Affairs Committees on the need to upgrade protections under the USERRA and SCRA because of the

ongoing call-ups of the Guard and Reserve. We recommended adoption of legislation for a pilot that would give authority to the Office of Special Counsel to monitor and enforce the USERRA for members of the Federal workforce who are members of the National Guard and Reserve. In our view, the Federal government must be the bellwether and standard for USERRA compliance. MOAA continues to support tougher enforcement measures for the USERRA and SCRA. MOAA also strongly supported establishment of a private right of action for Reservists whose rights were trampled by willful disregard of SCRA protections.
Our nation's growing reliance on the National Guard and Reserves for operational duties here and overseas means that our warrior-citizens must have airtight reemployment rights and financial protections when they are called to the colors. MOAA strongly supports the Servicemembers Rights Enforcement Improvement Act of 2012 and urges quick passage of the bill to strengthen enforcement of the rights of those who defend the rest of America.
S. 3179 (Sen. Jack Reed, D-RI). The Servicemember Housing Protection Act of 2012 would amend the Servicemembers Civil Relief Act (SCRA) to enhance the protections accorded to servicemembers and their spouses with respect to mortgages, and for other purposes.

S.3179 would permit a servicemember to terminate a lease agreement without penalty in situations where on-post housing suddenly becomes available. Several states already have similar laws; the legislation would extend this opportunity to servicemembers serving at any military base.

The legislation also enables military families to gain SCRA protections as needed via a commanding officer letter. There have been instances in recent years where servicemembers are activated prior to the issuance of formal orders. This bill would apply the broader definition of military orders, allowing for commanding officer letters in all sections of the SCRA in which a servicemember is required to submit copies of military orders. This change will make it easier for servicemembers to get their affairs in order more quickly prior to deployment.

Lastly, S.3179 would extend the nine-month window of foreclosure protections to surviving spouses. After suffering such an unspeakable loss, a military spouse should not have the additional burden of dealing with the potential of a mortgage foreclosure so soon after the death of her / his military sponsor.

MOAA supports The Servicemember Housing Protection Act, S.3179.

S.3233 (Sen. Casey, D-PA). The Servicemembers Access to Justice Act of 2012 would amend Title 38, United States Code, to improve the enforcement of employment and reemployment rights of members of the uniformed services, and for other purposes.

S.3233 would protect National Guard / Reserve state-workers by requiring states to waive their sovereign immunity in cases requiring the enforcement of USERRA rights; make workplace arbitration agreements unenforceable in disputes arising under USERRA; authorize punitive damages against employers' egregious violations of the statute and provide for a jury trial in such cases; require ( current law only "authorizes") a court to use equitable relief, including injunctions and restraining orders when appropriate, for USERRA violations; require a report on the effectiveness of federal education and outreach efforts on employer obligations under the law; and, for other purposes.

The Pentagon's Operational Reserve policy means that National Guard and Reserve forces are routinely called to active duty for operational duties at home and overseas. The policy does not end when the troops come home from Afghanistan. In fact, as our Armed Forces are drawn down in the coming years, we can expect even greater reliance on the Guard and Reserve to perform military missions. In this context, laws that protect the re-employment rights of reservists must be adjusted to reflect the new realities of reliance on our Guard and Reserve men and women.

Since September 11, 2001, 848,359 Guard and Reserve members have served on operational active duty (as of 29 May 2012), and 263,839 (as of 31 March 2012) have served multiple tours.

The FY 2012 National Defense Authorization Act (NDAA) further expanded the Operational Reserve policy by authorizing non-emergency access to the Guard and Reserve. The NDAA contains a provision that permits the Service Secretaries to activate up to 60,000 reservists for up to one year to perform pre-planned, budgeted missions – missions that no longer will require a national emergency declaration by the Commander in Chief.

