

108TH CONGRESS
1ST SESSION

H. R. 3317

To expand the travel and transportation allowances available to members of the Armed Forces granted leave under the Rest and Recuperation Leave program, to amend title 10, United States Code, to provide TRICARE program eligibility for members of the Ready Reserve and financial support for continuation of health insurance for mobilized members of reserve components, and to increase the amount of basic educational assistance for members of the Selected Reserve, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2003

Mr. POMEROY introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To expand the travel and transportation allowances available to members of the Armed Forces granted leave under the Rest and Recuperation Leave program, to amend title 10, United States Code, to provide TRICARE program eligibility for members of the Ready Reserve and financial support for continuation of health insurance for mobilized members of reserve components, and to increase the amount of basic educational assistance for members of the Selected Reserve, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guard and Reserve
5 Fairness Act”.

6 **SEC. 2. LIMITATION ON PERIOD OF DEPLOYMENT FOR**
7 **MEMBERS OF RESERVE COMPONENTS.**

8 (a) LIMITATION.—During a period when there is in
9 effect a policy of assigning units or members of one or
10 more of the active components of the Armed Forces to
11 duty in the area of responsibility of the United States Cen-
12 tral Command for a specified period of time of not less
13 than one year, the Secretary of Defense shall provide that
14 the length of such an assignment in the case of members
15 of the reserve components may not exceed the length of
16 such period for the corresponding active component re-
17 duced by the period of time between the date of entry of
18 the reserve component members onto active duty and the
19 date of the deployment of such members for such assign-
20 ment.

21 (b) TRANSITION.—Subsection (a) applies to members
22 of reserve components assigned to duty in the area of re-
23 sponsibility of the United States Central Command on or
24 after the date of the enactment of this Act and to such
25 members assigned to such duty before such date who as

1 of the date of the enactment of this Act have more than
2 90 days remaining in such assignment.

3 **SEC. 3. ACTIVE-DUTY RESERVE COMPONENT EMPLOYEE**
4 **CREDIT ADDED TO GENERAL BUSINESS**
5 **CREDIT.**

6 (a) ADDITION OF CREDIT.—Subpart D of part IV of
7 subchapter A of chapter 1 of the Internal Revenue Code
8 of 1986 (relating to business-related credits) is amended
9 by adding at the end the following new section:

10 **“SEC. 45G. ACTIVE-DUTY RESERVE COMPONENT EMPLOYEE**
11 **CREDIT.**

12 “(a) GENERAL RULE.—For purposes of section 38,
13 the active-duty reserve component employment credit de-
14 termined under this section is an amount equal to the sum
15 of—

16 “(1) the employment credit with respect to all
17 employees of the taxpayer who are members of a re-
18 serve component during the taxable year, plus

19 “(2) the self-employment credit of a qualified
20 self-employed taxpayer.

21 “(b) EMPLOYMENT CREDIT.—The employment credit
22 is, with respect to each employee who is also a member
23 of a reserve component during the taxable year, an
24 amount equal to 50 percent of the compensation paid by
25 the employer to such employee for the period during which

1 such employee was absent from employment for a reason
2 described in subsection (d), but not to exceed 50 percent
3 of the excess (if any) of—

4 “(1) the amount of compensation that would
5 otherwise have been payable to the employee during
6 such absence if the employee’s employment with the
7 employer had not been interrupted by the employee’s
8 absence, over

9 “(2) the amount of military pay that is payable
10 to the employee during the absence.

11 “(c) SELF-EMPLOYMENT CREDIT.—

12 “(1) IN GENERAL.—The self-employment credit
13 of a qualified self-employed taxpayer for any taxable
14 year is equal to 50 percent of the excess, if any, of—

15 “(A) the product of—

16 “(i) the self-employed taxpayer’s aver-
17 age daily self-employment income for the
18 taxable year, multiplied by

19 “(ii) the number of qualified days
20 during the taxable year, over

21 “(B) the product of—

22 “(i) the average daily military pay re-
23 ceived by the taxpayer (taking into account
24 only qualified days during the taxable
25 year), multiplied by

1 “(ii) the number of qualified days
2 during the taxable year.

