

110TH CONGRESS
1ST SESSION

H. R. 4889

To amend title 38, United States Code, to recodify as part of that title chapter 1607 of title 10, United States Code.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2007

Mr. FILNER introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, 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 title 38, United States Code, to recodify as part of that title chapter 1607 of title 10, United States Code.

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 Reserves
5 Are Fighting Too Act of 2008”.

1 **SEC. 2. RECODIFICATION IN TITLE 38, UNITED STATES**
 2 **CODE, OF CERTAIN EDUCATIONAL ASSIST-**
 3 **ANCE PROGRAMS FOR MEMBERS OF THE RE-**
 4 **SERVE COMPONENTS.**

5 (a) IN GENERAL.—Part III of title 38, United States
 6 Code, is amended by inserting after chapter 32 the fol-
 7 lowing new chapter:

8 **“CHAPTER 33—EDUCATIONAL ASSIST-**
 9 **ANCE FOR MEMBERS OF THE RE-**
 10 **SERVE COMPONENTS SUPPORTING**
 11 **CONTINGENCY OPERATIONS AND CER-**
 12 **TAIN OTHER OPERATIONS**

“3301. Purpose.

“3302. Educational assistance program.

“3303. Eligibility for educational assistance.

“3304. Time limit for use of entitlement.

“3305. Termination of assistance.

“3306. Administration of program.

13 **“§ 3301. Purpose**

14 “The purpose of this chapter is to provide educational
 15 assistance to members of the reserve components called
 16 or ordered to active service in response to a war or na-
 17 tional emergency declared by the President or Congress,
 18 in recognition of the sacrifices that those members make
 19 in answering the call to duty.

20 **“§ 3302. Educational assistance program**

21 “(a) PROGRAM ESTABLISHMENT.—The Secretary of
 22 each military department, under regulations prescribed by

1 the Secretary of Veterans Affairs, shall establish and
2 maintain a program as prescribed in this chapter to pro-
3 vide educational assistance to members of the Ready Re-
4 serve of the Armed Forces under the jurisdiction of the
5 Secretary concerned.

6 “(b) AUTHORIZED EDUCATION PROGRAMS.—Edu-
7 cational assistance may be provided under this chapter for
8 pursuit of any program of education that is an approved
9 program of education for purposes of chapter 30 of this
10 title.

11 “(c) BENEFIT AMOUNT.—(1) The educational assist-
12 ance program established under subsection (a) shall pro-
13 vide for payment by the Secretary of Veterans Affairs of
14 an educational assistance allowance to each member enti-
15 tled to educational assistance under this chapter who is
16 pursuing a program of education authorized under sub-
17 section (b).

18 “(2) The educational assistance allowance provided
19 under this chapter shall be based on the applicable percent
20 under paragraph (4) to the applicable rate provided under
21 section 3015 of this title for a member whose entitlement
22 is based on completion of an obligated period of active
23 duty of three years.

24 “(3) The educational assistance allowance provided
25 under this section for a person who is undertaking a pro-

1 gram for which a reduced rate is specified in chapter 30
2 of this title, that rate shall be further adjusted by the ap-
3 plicable percent specified in paragraph (4).

4 “(4) The adjusted educational assistance allowance
5 under paragraph (2) or (3), as applicable, shall be—

6 “(A) 40 percent in the case of a member of a
7 reserve component who performed active service for
8 90 consecutive days but less than one continuous
9 year;

10 “(B) 60 percent in the case of a member of a
11 reserve component who performed active service for
12 one continuous year but less than two continuous
13 years; or

14 “(C) 80 percent in the case of a member of a
15 reserve component who performed active service for
16 two continuous years or more.

17 “(d) MAXIMUM MONTHS OF ASSISTANCE.—(1) Sub-
18 ject to section 3695 of this title, the maximum number
19 of months of educational assistance that may be provided
20 to any member under this chapter is 36 (or the equivalent
21 thereof in part-time educational assistance).

22 “(2)(A) Notwithstanding any other provision of this
23 chapter or chapter 36 of this title, any payment of an edu-
24 cational assistance allowance described in subparagraph
25 (B) shall not—

1 “(i) be charged against the entitlement of any
2 individual under this chapter; or

3 “(ii) be counted toward the aggregate period for
4 which section 3695 of this title limits an individual’s
5 receipt of assistance.

