

108TH CONGRESS
2^D SESSION

H. R. 5239

To amend titles 10 and 38, United States Code, to improve educational benefits for members of the Selected Reserve, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2004

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, 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 amend titles 10 and 38, United States Code, to improve educational benefits 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 “National Guard and
5 Reserve Education Act of 2004”.

1 **SEC. 2. INCREASE IN RATE OF EDUCATIONAL ASSISTANCE**
2 **FOR MEMBERS OF THE SELECTED RESERVE**
3 **AS ADMINISTERED BY THE SECRETARY OF**
4 **VETERANS AFFAIRS.**

5 (a) INCREASE IN RATE OF ASSISTANCE.—Subsection
6 (b)(1) of section 16131 of title 10, United States Code,
7 is amended—

8 (1) in subparagraph (A), by striking “\$251”
9 and inserting “\$400”;

10 (2) by striking subparagraphs (B) and (C);

11 (3) by redesignating subparagraph (D) as sub-
12 paragraph (B); and

13 (4) in subparagraph (B), as so redesignated, by
14 striking “for each month of less than half-time pur-
15 suit” and inserting “for each month of less than
16 full-time pursuit”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 subsection (a) shall apply with respect to months begin-
19 ning after the date of the enactment of this Act.

20 (c) NO CPI ADJUSTMENT FOR FISCAL YEAR 2005.—
21 Paragraph (2) of section 16131(b) of such title shall not
22 apply to rates of basic educational assistance paid under
23 such section during fiscal year 2005.

1 **SEC. 3. PAYMENT OF EDUCATIONAL ASSISTANCE FOR MEM-**
2 **BERS OF THE SELECTED RESERVE CALLED**
3 **UP FOR SERVICE FOR CUMULATIVE PERIOD**
4 **OF 180 DAYS OR MORE AT THE RATE APPLI-**
5 **CABLE UNDER CHAPTER 30 OF TITLE 38,**
6 **UNITED STATES CODE.**

7 (a) INCREASE.—Section 16131 of title 10, United
8 States Code, is amended by adding at the end the fol-
9 lowing new subsection:

10 “(j)(1) In the case of a person described in paragraph
11 (2), the rate payable under subsection (b) or subsection
12 (c) to such person for such educational assistance for each
13 month shall be paid at the rate applicable under section
14 3015(b) of title 38.

15 “(2) A person referred to in paragraph (1) is a per-
16 son who is entitled to educational assistance under this
17 chapter—

18 “(A) who, on or after September 11, 2001,
19 serves a period of active duty of at least 180 days
20 of active duty pursuant to an order to serve on ac-
21 tive duty under section 12301(a), 12301(d),
22 12301(g), 12302, or 12304 of this title during a five
23 year period, or

24 “(B) in the case of a member of the Army Na-
25 tional Guard of the United States or Air National
26 Guard of the United States, who, on or after Sep-

1 tember 11, 2001, performed full time National
2 Guard duty under section 502(f) of title 32 for at
3 least 180 days during a five year period when au-
4 thorized by the President or Secretary of Defense
5 for the purpose of responding to a national emer-
6 gency declared by the President and supported by
7 Federal funds.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 subsection (a) shall apply with respect to payments of edu-
10 cational assistance under chapter 1606 of such title for
11 months beginning after September 30, 2004.

12 **SEC. 4. MODIFICATION OF DELIMITING DATE FOR USE OF**
13 **ENTITLEMENT.**

14 (a) **IN GENERAL.**—Section 16133 of title 10, United
15 States Code, is amended—

16 (1) in subsection (a), by striking “subsection
17 (b)” and inserting “subsections (b) and (c)”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(c) In the case of a person described in section
21 16131(j)(2) of this title, the period during which such per-
22 son may use such person’s entitlement to educational as-
23 sistance under this chapter expires at the end of the 14-
24 year period beginning on the date that is the last day of
25 the person’s last duty referred to in such section.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 subsection (a) shall take effect on September 30, 2004,
 3 and shall apply to members of the Selected Reserve enti-
 4 tled to educational assistance under chapter 1606 of title
 5 10, United States Code, on or after that date.

