



STATEMENT FOR THE RECORD

MILITARY OFFICERS ASSOCIATION OF AMERICA

on

Pending Benefits Legislation

1st Session, 114th Congress

SENATE COMMITTEE on VETERANS AFFAIRS

May 13, 2015

CHAIRMAN ISAKSON, RANKING MEMBER BLUMENTHAL, the Military Officers Association of America (MOAA) is pleased to present its views on veterans' benefits legislation under consideration by the Committee today, May 13, 2015.

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

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION (MCRMC)

MCRMC Recommendation 11 proposes that Congress "Safeguard education benefits for Service members by reducing redundancy and ensuring fiscal sustainability of education programs."

MOAA has long supported consolidating multiple educational benefit programs in a single platform under Title 38 with benefits eligibility and scope based on the length and type of duty performed.

Specifically, the MCRMC recommends a number of steps towards reducing redundancy in GI Bill programs. MOAA endorses most of the specific proposals and offers these comments for the Committee's consideration.

Montgomery GI Bill and REAP. *MCRMC recommendation: Montgomery GI Bill – Active Duty (Chap. 30, 38 U.S.C) should be sunset on 1 October 2015. The Reserve Educational Assistance Program (REAP) (Chap. 1607, 10 U.S.C.) should be sunset restricting any further enrollment and allowing those currently pursuing an education program with REAP to complete their studies. Service members who switch to the Post-9/11 GI Bill should receive a full or partial refund of the \$1,200 they paid to become eligible for MGIB benefits. The refund should be proportional to the amount of the Post-9/11 GI Bill benefit used.*

MOAA concurs. The Post-9/11 GI Bill should be the sole educational platform for supporting recruitment, retention and re-adjustment outcomes for the All-Volunteer Force. Service members with MGIB-AD or REAP entitlement should be grandfathered with those benefits; under current policy they may elect to convert to the new GI Bill, if eligible. \$1200 refunds are already authorized for MGIB-AD holders who make an irrevocable election to the new GI Bill and consume all 36 months of their entitlement. MOAA recommends making \$1200 refund rules clearer and simpler.

Transfer Eligibility of Educational Benefits. *MCRMC recommends eligibility requirements for transferring Post-9/11 GI Bill benefits should be increased to 10 YOS plus an additional commitment of 2 YOS. This change strengthens transferability as a true retention tool and aligns transferability eligibility to the Commission's Recommendation on retirement.*

MOAA does not support the transferability recommendation. Congress provided statutory authority for the Dept. of Defense (DoD) to determine the optimal service obligation for eligible service members to transfer new GI Bill benefits to dependents. MOAA recommends DoD review its policy / procedures and adjust transferability service commitments to support career force retention as necessary.

Housing Stipend. *MCRMC recommends the housing stipend for dependents should be sunset on July 1, 2017.*

MOAA has no position on sunseting the housing stipend for future Post-9/11 GI Bill transfer contracts entered into on / after 1 July 2017. However, MOAA strongly objects to any cancellation of the housing stipend under transferability contracts in place before 1 July 2017. DoD should not break faith on existing transfer agreements including the housing stipend (BAH) after 1 July 2017. In cases where service extension agreements have already been signed and/or fulfilled for transferability, BAH for dependents must be honored, and service members with such contracts should not have to meet a new threshold of service.

Unemployment Compensation. *MCRMC recommends eligibility for unemployment compensation should be eliminated for anyone receiving housing stipend benefits under the Post-9/11 GI Bill.*

MOAA objects to the proposal. Housing stipends start and stop in synch with academic and training calendars. Unemployment compensation is needed for veterans, including veterans with dependents, to meet financial obligations during breaks in full-time study or training.

Tracking Education Levels. *DoD should track the education levels of Service members leaving the Service, as well as the education levels of Service members who transfer their Post-9/11 GI Bill to their dependents.* **MOAA supports.**

Report to Congress. *The VA should collect information related to, but not limited to, graduation rates, course completion rates, course dropout rates, course failure rates, certificates and degrees being pursued, and employment rates after graduation, and include that information in an annual report to the Congress.* **MOAA supports.** The Departments of Defense, Veterans' Affairs and Education must build on their ongoing efforts to track outcomes from military tuition assistance (TA) and GI Bill programs.