6 “(B) The payment of the educational assistance al-
7 lowance referred to in subparagraph (A) is the payment
8 of such an allowance to the individual for pursuit of a
9 course or courses under this chapter if the Secretary of
10 Veterans Affairs finds that the individual—

11 “(i) had to discontinue such course pursuit as
12 a result of being ordered to serve on active duty
13 under section 12301(a), 12301(d), 12301(g), 12302,
14 or 12304 of title 10; and

15 “(ii) failed to receive credit or training time to-
16 ward completion of the individual’s approved edu-
17 cational, professional, or vocational objective as a re-
18 sult of having to discontinue, as described in clause
19 (i), the individual’s course pursuit.

20 “(C) The period for which, by reason of this sub-
21 section, an educational assistance allowance is not charged
22 against entitlement or counted toward the applicable ag-
23 gregate period under section 3695 of this title shall not
24 exceed the portion of the period of enrollment in the
25 course or courses for which the individual failed to receive

1 credit or with respect to which the individual lost training
2 time, as determined under subparagraph (B)(ii).

3 “(e) AVAILABILITY OF ASSISTANCE FOR LICENSING
4 AND CERTIFICATION TESTS.—(1) Subject to paragraph
5 (3), the amount of educational assistance payable under
6 this chapter for a licensing or certification test described
7 in section 3452(b) of this title is the lesser of \$2,000 or
8 the fee charged for the test.

9 “(2) The number of months of entitlement charged
10 in the case of any individual for such licensing or certifi-
11 cation test is equal to the number (including any fraction)
12 determined by dividing the total amount of educational as-
13 sistance paid such individual for such test by the full-time
14 monthly institutional rate of educational assistance which,
15 but for paragraph (1), such individual would otherwise be
16 paid under subsection (c).

17 “(3) In no event shall payment of educational assist-
18 ance under this subsection for such a test exceed the
19 amount of the individual’s available entitlement under this
20 chapter.

21 “(f) FLIGHT TRAINING.—The Secretary of Veterans
22 Affairs may approve the pursuit of flight training (in addi-
23 tion to a course of flight training that may be approved
24 under section 3680A(b) of this title) by an individual enti-
25 tled to educational assistance under this chapter if—

1 “(1) such training is generally accepted as nec-
2 essary for the attainment of a recognized vocational
3 objective in the field of aviation;

4 “(2) the individual possesses a valid private
5 pilot certificate and meets, on the day the member
6 begins a course of flight training, the medical re-
7 quirements necessary for a commercial pilot certifi-
8 cate; and

9 “(3) the flight school courses meet Federal
10 Aviation Administration standards for such courses
11 and are approved by the Federal Aviation Adminis-
12 tration and the State approving agency.

13 **“§ 3303. Eligibility for educational assistance**

14 “(a) ELIGIBILITY.—On or after September 11, 2001,
15 a member of a reserve component is entitled to educational
16 assistance under this chapter if the member—

17 “(1) served on active duty in support of a con-
18 tingency operation for 90 consecutive days or more;
19 or

20 “(2) in the case of a member of the Army Na-
21 tional Guard of the United States or Air National
22 Guard of the United States, performed full time Na-
23 tional Guard duty under section 502(f) of title 32
24 for 90 consecutive days or more when authorized by
25 the President or Secretary of Defense for the pur-

1 pose of responding to a national emergency declared
2 by the President and supported by Federal funds.

3 “(b) DISABLED MEMBERS.—Notwithstanding the eli-
4 gibility requirements in subsection (a), a member who was
5 ordered to active service as prescribed under subsection
6 (a)(1) or (a)(2) but is released from duty before com-
7 pleting 90 consecutive days because of an injury, illness
8 or disease incurred or aggravated in the line of duty shall
9 be entitled to educational assistance under this chapter at
10 the rate prescribed in section 3302(c)(4)(A) of this title.

11 “(c) WRITTEN NOTIFICATION.—(1) Each member
12 who becomes entitled to educational assistance under sub-
13 section (a) shall be given a statement in writing prior to
14 release from active service that summarizes the provisions
15 of this chapter and stating clearly and prominently the
16 substance of section 3305 of this title as such section may
17 apply to the member.

18 “(2) At the request of the Secretary of Veterans Af-
19 fairs, the Secretary of the military department concerned
20 shall transmit a notice of entitlement for each such mem-
21 ber to that Secretary.