6 **SEC. 5. AUTHORITY FOR MEMBERS OF THE SELECTED RE-**
 7 **SERVE ENTITLED TO RETIRED PAY TO**
 8 **TRANSFER ENTITLEMENT TO BASIC EDU-**
 9 **CATIONAL ASSISTANCE.**

10 (a) ESTABLISHMENT OF AUTHORITY TO TRANSFER
 11 ENTITLEMENT.—(1) Chapter 1606 of title 10, United
 12 States Code, is amended by adding at the end the fol-
 13 lowing new section:

14 **“§ 16138. Transfer of entitlement to basic educational**
 15 **assistance by members of the Selected**
 16 **Reserve entitled to retired pay**

17 “(a) IN GENERAL.—Subject to the provisions of this
 18 section, each Secretary concerned may permit an indi-
 19 vidual described in subsection (b) who is entitled to basic
 20 educational assistance under this chapter to elect to trans-
 21 fer to one or more of the dependents specified in sub-
 22 section (c) a portion of such individual’s entitlement to
 23 such assistance.

24 “(b) ELIGIBLE INDIVIDUALS.—An individual re-
 25 ferred to in subsection (a) is an individual who—

1 “(1) is entitled to retired pay under chapter
2 1223; and

3 “(2) is entitled to educational assistance under
4 this chapter.

5 “(c) ELIGIBLE DEPENDENTS.—An individual ap-
6 proved to transfer an entitlement to basic educational as-
7 sistance under this section may transfer the individual’s
8 entitlement as follows:

9 “(1) To the individual’s spouse.

10 “(2) To one or more of the individual’s chil-
11 dren.

12 “(3) To a combination of the individuals re-
13 ferred to in paragraphs (1) and (2).

14 “(d) DESIGNATION OF TRANSFEREE.—An individual
15 transferring an entitlement to basic educational assistance
16 under this section shall—

17 “(1) designate the dependent or dependents to
18 whom such entitlement is being transferred;

19 “(2) designate the number of months of such
20 entitlement to be transferred to each such depend-
21 ent; and

22 “(3) specify the period for which the transfer
23 shall be effective for each dependent designated
24 under paragraph (1).

1 Each designation under this section shall be made in writ-
2 ing and shall be transmitted to the Secretary concerned
3 and the Secretary of Veterans Affairs.

4 “(e) TIME FOR TRANSFER; REVOCATION AND MODI-
5 FICATION.—(1) Subject to the time limitation for use of
6 entitlement under section 16133 of this title, an individual
7 approved to transfer entitlement to basic educational as-
8 sistance under this section may transfer such entitlement
9 at any time after the approval of the individual’s request
10 to transfer such entitlement without regard to whether the
11 individual is a member of the Armed Forces when the
12 transfer is executed.

13 “(2)(A) An individual transferring entitlement under
14 this section may modify or revoke at any time the transfer
15 of any unused portion of the entitlement so transferred.

16 “(B) The modification or revocation of the transfer
17 of entitlement under this paragraph shall be made by the
18 submittal of written notice of the action to both the Sec-
19 retary concerned and the Secretary of Veterans Affairs.

20 “(f) COMMENCEMENT OF USE.—In the case of enti-
21 tlement transferred to a child to whom entitlement to
22 basic educational assistance is transferred under this sec-
23 tion, the child may not commence the use of the trans-
24 ferred entitlement until either—

1 “(1) the completion by the child of the require-
2 ments of a secondary school diploma (or equivalency
3 certificate); or

4 “(2) the attainment by the child of 18 years of
5 age.

6 “(g) ADDITIONAL ADMINISTRATIVE MATTERS.—(1)
7 The use of any entitlement to basic educational assistance
8 transferred under this section shall be charged against the
9 entitlement of the individual making the transfer at the
10 rate of one month for each month of transferred entitle-
11 ment that is used.

12 “(2) Except as provided under subsection (d)(2) and
13 subject to paragraphs (4) and (5), a dependent to whom
14 entitlement is transferred under this section is entitled to
15 basic educational assistance under this chapter in the
16 same manner and at the same rate as the individual from
17 whom the entitlement was transferred.

18 “(3)(A) The death of an individual transferring an
19 entitlement under this section shall not affect the use of
20 the entitlement by the dependent to whom the entitlement
21 is transferred.

22 “(B) Entitlement may only be transferred under this
23 section before the date of death of the individual making
24 the transfer.

1 “(4) A child to whom entitlement is transferred under
2 this section may not use any entitlement so transferred
3 after attaining the age of 26 years.

4 “(5) The administrative provisions of chapter 30 of
5 title 38 (including the provisions set forth in section
6 3034(a)(1) of that title) shall apply to the use of entitle-
7 ment transferred under this section, except that the de-
8 pendent to whom the entitlement is transferred shall be
9 treated as the eligible veteran for purposes of such provi-
10 sions.

11 “(6) The purposes for which a dependent to whom
12 entitlement is transferred under this section may use such
13 entitlement shall include the pursuit and completion of the
14 requirements of a secondary school diploma (or equiva-
15 lency certificate).