Non-Personally Identifiable Information. *Educational institutions should be required to provide non-personally identifiable information on students who receive Post-9/11 GI Bill and TA benefits, when requested by DoD or VA.* **MOAA supports.** Allow the collection of non-personally-identifiable veteran data by the Department of Education.

Montgomery GI Bill – Selected Reserve (MGIB-SR) (Chapter 1606, 10 U.S.C.). *The MCRMC did not make a recommendation re the MGIB-SR.*

MOAA position. The MGIB-SR program paid nearly 50 cents to the dollar compared to the MGIB – AD for the first 14 years of its existence (1985 – 1999). Thereafter, the Services and their National Guard and Reserve components allowed the program to dwindle to a current ratio of 22 cents to the dollar compared to the MGIB – AD. The reason for the steep decline in these benefits over time is the program competes directly for funding against annual discretionary reserve pay and benefit accounts. The MGIB –

AD and the Post 9/11 GI Bill, on the other hand, are mandatory funding programs under Title 38. As a Title 10 discretionary program DoD has declined to sustain the MGIB-SelRes as a recruitment tool.

Consistent with the MCRMC's basic recommendation to eliminate educational benefit programs redundancy, MOAA has long maintained that the MGIB-SR should be re-codified as a sub-chapter in Chapter 33, 38 USC as an initial entry benefit for reservists. A single GI Bill platform with benefits scaled to the length and type of duty performed is needed to support All Volunteer Force manpower in the 21st century.

DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS - REGARDING EDUCATION BENEFITS, TRANSITION ASSISTANCE PROGRAM, AND ADVISORY BOARD ON DOSE RECONSTRUCTION (SECTIONS 514, 522, 542, 545, AND 1041)

DOD Legislative Proposal Section 514. Expansion of Service Qualifying for Post-9/11 GI Bill Entitlement. DoD proposes to add Section 12301(h), 10 USC as qualifying active duty service for reservists who are receiving authorized medical care – medical hold status – for Post-9/11 GI Bill entitlement purposes.

Members of the National Guard or Reserve who are disabled on active duty orders and receiving medical care should not lose eligibility for Post-9/11 GI Bill benefits.

The DoD's Reserve Forces Policy Board recommended to the Secretary of Defense a change in law on the basis of equity. MOAA agrees. Currently, when a Guard or Reserve service member is injured or wounded in a combat theatre, the member is transitioned on orders to a medical hold status under 10 USC 12301(h). This stops accrual of active duty time that would count towards Post 9/11 GI Bill entitlement. If the member is not discharged but returns to service, none of the time spent in medical hold counts as qualifying service. In effect, the reserve member is penalized for a line-of-duty wound, injury or illness. Coincidentally, if the same member were discharged from service because of the disability, the member would earn 100% of the benefit – assuming 30 days continuous active duty service.

Reservists continue to honorably serve wherever and whenever they are needed. Closing this oversight in current statute would allow all service members to continue to accrue the educational benefits earned in service while receiving medical care from the DoD under Section 12301(h) of Title 10.

MOAA strongly supports S.602, the GI Bill Fairness Act of 2015, which would implement DoD's recommendation for reservists in medical hold status.

Section 522. Recovery of MGIB-Selected Reserve (MGIB-SR) Benefits for Service on Active Duty under Recently Added Authorities. DoD proposes that Sections 12304a and 12304b of 10 USC would be added to existing authorities in Chapter 1606, 10 USC so that reservists called to active duty under these sections may regain lost MGIB-SR after release from active duty.

Section 12304a authorizes the involuntary activation of a National Guard or Reserve member by the Secretary of Defense when a state Governor requests Federal assistance in responding to a major disaster or emergency. Reservists may serve a continuous period of active duty of not more than 120

days under the authority. Under a catastrophic event like Hurricane Katrina reservists may need to be activated for a period of time that would compel them to repeat a course of study or training.

Section 12304b authorizes Secretaries of the Military Departments to order as many as 60,000 members of the Selected Reserve to active duty to augment the active forces for missions in support of a combatant command for up to 365 days without the consent of the member. By law, such missions must be preplanned and budgeted in Service budget submissions and members must be notified 180 days prior to their activation. Reservists may be activated if an exception to policy is approved by the Secretary of Defense. When this happens, service members may be forced to lose academic credit for withdrawal from a course. DoD anticipates that few reservists would be affected over the next few years but wants to protect their earned benefits.

MOAA supports the DoD proposal. Reservists called to operational duty under Sections 12304a and 12304b should not lost entitlement to MGIB-SR benefits during their active duty service.