22 “(d) BAR FROM DUAL ELIGIBILITY.—A member who
23 qualifies for educational assistance under this chapter may
24 not receive credit for such service under both the program
25 established by chapter 30 of this title and the program

1 established by this chapter but shall make an irrevocable
2 election (in such form and manner as the Secretary of Vet-
3 erans Affairs may prescribe) as to the program to which
4 such service is to be credited.

5 “(e) BAR FROM DUPLICATION OF EDUCATIONAL AS-
6 SISTANCE ALLOWANCE.—(1) Except as provided in para-
7 graph (2), an individual entitled to educational assistance
8 under this chapter who is also eligible for educational as-
9 sistance under subchapter I of this chapter, chapter 30,
10 31, 32, or 35 of this title, or under the Hostage Relief
11 Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note)
12 may not receive assistance under more than one such pro-
13 grams and shall elect (in such form and manner as the
14 Secretary of Veterans Affairs may prescribe) under which
15 program the member elects to receive educational assist-
16 ance.

17 “(2) The restriction on duplication of educational as-
18 sistance under paragraph (1) does not apply to the entitle-
19 ment of educational assistance under section 16131(i) of
20 title 10.

21 **“§ 3304. Time limit for use of entitlement**

22 “(a) DURATION OF ENTITLEMENT.—Except as pro-
23 vided in subsection (b), a member remains entitled to edu-
24 cational assistance under this chapter while serving—

1 “(1) in the Selected Reserve of the Ready Re-
2 serve, in the case of a member called or ordered to
3 active service while serving in the Selected Reserve;
4 or

5 “(2) in the Ready Reserve, in the case of a
6 member ordered to active duty while serving in the
7 Ready Reserve (other than the Selected Reserve).

8 “(b) DURATION OF ENTITLEMENT FOR DISABLED
9 MEMBERS.—(1) In the case of a person who is separated
10 from the Ready Reserve because of a disability which was
11 not the result of the individual’s own willful misconduct
12 incurred on or after the date on which such person became
13 entitled to educational assistance under this chapter, such
14 person’s entitlement to educational assistance expires at
15 the end of the 10-year period beginning on the date on
16 which such person became entitled to such assistance.

17 “(2) The provisions of subsections (d) and (f) of sec-
18 tion 3031 of this title shall apply to the period of entitle-
19 ment prescribed by paragraph (1).

20 **“§ 3305. Termination of assistance**

21 “(a) IN GENERAL.—Except as provided in subsection
22 (b), educational assistance may not be provided under this
23 chapter, or if being provided under this chapter, shall be
24 terminated—

1 “(1) if the member is receiving financial assist-
2 ance under section 2107 of title 10 as a member of
3 the Senior Reserve Officers’ Training Corps pro-
4 gram; or

5 “(2) when the member separates from the
6 Ready Reserve, as provided for under section
7 3304(a)(1) or section 3304(a)(2), as applicable, of
8 this title.

9 “(b) EXCEPTION.—Under regulations prescribed by
10 the Secretary of Defense, educational assistance may be
11 provided under this chapter to a member of the Selected
12 Reserve of the Ready Reserve who incurs a break in serv-
13 ice in the Selected Reserve of not more than 90 days if
14 the member continues to serve in the Ready Reserve dur-
15 ing and after such break in service.

16 **“§ 3306. Administration of program**

17 “(a) PAYMENTS.—Payments for educational assist-
18 ance under this chapter shall be made from funds appro-
19 priated or otherwise made available to the Department of
20 Veterans Affairs for fiscal year 2010 or any subsequent
21 fiscal year for the payment of readjustment benefits.

22 “(b) PROGRAM MANAGEMENT.—Except as otherwise
23 provided in this chapter, the provisions of sections 3470,
24 3471, 3474, 3476, 3482(g), 3483, and 3485 of this title
25 and the provisions of subchapters I and II of chapter 36

1 of this title (with the exception of sections 3686(a) and
2 3687) shall be applicable to the provision of educational
3 assistance under this chapter. The term ‘eligible veteran’
4 and the term ‘person’, as used in those provisions, shall
5 be deemed for the purpose of the application of those pro-
6 visions to this chapter to refer to a person eligible for edu-
7 cational assistance under this chapter.”.