3 “(2) AVERAGE DAILY SELF-EMPLOYMENT.—

4 For purposes of this subsection, the term ‘average
5 daily self-employment income’ means the self-em-
6 ployment income (as defined in section 1402) of the
7 taxpayer for the taxable year divided by the excess
8 of 365 over the number of qualified days during the
9 taxable year.

10 “(3) QUALIFIED DAY.—For purposes of this
11 subsection, the term ‘qualified day’ means, with re-
12 spect to any individual, any day such individual was
13 absent from self-employment duties for a reason de-
14 scribed in subsection (d).

15 “(d) COVERED PAY PERIODS.—This section shall
16 apply with respect to an employee or qualified self-em-
17 ployed taxpayer who is also a member of a reserve compo-
18 nent—

19 “(1) while the employee serves on active duty
20 for a period of more than 30 days;

21 “(2) while the employee is hospitalized for, or
22 convalescing from, an illness or injury incurred in,
23 or aggravated during, the performance of such active
24 duty; and

1 “(3) during the 14-day period beginning at the
2 end of such active duty or the end of the period re-
3 ferred to in paragraph (2).

4 “(e) LIMITATION.—No credit shall be allowed under
5 this section with respect to an employee or qualified self-
6 employed individual for any day on which the employee
7 or taxpayer was not scheduled to work (for a reason other
8 than such service on active duty) and ordinarily would not
9 have worked.

10 “(f) DEFINITIONS.—For purposes of this section—

11 “(1) The term ‘qualified self-employed tax-
12 payer’ means a taxpayer who—

13 “(A) has net earnings from self-employ-
14 ment (as defined in section 1402) for the tax-
15 able year, and

16 “(B) is a member of a reserve component.

17 “(2) The terms ‘active duty for a period of
18 more than 30 days’, ‘member’, and ‘reserve compo-
19 nent’ have the meanings given such terms in section
20 101 of title 37, United States Code.

21 “(3) The term ‘compensation’ means any remu-
22 neration for employment, whether in cash or in kind,
23 which is paid or incurred by a taxpayer and which
24 is deductible from the taxpayer’s gross income under
25 section 162(a)(1).”.

1 (b) CREDIT TO BE PART OF GENERAL BUSINESS
2 CREDIT.—Subsection (b) of section 38 of such Code (re-
3 lating to general business credit) is amended by striking
4 “plus” at the end of paragraph (14), by striking the period
5 at the end of paragraph (15) and inserting “, plus”, and
6 by adding at the end the following new paragraph:

7 “(16) the active-duty reserve component em-
8 ployee credit determined under section 45G(a).”.

9 (c) CONFORMING AMENDMENT.—The table of sec-
10 tions for subpart D of part IV of subchapter A of chapter
11 1 of the Internal Revenue Code of 1986 is amended by
12 inserting after the item relating to section 45F the fol-
13 lowing new item:

“45G. Active-duty reserve component employee credit.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2002.

17 SEC. 4. EXPANSION OF REST AND RECUPERATION LEAVE
18 PROGRAM ALLOWANCES TO INCLUDE TRAV-
19 EL AND TRANSPORTATION TO PERMANENT
20 STATION OR HOME.

21 (a) EXPANDED ALLOWANCES.—The Secretary of De-
22 fense shall expand the Central Command Rest and Recu-
23 peration Leave program for Operation Iraqi Freedom and
24 Operation Enduring Freedom to provide travel and trans-
25 portation allowances to each member of the Armed Forces

1 granted leave under the program to permit the member
2 to travel at the expense of the United States between the
3 deployment location of the member and the permanent
4 station or home of record of the member.