The “operational reserve” policy was promulgated by former Secretary of Defense Bob Gates on January 17, 2007. It specifies that members and units of the National Guard and Reserve can expect to serve up to one year on active duty to perform operational missions for every six years of service in the Selected Reserve – “one year mobilized to every five years demobilized ratio.” DoD’s recommendation springs from acknowledgement that additional call-up authorities provided by Congress should not be a cause for them to lose earned MGIB-SR benefits.

That said, MOAA believes that the DoD recommendation on Sections 12304a and 12304b is too narrowly drawn. ***MOAA recommends that Sections 12304a and 12304b be added to the Post-9/11 GI Bill under Section 3301, 38 USC.*** By any reasonable interpretation of Congress’ intent for Sections 12304a and 12304b, missions that would be performed under such orders are operational missions for the purpose of defending or protecting the homeland or augmenting active force missions that are pre-planned and budgeted.

In MOAA’s view, reservists who serve aggregates of 90 days of active duty under Sections 12304a and 12304b should be entitled to Post-9/11 GI Bill benefits. Our recommendation is consistent with the MCRMC’s view on education benefits, discussed earlier, to eliminate GI Bill programs redundancy and rely on Chapter 33, 38 USC as the GI Bill educational platform for the All Volunteer Force.

Section 542. Update Involuntary Mobilization Authorities Exempted from the USERRA Five-year Limit. DoD proposes to add references to Sections 12304a and 12304b of 10 USC to complete the list of current statutory authorities exempt from the Uniformed Services Employment and Reemployment Rights Act (USERRA) five-year limitation under Chapter 43, 38 USC.

Congress enacted the USERRA to protect members of individuals who perform or have performed service on active duty from employment discrimination on the basis of their uniformed service in accordance with Sections 4301-4335, 38 USC. As DoD notes, the USERRA is “intended to ensure that these uniformed service members are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not disadvantaged against in employment because of their military status or uniformed service obligations.”

Adding Sections 12304a and 12304b is consistent with Congress' intent for protecting uniformed service members when called to active duty. *MOAA strongly supports amending the USERRA to include Sections 12304a and 12304b, 10 USC.*

Section 545. Pre-Separation Counseling for Members of the National Guard and Reserves on Continuous Active Duty. DoD proposes to “expressly exclude” any period of active duty for training (ADT) from receiving transition assistance program (TAP) services. TAP is provided to members who are being discharged or released before the completion of that member’s first 180 days active duty.

According to DoD, the “first 180 days” can be misinterpreted to mean the first 180 cumulative days on active duty as in the case of National Guard and Reserve members.

MOAA accepts the proposal to clarify the intent to exclude an initial period of active duty training (ADT) in the calculation of service to qualify for TAP services.

We point out that the DoD and Services could use the proposed change to “game” the system by putting reservists on ADT and active duty orders in connection with an operational call-up.

There are numerous examples of call-ups executed during OIF-OEF in the last decade that involved blended ADT and active duty orders. These appear to have been used to align the call-ups with available funding sources and to manage the numbers of National Guard and Reserves who were to be counted on “active duty” for operational purposes.

MOAA is concerned that the proposed change could be used against reservists during extended call-ups to deny their access to TAP re-adjustment services. *MOAA, therefore, opposes the proposal as written. MOAA recommends the Committee review this matter with the Armed Services Committee to ensure Guard and Reserve members who are on active duty to perform operational missions are not denied TAP upon the completion of 180 days of continuous active duty.*

Section 1041. Repeal the Authority for the Federal Advisory Committee Act Board on Radiation Dose Reconstruction Program. DoD proposes to repeal the FACA advisory board for the Radiation Dose Reconstruction Program. DoD asserts the board has achieved its objectives and its functions can now be more effectively conducted through an interagency effort rather than through a FACA advisory board.

DoD notes that the Veterans’ Advisory Board on Dose Reconstruction (VBDR), a Federal Advisory Committee, provides technical assistance on DoD’s Radiation Dose Reconstruction Program and the Dept. of VA’s radiological disease claims processing procedures. DoD is requesting that that review and oversight functions of the VBDR be transferred to the Secretaries of Defense and Veterans Affairs.