8 (b) TRANSFER OF AMOUNTS FOR BENEFITS AC-
9 CRUED BEFORE OCTOBER 1, 2009.—

10 (1) FISCAL YEAR 2010.—By not later than Oc-
11 tober 1, 2009, the Secretary of Defense shall trans-
12 fer to the Secretary of Veterans Affairs from the
13 funds in the Department of Defense Education Ben-
14 efits Fund under section 2006 of title 10, United
15 States Code, that are attributable to armed forces
16 education liabilities under chapter 1607 of such title
17 that accrue before such date, such funds as may be
18 required by the Secretary of Veterans Affairs to
19 make payments with respect to such liabilities dur-
20 ing fiscal year 2010. Such amounts shall be depos-
21 ited into the education account of the Readjustment
22 Benefits Account of the Department of Veterans Af-
23 fairs and shall be available to the Secretary of Vet-
24 erans Affairs to make payments of educational as-

1 sistance under chapter 33 of title 38, United States
2 Code, as added by subsection (a).

3 (2) AGREEMENT FOR SUBSEQUENT FISCAL
4 YEARS.—By not later than October 1, 2009, the
5 Secretary of Defense and the Secretary of Veterans
6 Affairs shall enter into an agreement under which
7 the Secretary of Defense shall transfer to the Sec-
8 retary of Veterans Affairs all remaining funds in the
9 Department of Defense Education Benefits Fund
10 under section 2006 of title 10, United States Code,
11 that are attributable to armed forces liabilities under
12 chapter 1607 of such title that accrue before such
13 date. Such amounts shall be deposited into the edu-
14 cation account of the Readjustment Benefits Ac-
15 count of the Department of Veterans Affairs and
16 shall be available to the Secretary of Veterans Af-
17 fairs to make payments of educational assistance
18 under chapter 33 of title 38, United States Code, as
19 added by subsection (a).

20 (3) REPORT.—By not later than October 1,
21 2009, the Secretary of Defense shall submit to the
22 congressional defense committees, the Committee on
23 Veterans Affairs of the Senate, and the Committee
24 on Veterans Affairs of the House of Representatives
25 a detailed report on the agreement between the Sec-

1 retary of Defense and the Secretary of Veterans Af-
 2 fairs and the status of the transfer of funds de-
 3 scribed in paragraph (2). Such report shall include
 4 the date on which the Secretary of Defense has
 5 agreed to complete such transfer.

6 (c) CLERICAL AMENDMENTS.—The tables of chap-
 7 ters at the beginning of title 38, United States Code, and
 8 at the beginning of part III of such title, are each amend-
 9 ed by inserting after the item relating to chapter 32 the
 10 following new item:

**“33. Educational Assistance for Members of the Reserve
 Components Supporting Contingency Op-
 erations and Certain Other Operations 3301”.**

11 (d) TECHNICAL AND CONFORMING AMENDMENTS.—
 12 (1) CONFORMING AMENDMENTS ON BAR ON
 13 DUAL ELIGIBILITY FOR BENEFITS.—

14 (A) Section 3033 of title 38, United States
 15 Code, is amended—

16 (i) in subsection (a)(1), by striking
 17 “chapter 31, 32, or 35 of this title, under
 18 chapter 106 or 107 of title 10” and insert-
 19 ing “under chapter 31, 32, 33, or 35 of
 20 this title, under chapter 107 or 1606 of
 21 title 10”; and

22 (ii) in subsection (c), by striking
 23 “chapter 106 of title 10” and inserting
 24 “chapter 1606 of title 10”.

(B) Section 3221(f) of such title is amended by striking “chapter 106 of title 10” and inserting “chapter 1606 of title 10”.

(C) Section 3681 of such title is amended—

(i) in subsection (a), by striking “34, 35, or 36 of this title or 106 or 107 of title 10,” and inserting “33, 34, 35, or 36 of this title or chapter 107 or 1606 of title 10”; and

(ii) in subsection (b)—

(I) in paragraph (1), by inserting after “32,” the following: “33,”; and

(II) in paragraph (2), by striking “Chapters 106 and 107” and inserting “Chapters 107 and 1606”.

(2) CONFORMING AMENDMENTS RELATING TO DEPARTMENT OF DEFENSE EDUCATION BENEFITS FUND.—

(A) DEFINITION OF ARMED FORCES EDUCATION LIABILITIES.—Paragraph (1) of section 2006(b) of title 10, United States Code, is amended to read as follows:

“(1) The term ‘armed forces education liabilities’ means liabilities of the armed forces for bene-

fits under chapter 30 and of title 38 and for Department of Defense benefits under paragraphs (3) and (4) of section 510(e) and chapter 1606 of this title, including funds provided by the Secretary of Homeland Security for education liabilities for the Coast Guard when it is not operating as a service in the Department of the Navy.”.