5 (b) METHOD OF PROVIDING ALLOWANCES.—The
6 travel and transportation allowances authorized under
7 subsection (a) shall be provided in the manner otherwise
8 provided in section 411c of title 37, United States Code.

9 (c) RELATION TO OTHER ALLOWANCES.—Travel and
10 transportation allowances provided for travel under sub-
11 section (a) are in addition to any other travel and trans-
12 portation or other allowances that may be provided for
13 such travel by law.

14 (d) TREATMENT OF RESERVE COMPONENT MEM-
15 BERS.—It is the sense of Congress that, to the extent
16 practicable, members of the reserve components should
17 continue to be provided the same benefits under the Rest
18 and Recuperation program of the United States Central
19 Command as are provided to members of the active com-
20 ponents.

21 (e) RETROACTIVE APPLICATION.—In the case of a
22 member of the Armed Forces granted leave as described
23 in subsection (a) before the date of the enactment of this
24 Act and who received travel and transportation allowances
25 under section 411c of title 37, United States Code, during

1 the period beginning on September 20, 2003, and ending
2 on the date of the enactment of this Act in connection
3 with such leave, the Secretary of Defense shall reimburse
4 the member for any transportation costs incurred by the
5 member before that date to procure transportation be-
6 tween the designated port of entry in the United States
7 or the designated overseas location under such section and
8 the permanent duty station or home of record of the mem-
9 ber.

10 (f) REPORT ON PERMANENT EXPANSION OF ALLOW-
11 ANCES.—Not later than one year after the date of the en-
12 actment of this Act, the Secretary of Defense shall submit
13 to Congress a report evaluating the feasibility and cost
14 of amending section 411c of title 37, United States Code,
15 to permanently expand the travel and transportation al-
16 lowances available to members of the Armed Forces grant-
17 ed leave under future rest and recuperation leave pro-
18 grams to cover travel and transportation to the members'
19 permanent station or home of record.

20 **SEC. 5. INCREASE IN AMOUNT OF BASIC EDUCATIONAL AS-**
21 **SISTANCE UNDER THE MONTGOMERY GI**
22 **BILL.**

23 (a) IN GENERAL.—(1) Paragraph (1) of Section
24 16131(b) of title 10, United States Code, is amended—

3 (B) in subparagraph (B), by striking “\$188”
4 and inserting “\$450”; and

5 (C) in subparagraph (C), by striking “\$125”
6 and inserting “\$300”.

7 (2) The amendments made by paragraph (1) shall
8 take effect on October 1, 2004, and shall apply with re-
9 spect to educational assistance allowances under section
10 16131(b)(1) of such title paid for months after September
11 2004.

12 (3) In the case of an educational assistance allowance
13 under such section paid for months occurring during fiscal
14 year 2004—

19 (C) subparagraph (C) of such section shall be
20 applied by substituting “\$215” for “\$125”.

21 (b) NO ADJUSTMENT FOR FISCAL YEARS 2004 AND
22 2005.—Section 16131(b)(2) of such title shall not apply
23 to rates of basic educational assistance paid under such
24 section during fiscal years 2004 and 2005.

1 (c) APPLICATION OF INDEX BASED ON COSTS OF
2 HIGHER LEARNING.—

3 (1) IN GENERAL.—Section 16131(f)(2) of title
4 10, United States Code, is amended to read as fol-
5 lows:

6 “(2)(A) With respect to any fiscal year beginning on
7 or after October 1, 2004, the Secretary shall provide a
8 percentage increase (rounded to the nearest dollar) in the
9 rates payable under paragraph (1) equal to the percentage
10 (as determined by the Secretary) by which—

11 “(i) the average monthly costs of tuition and
12 expenses for commuter students at public institu-
13 tions of higher learning that award baccalaureate
14 degrees for purposes of paragraph (1) for the fiscal
15 year involved, exceeds

16 “(ii) such average monthly costs for the pre-
17 ceding fiscal year.

18 “(B) The Secretary shall make the determination
19 under subparagraph (A) after consultation with the Sec-
20 retary of Education.