Non-emergency call-ups of the Guard and Reserve have no precedent in our nation's history. This sea-change in reliance on the Reserves means it will be important that the Committee, working with the Armed Services Committee, must ensure that this expansion of policy does not adversely affect Guard and Reserve members, their families and employers. And, it means that the laws protecting our Guard and Reserve members when they return to the community and workplace must be robust and well-understood in the public space.

MOAA continues to endorse a comprehensive approach to supporting Guard and Reserve servicemembers, including expansion of incentives for employers to hire and retain them. But the cornerstone of this effort must be ensuring a strong, responsive set of laws that protect their return to the workplace.

MOAA supports S.3233.

S. 3236 (Sen. Pryor, D-AR). The Servicemember Employment Protection Act would amend Title 38, United States Code, to improve the protection and enforcement of employment and reemployment rights of members of the uniformed services, and for other purposes.

Section 2 of S.3236 would make workplace arbitration agreements unenforceable in disputes arising under USERRA. The Section is similar to Section 3 of S.3233, above.

Section 4 of the legislation would suspend, terminate or debar a government contractor if the head of the government agency determined that a contractor had repeatedly failed or refused to comply with the USERRA. By comparison, Section 7 of S.3233 would require Federal agencies to notify contractors of potential obligations relating to the USERRA.

MOAA supports Sections 2 and 4 of S.3236 and recommends the Committee coordinate final legislative language with similar provisions in S.3233.

Section 3 of S.3236 would extend USERRA protections to members of the uniformed services to include protections for absences from employment for medical treatment relating to service-connected injuries and illnesses.

MOAA supports Section 3 in principle. We are concerned, however, over the practical challenges in implementing the change. Over the past 10+ years of conflict, only one case concerning a workplace absence for medical treatment arising from military service has come to our attention. For example, if a Reservist were required to provide documentation to his employer of the nature of the injury or illness for which medical treatment is needed, that could compromise her private medical record from military service.

Moreover, we would be concerned if an employer were to use military medical information to find a Reservist-employee later unfit for employment. MOAA recommends that this provision be tabled until implementation questions are clarified in the interest of protecting members of the Guard and Reserve returning to the workplace with injuries or illness, including Post Traumatic Stress Injury or Traumatic Brain Injury.

OTHER LEGISLATION BEFORE THE COMMITTEE

S.2246 (Sen. Boozman, R-AR). The TAP Modernization Act of 2012 would direct a three-year pilot of providing Transition Assistance Program (TAP) services at locations other than military installations in at least three and up to five states based on the highest unemployment rates of veterans.

This legislation's purpose is akin to the National Guard's 'yellow ribbon' transition support programs for returning members of the Guard and their families. States like Arkansas, Maryland, Minnesota, New Hampshire and others have pioneered very effective TAP-like programs. Title 10 requires reintegration activities be conducted at 'home station' at 30, 60 and 90 day intervals for Guard and Reserve members and their families following deployment.

The focus on veteran unemployment is a commendable objective of S.2246. If the bill is enacted, MOAA would suggest that the states selected for the pilot should include one or more successful 'yellow ribbon' reintegration program states.

MOAA supports S.2246.

S.1798 (Sen. Tom Udall, D-NM). The Open Burn Pit Registry Act of 2011 would establish an open burn pit registry to ensure that members of the Armed Forces who may have been exposed to toxic chemicals and fumes caused by open burn pits while deployed to Afghanistan or Iraq receive information regarding such exposure, and for other purposes.

S.1798 is consistent with other actions taken Congress to track the long-term effects on service women and men from toxic exposures.

MOAA believes S.1798 supports the long-term health of our nation's veterans exposed to toxic substances in open burn pits, protects the government's interest, and ensures that future benefits, treatments and outcomes can be tracked back to data on exposure.

MOAA supports S.1798.

Conclusion

The Military Officers Association of America is grateful to the leadership and members of the

Committee on Veterans Affairs for its enduring commitment to the support of our veterans, who have stood in the breach and protected the freedoms that their fellow citizens sometimes take for granted.