MOAA is not opposed to sunseting the Federal Advisory Board on Radiation Dose Reconstruction. *MOAA, however, would recommend the Committee consider the potential value in re-casting the VBDR charter with a broader mission of advising the Secretaries of Defense and Veterans Affairs on toxic exposures.* The experience of our nation’s warriors over the past 25 years with exposures to burn pits, chemical weapons, hazardous military materials, spent uranium rounds, biologicals, and other toxic materials suggests that a Federal Advisory Board would be of value to the respective departments, service members, veterans and their families.

S. 681, Blue Water Navy Vietnam Veterans Act of 2015 (Senators Gillibrand, D-NY, Tester, D-MT and Moran, R-KS). S. 681 would authorize Agent Orange-related benefits to Navy veterans who served in the territorial waters of Vietnam during that conflict. Despite scientific studies confirming their likely onboard exposure to dioxin and other chemicals that make up Agent Orange, these veterans have been denied access to service-related disability and other benefits arising from illnesses presumed caused by the exposure.

MOAA has long maintained that these veterans deserve equal treatment with other veterans who set “boots on the ground” during the Vietnam War. That limitation was arbitrary, unfair and not based on science.

MOAA strongly supports S. 681 and urges the Committee favorably report the bill as soon as possible.

S. 1203, The 21st Century Veterans Benefits Delivery Act (Senators Heller, R-NV and Casey, D-PA). S. 1203 builds upon Senator Heller and Casey’s legislation passed in the last session of Congress to advance practical, low-cost solutions to resolve the backlog of veterans’ claims in the Department of Veterans Affairs (VA). The bill also sets out supporting initiatives that can improve the efficiency and effectiveness of procedures and practices to sustain the claims system for the future.

The 21st Century Veterans Benefits Delivery Act includes provisions beneficial to our nation’s veterans that will enable easier access to information on their claims through the eBenefits portal and speed access to hearings when they appeal a claim. The legislation also brings needed reforms to VA regional offices’ practices that are designed to increase the accuracy and efficiency of their work on behalf of veterans and improve transparency. Additionally, S. 1203 requires government agencies to cooperate in the collection and transmission of information needed by the VA to decide veterans’ claims, and for other purposes.

MOAA is very grateful that Senators Heller and Casey’s offices actively consulted with us and our partner veteran service organizations to improve the draft legislation and make it responsive to the needs of our veterans.

MOAA strongly supports the 21st Century Veterans Benefits Delivery Act, S. 1203, and urges the Committee to favorably report the bill at the earliest opportunity.

Discussion Draft Legislation Including Provisions Derived from Various Senate Bills.

S. 241, the Military Family Relief Act of 2015 (Senators Tester, D-MT and Moran, R-KS), would provide for the payment of temporary Dependency and Indemnity Compensation (DIC) to a surviving spouse of a veteran upon the death of the veteran, and for other purposes. *MOAA strongly supports S. 241.*

S. 296, the Veterans Small Business Opportunity and Protection Act of 2015 (Senator Heller, R-NV and Manchin, D-WV) would assist surviving spouses and dependents of service-disabled

veteran-owned businesses after the veteran dies from the disability or in the line of duty, and for other purposes. *MOAA supports S. 296.*

S. 666, the Quicker Benefits Delivery Act of 2015 (Senator Franken, D-MN) would require (instead of permit) the consideration of non-Dept. of VA medical professionals evidence in support of claims for disability compensation submitted by veterans, and for other purposes. *MOAA strongly supports S. 666.*

S. 695, the Dignified Interment of Our Veterans Act of 2015 (Sen. Toomey, R-PA) would require the Secretary of Veterans Affairs to conduct a study on matters relating to the burial of unclaimed remains of veterans in national cemeteries, and for other purposes. *MOAA supports S. 695.*

S. 743, Honor America's Guard-Reserve Retirees Act of 2015 (Senator Boozman, R-AR) would honor as a veteran members of the National Guard or Reserves who are entitled to or in receipt of retired pay for non-regular (reserve) service but who had not served on active duty.

National Guard and Reserve members who complete a full career in reserve status and are receiving or entitled to a military pension, government health care and specific earned veterans' benefits under Title 38 are not "veterans of the Armed Forces of the United States," in the absence of a qualifying period of active duty.

Due to military accounting and funding protocols, many reservists actually have performed operational missions during their careers but orders often were issued under other than a Title 10 active duty authority. S. 743 would honor these retired service members as veterans but preclude award of any veterans' benefits they are not already entitled to as a result of their service. *MOAA strongly supports passage of S. 243.*