21 “(C) A determination made under subparagraph (A)
22 in a year shall take effect on October 1 of that year and
23 apply with respect to basic educational assistance allow-
24 ances payable under this section for the fiscal year begin-
25 ning in that year.

1 “(D) Not later than September 30 each year, the Sec-
2 retary shall publish in the Federal Register the average
3 monthly costs of tuition and expenses as determined under
4 subparagraph (A) in that year.”.

5 (2) CONFORMING AMENDMENT.—Section
6 3015(h) of title 38, United States Code, is amended
7 by striking “by which—” and all that follows and in-
8 serting “determined by the Secretary under section
9 16131(b)(2) of title 10 for the fiscal year involved.”.

10 (3) APPLICATION.—The amendment made by
11 paragraph (1) shall apply to fiscal years beginning
12 on or after October 1, 2004.

13 **SEC. 6. ALLOWANCE FOR CONTINUATION OF NON-TRICARE**
14 **HEALTH BENEFITS COVERAGE FOR CERTAIN**
15 **MOBILIZED RESERVES.**

16 (a) PAYMENT OF PREMIUMS.—(1) Chapter 55 of title
17 10, United States Code, is amended by inserting after sec-
18 tion 1078a the following new section:

19 **“§ 1078b. Continuation of non-TRICARE health bene-**
20 **fits plan coverage for certain reserves**
21 **called or ordered to active duty and their**
22 **dependents**

23 “(a) PAYMENT OF PREMIUMS.—The Secretary con-
24 cerned shall pay the applicable premium to continue in
25 force any qualified health benefits plan coverage for an

1 eligible reserve component member for the benefits cov-
2 erage continuation period if timely elected by the member
3 in accordance with regulations prescribed under sub-
4 section (j).

5 “(b) ELIGIBLE MEMBER.—A member of a reserve
6 component is eligible for payment of the applicable pre-
7 mium for continuation of qualified health benefits plan
8 coverage under subsection (a) while serving on active duty
9 pursuant to a call or order issued under a provision of
10 law referred to in section 101(a)(13)(B) of this title dur-
11 ing a war or national emergency declared by the President
12 or Congress.

13 “(c) QUALIFIED HEALTH BENEFITS PLAN Cov-
14 ERAGE.—For the purposes of this section, health benefits
15 plan coverage for a member called or ordered to active
16 duty is qualified health benefits plan coverage if—

17 “(1) the coverage was in force on the date on
18 which the Secretary notified the member that
19 issuance of the call or order was pending or, if no
20 such notification was provided, the date of the call
21 or order;

22 “(2) on such date, the coverage applied to the
23 member and dependents of the member described in
24 subparagraph (A), (D), or (I) of section 1072(2) of
25 this title; and

1 “(3) the coverage has not lapsed.

2 “(d) APPLICABLE PREMIUM.—The applicable pre-
3 mium payable under this section for continuation of health
4 benefits plan coverage in the case of a member is the
5 amount of the premium payable by the member for the
6 coverage of the member and dependents.

7 “(e) MAXIMUM AMOUNT.—The total amount that
8 may be paid for the applicable premium of a health bene-
9 fits plan for a member under this section in a fiscal year
10 may not exceed the amount determined by multiplying—

11 “(1) the sum of one plus the number of the
12 member’s dependents covered by the health benefits
13 plan, by

14 “(2) the per capita cost of providing TRICARE
15 coverage and benefits for dependents under this
16 chapter for such fiscal year, as determined by the
17 Secretary of Defense.

18 “(f) BENEFITS COVERAGE CONTINUATION PE-
19 RIOD.—The benefits coverage continuation period under
20 this section for qualified health benefits plan coverage in
21 the case of a member called or ordered to active duty is
22 the period that—

23 “(1) begins on the date of the call or order; and
24 “(2) ends on the earlier of the date on which—

1 “(A) the member’s eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section; or

5 “(B) the member elects to terminate the continued qualified health benefits plan coverage of the dependents of the member.