(B) DEFINITION OF NORMAL COST.—Paragraph (2) of such section is amended by striking subparagraph (C) and inserting the following new subparagraph:

“(C) The present value of the future Department of Defense benefits payable from the Fund (including funds from the Department in which the Coast Guard is operating) for educational assistance under chapter 1606 of this title to persons who during such period become entitled to such assistance.”.

(3) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TITLE 38, UNITED STATES CODE.—

(i) Section 3485 of title 38, United States Code, is amended—

(I) in subsection (a)(4)(E), by striking “or 1607”;

1 (II) in subsection (b), by striking
2 “chapter 30, 31, 32, or 34 of this title
3 or chapter 1606 or 1607 of title 10,”
4 and inserting “chapter 30, 31, 32, 33,
5 or 34 of this title or chapter 1606 of
6 title 10,”; and

7 (III) in subsection (e)(1)—

8 (aa) by striking “, chapter
9 30, 31, 32, 35, or 36 of this title,
10 or chapter 1606 or 1607 of title
11 10” and inserting “or chapter
12 30, 31, 32, 33, 35, or 36 of this
13 title or chapter 1606 of title 10”;
14 and

15 (bb) by striking “section
16 2135” and inserting “section
17 16135”.

18 (ii) Section 3672(c) of such title is
19 amended—

20 (I) in paragraph (3)(A), by strik-
21 ing “chapters 30 and 35 of this title”
22 and inserting “chapters 30, 33, and
23 35 of this title”; and

24 (II) in paragraph (4), by striking
25 “chapter 30 or 35 of this title” and

1 inserting “chapter 30, 33, or 35 of
2 this title”.

3 (iii) Section 3674 of such title is
4 amended—

5 (I) in subsection (a)(1), by strik-
6 ing “chapter 106” and inserting
7 “chapter 1606”; and

8 (II) in subsection (c), by insert-
9 ing “33,” after “32,”.

10 (iv) Section 3680A(d)(1) of such title
11 is amended—

12 (I) by striking “chapter 106”
13 each place it appears and inserting
14 “chapter 1606”; and

15 (II) by inserting “, 33” after
16 “32”.

17 (v) Section 3684A(a)(1) of such title
18 is amended by striking “chapter 30 or 32
19 of this title or in chapter 106” and insert-
20 ing “chapter 30, 32, or 33 of this title or
21 in chapter 1606”.

22 (vi) Section 3688(b) of such title is
23 amended by striking “, chapter 30, 32, or
24 35 of this title, or chapter 106” and in-

1 serting “or chapter 30, 32, 33, or 35 of
2 this title, or chapter 1606”.

3 (vii) Section 3689 of such title is
4 amended by inserting “33,” after “32,”
5 each place it appears.

6 (viii) Section 3692 of such title is
7 amended—

8 (I) in subsection (a), by striking
9 “or 35 of this title” and inserting
10 “33, or 35 of this title”; and

11 (II) in subsection (b), by striking
12 “, chapters 30, 32, and 35 of this
13 title” and inserting “and chapters 30,
14 32, 33, and 35 of this title”.

15 (ix) Section 3695(a) of such title is
16 amended—

17 (I) by striking paragraph (4) and
18 inserting the following new paragraph
19 (4):

20 “(4) Chapters 30, 32, 33, 34, 35, and 36 of
21 this title.”; and

22 (II) in paragraph (5), by striking
23 “1607,”.

24 (x) Section 3697(a) of such title is
25 amended by striking “chapter 30, 32, 34,

1 or 35 of this title, or chapter 106” and in-
 2 serting “chapter 30, 32, 33, 34, or 35 of
 3 this title or chapter 1606”.

4 (xi) Section 3697A(b)(1) of such title
 5 is amended by striking “or 32 of this title
 6 or chapter 106 or 107” and inserting “32,
 7 or 33 of this title or chapter 107 or 1606”.

8 (B) TITLE 10, UNITED STATES CODE.—
 9 Section 510(h)(1) of title 10, United States
 10 Code, is amended—

11 (i) in subparagraph (A), by inserting
 12 “or chapter 33” after “chapter 30”; and

13 (ii) in subparagraph (B), by striking
 14 “either such chapter” each place it appears
 15 and inserting “any such chapter”;

16 (e) EFFECTIVE DATE.—This section and the amend-
 17 ments made by this section shall take effect on October
 18 1, 2009.

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