16 “(h) OVERPAYMENT.—In the event of an overpay-
17 ment of basic educational assistance with respect to a de-
18 pendent to whom entitlement is transferred under this sec-
19 tion, the dependent and the individual making the transfer
20 shall be jointly and severally liable to the United States
21 for the amount of the overpayment for purposes of section
22 3685 of title 38.

23 “(i) APPROVALS OF TRANSFER SUBJECT TO AVAIL-
24 ABILITY OF APPROPRIATIONS.—The Secretary concerned
25 may approve transfers of entitlement to basic educational

1 assistance under this section in a fiscal year only to the
2 extent that appropriations for military personnel are avail-
3 able in that fiscal year for purposes of making deposits
4 in the Department of Defense Education Benefits Fund
5 under section 2006 of this title in that fiscal year to cover
6 the present value of future benefits payable from the Fund
7 for the Department of Defense portion of payments of
8 basic educational assistance attributable to increased
9 usage of benefits as a result of such transfers of entitle-
10 ment in that fiscal year.

11 “(j) REGULATIONS.—After consultation with the Sec-
12 retary of Veterans Affairs, the Secretary of Defense shall
13 prescribe regulations for purposes of this section. Such
14 regulations shall specify the manner and effect of an elec-
15 tion to modify or revoke a transfer of entitlement under
16 subsection (e)(2) and shall specify the manner of the ap-
17 plicability of the administrative provisions referred to in
18 subsection (g)(5) to a dependent to whom entitlement is
19 transferred under this section.

20 “(k) ANNUAL REPORT.—(1) As part of the report re-
21 quired under section 3020(l) of title 38, (beginning in
22 2006), the Secretary of Defense shall include information
23 on the transfers of entitlement to basic educational assist-
24 ance under this section that were approved by each Sec-
25 retary concerned during the preceding fiscal year.

1 “(2) Each report shall set forth—

2 “(A) the number of transfers of entitlement
3 under this section that were approved by such Sec-
4 retary during the preceding fiscal year; or

5 “(B) if no transfers of entitlement under this
6 section were approved by such Secretary during that
7 fiscal year, a justification for such Secretary’s deci-
8 sion not to approve any such transfers of entitlement
9 during that fiscal year.”.

10 (2) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of such chapter is amended by adding
12 at the end the following new item:

“16138. Transfer of entitlement to basic educational assistance by members of
the Selected Reserve entitled to retired pay.”.

13 (b) CONFORMING AMENDMENT.—Section 3020 of
14 title 38, United States Code, is amended—

15 (1) by redesignating subsection (m) as sub-
16 section (n); and

17 (2) by inserting after subsection (l) the fol-
18 lowing new subsection:

19 “(m) COORDINATION WITH AUTHORITY FOR TRANS-
20 FERS UNDER THE RESERVE MONTGOMERY GI BILL.—

21 In carrying out this section and section 16138 of title 10,
22 each Secretary concerned shall take such steps as may be
23 necessary to ensure that a transfer of entitlement under

1 each such section is made pursuant to the applicable re-
2 quirements of such sections.”.

3 **SEC. 7. REQUIREMENT FOR THE SECRETARY OF VETERANS**
4 **AFFAIRS TO REPORT TO CONGRESS ON**
5 **TRANSFERS OF ENTITLEMENT BY MEMBERS**
6 **OF THE SELECTED RESERVE ENTITLED TO**
7 **RETIRED PAY.**

8 (a) IN GENERAL.—Subchapter II of chapter 30 of
9 title 38, United States Code, is amended by adding at the
10 end the following new section:

11 **“§ 3020A. Annual report on transfers of entitlement to**
12 **basic educational assistance by members**
13 **of the Selected Reserve entitled to retired**
14 **pay**

15 “(a) INCLUSION IN ANNUAL REPORT.—As part of
16 the annual report submitted to the Congress under section
17 529 of this title, the Secretary shall include a description
18 of the operation of the program for transfer of entitlement
19 to basic educational assistance by members of the selected
20 reserve entitled to retired pay under section 16138 of title
21 10.

22 “(b) SPECIFIC INFORMATION REQUIRED.—The Sec-
23 retary shall include in the description required under sub-
24 section (a) the following information:

1 “(1) The aggregate number of transfers of enti-
2 tlement made during the preceding year.

3 “(2) The type of programs of education pur-
4 sued by dependents to whom entitlement was so
5 transferred.

6 “(3) The number of spouses to whom entitle-
7 ment was so transferred.

8 “(4) The number of dependent children to
9 whom entitlement was so transferred.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of such chapter is amended by adding
12 at the end the following new item:

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