8 “(g) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

10 “(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

16 “(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

20 “(h) NONDUPLICATION OF BENEFITS.—A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this section is not eligible for benefits under the TRICARE program during a period of the coverage for which so paid.

1 “(i) REVOCABILITY OF ELECTION.—A member who
2 makes an election under subsection (a) may revoke the
3 election. Upon such a revocation, the member’s depend-
4 ents shall become eligible for benefits under the
5 TRICARE program as provided for under this chapter.

6 “(j) REGULATIONS.—The Secretary of Defense shall
7 prescribe regulations for carrying out this section. The
8 regulations shall include such requirements for making an
9 election of payment of applicable premiums as the Sec-
10 retary considers appropriate.”.

11 (2) The table of sections at the beginning of such
12 chapter is amended by inserting after the item relating
13 to section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for cer-
tain Reserves called or ordered to active duty and their depend-
ents.”.

14 (b) APPLICABILITY.—Section 1078b of title 10,
15 United States Code (as added by subsection (a)), shall
16 apply with respect to calls or orders of members of reserve
17 components of the Armed Forces to active duty as de-
18 scribed in subsection (b) of such section, that are issued
19 by the Secretary of a military department on or after the
20 date of the enactment of this Act.

1 **SEC. 7. TRICARE COVERAGE FOR MEMBERS OF THE READY**2 **RESERVE.**

3 (a) ELIGIBILITY.—(1) Chapter 55 of title 10, United
4 States Code, is amended by inserting after section 1076a
5 the following new section:

6 **“§ 1076b. TRICARE program: coverage for members**7 **of the Ready Reserve**

8 “(a) ELIGIBILITY.—Members of the Selected Reserve
9 of the Ready Reserve and members of the Individual
10 Ready Reserve described in subsection 10144(b) of this
11 title are eligible, subject to subsection (h)(1), to enroll in
12 the following TRICARE program options:

13 “(1) TRICARE Prime.

14 “(2) TRICARE Standard.

15 “(b) TYPES OF COVERAGE.—(1) A member eligible
16 under subsection (a) may enroll for either of the following
17 types of coverage:

18 “(A) Self alone coverage.

19 “(B) Self and family coverage.

20 “(2) An enrollment by a member for self and family
21 covers the member and the dependents of the member who
22 are described in subparagraph (A), (D), or (I) of section
23 1072(2) of this title.

24 “(c) OPEN ENROLLMENT PERIODS.—The Secretary
25 of Defense shall provide for at least one open enrollment
26 period each year. During an open enrollment period, a

1 member eligible under subsection (a) may enroll in the
2 TRICARE program or change or terminate an enrollment
3 in the TRICARE program.

4 “(d) SCOPE OF CARE.—(1) A member and the de-
5 pendents of a member enrolled in the TRICARE program
6 under this section shall be entitled to the same benefits
7 under this chapter as a member of the uniformed services
8 on active duty or a dependent of such a member, respec-
9 tively.

10 “(2) Section 1074(c) of this title shall apply with re-
11 spect to a member enrolled in the TRICARE program
12 under this section.

13 “(e) PREMIUMS.—(1) The Secretary of Defense shall
14 charge premiums for coverage pursuant to enrollments
15 under this section. The Secretary shall prescribe for each
16 of the TRICARE program options referred to in sub-
17 section (a) a premium for self alone coverage and a pre-
18 mium for self and family coverage.

19 “(2) The monthly amount of the premium in effect
20 for a month for a type of coverage under this section shall
21 be the amount equal to 28 percent of the total amount
22 determined by the Secretary on an appropriate actuarial
23 basis as being reasonable for the coverage.

24 “(3) The premiums payable by a member under this
25 subsection may be deducted and withheld from basic pay

1 payable to the member under section 204 of title 37 or
2 from compensation payable to the member under section
3 206 of such title. The Secretary shall prescribe the re-
4 quirements and procedures applicable to the payment of
5 premiums by members not entitled to such basic pay or
6 compensation.

7 “(4) Amounts collected as premiums under this sub-
8 section shall be credited to the appropriation available for
9 the Defense Health Program Account under section 1100
10 of this title, shall be merged with sums in such Account
11 that are available for the fiscal year in which collected,
12 and shall be available under subsection (b) of such section
13 for such fiscal year.

14 “(f) OTHER CHARGES.—A person who receives
15 health care pursuant to an enrollment in a TRICARE pro-
16 gram option under this section, including a member who
17 receives such health care, shall be subject to the same
18 deductibles, copayments, and other nonpremium charges
19 for health care as apply under this chapter for health care
20 provided under the same TRICARE program option to de-
21 pendents described in subparagraph (A), (D), or (I) of sec-
22 tion 1072(2) of this title.

23 “(g) TERMINATION OF ENROLLMENT.—(1) A mem-
24 ber enrolled in the TRICARE program under this section
25 may terminate the enrollment only during an open enroll-

1 ment period provided under subsection (c), except as pro-
2 vided in subsection (h)(2).

3 “(2) An enrollment of a member for self alone or for
4 self and family under this section shall terminate on the
5 first day of the first month beginning after the date on
6 which the member ceases to be eligible under subsection
7 (a).

8 “(3) The enrollment of a member under this section
9 may be terminated on the basis of failure to pay the pre-
10 mium charged the member under this section.

11 “(h) RELATIONSHIP TO TRANSITION TRICARE Cov-
12 ERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A
13 member may not enroll in the TRICARE program under
14 this section while entitled to transitional health care under
15 subsection (a) of section 1145 of this title or while author-
16 ized to receive health care under subsection (c) of such
17 section.

18 “(2) A member who enrolls in the TRICARE pro-
19 gram under this section within 90 days after the date of
20 the termination of the member’s entitlement or eligibility
21 to receive health care under subsection (a) or (c) of section
22 1145 of this title may terminate the enrollment at any
23 time within one year after the date of the enrollment.

24 “(i) REGULATIONS.—The Secretary of Defense, in
25 consultation with the other administering Secretaries,

1 shall prescribe regulations for the administration of this
2 section.”.

3 (2) The table of sections at the beginning of such
4 chapter is amended by inserting after the item relating
5 to section 1076a the following new item:

“1076b. TRICARE program: coverage for members of the Ready Reserve.”.

6 (b) DEFINITIONS.—(1) Section 1072 of title 10,
7 United States Code, is amended by adding at the end the
8 following new paragraphs:

9 “(10) The term ‘TRICARE Prime’ means the
10 managed care option of the TRICARE program.

11 “(11) The term ‘TRICARE Standard’ means
12 the option of the TRICARE program that is also
13 known as the Civilian Health and Medical Program
14 of the Uniformed Services”.

15 (2) Section 1097a(f) of such title is amended by
16 striking “Definitions.—In this section:” and all that fol-
17 lows through “(2) The term” and inserting “Catchment
18 Area Defined.—In this section, the term”.

19 (c) PERIOD FOR IMPLEMENTATION.—Section 1076b
20 of title 10, United States Code (as added by subsection
21 (a)), shall apply with respect to months that begin on or
22 after the date that is 180 days after the date of the enact-
23 ment of this Act.

1 **SEC. 8. REPORT ON TARGETED COMPENSATION PROGRAM**
2 **TO ADDRESS INCOME LOSS FACED BY MEM-**
3 **BERS OF RESERVE COMPONENTS DEPLOYED**
4 **OVERSEAS.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, the Secretary of Defense shall submit
7 to Congress a report evaluating the adverse financial ef-
8 fects of deployments of greater than six months on mem-
9 bers of the reserve components and the feasibility and cost
10 of developing a targeted compensation program for the re-
11 serve components to offset some or all of those adverse
12 effects.

○