



CHAIRMAN

OFFICE OF THE SECRETARY OF DEFENSE
RESERVE FORCES POLICY BOARD

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INFO MEMO

JUN 28 2017
JUN 28 2017

FOR: SECRETARY OF DEFENSE

DepSec Action _____

FROM: MajGen Arnold L. Punaro, USMCR (Ret), Chairman, Reserve Forces Policy Board

SUBJECT: Report of the Reserve Forces Policy Board on Support for H.R. 2099 and S. 844 –
GI Bill Fairness Act of 2017

The Reserve Forces Policy Board (RFPB) is a federal advisory committee established in law to provide you with independent advice and recommendations on strategies, policies and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

The RFPB met on 7 June 2017 and discussed changes in pending legislation to amend Title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes as specified in H.R. 2099 and S. 844. After careful review and analysis, the RFPB recommends the Department of Defense fully support these bills. TAB A provides the background.

Recommendation: The Department support the GI Bill Fairness Act of 2017, adding Title 10, Section 12301(h) as a period of "active duty" to Title 38, Section 3301 (1)(B) for the purpose of accruing Post-9/11 GI Bill benefits.

As required by the Federal Advisory Committee Act, the recommendations were deliberated and approved in an open, public session. The briefing presented to and approved by the Board is at TAB B and will be posted to the RFPB web site. TAB C contains Title 38, Section 3301(1)(B). TAB D contains current Title 10, Section 12301(h) language, and TABs E and F contain S. 844 and H.R. 2099 respectively. The background information about the RFPB is at TAB G.

COORDINATION: NONE

Attachment(s):
As stated

Prepared by: Col Kevin Merrill, 703-681-0642

TAB

A

BACKGROUND and DISCUSSION

Under the Veterans Educational Assistance Act Of 2008 (Post 9/11 GI Bill), a Reserve Component (RC) service member of the Armed Forces accrues active duty service time credit for the calculation of educational assistance benefits only while serving on active duty as defined in Title 38, Section 3301 [TAB C]. In this section, active duty for reserve component members is defined as service under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of Title 10.

Excluded from the current definition of active duty under Title 38, is Title 10, Section 12301(h) [TAB D]. Title 10, Section 12301(h) provides a category of active duty for reservists while receiving medical treatment (i.e. medical hold status).

The Post-9/11 GI Bill benefit is earned with active duty service time (as defined by Title 38) accrued since September 10, 2001 and the benefit is earned in tiers. To earn 100% of the benefit, a service member must accrue 36 cumulative months of active duty time or serve at least 30 continuous days on active duty and be discharged due to service connected disability.

Currently, when a RC service member is injured or wounded in a combat theater, that member is transitioned on orders to a medical hold status under Title 10, Section 12301(h) for a potentially long recovery and rehabilitation. This stops the accrual of active duty time that would count toward the Post-9/11 GI Bill benefit. If the member does not discharge and instead returns to service - either deployed or as a Selected Reservist - none of the time spent in recovery is considered qualifying time. The service member would earn less qualifying time than those who served the entire time without an injury, and would not receive an equal benefit. In effect, this service member is penalized for being wounded or injured in theater. Coincidentally, if that same member was discharged from service because of the injury, the member would earn 100% of the benefit (assuming 30 days of continuous active duty service).

S.844 [TAB E] and H.R. 2099 [TAB F], entitled *The GI Bill Fairness Act of 2017*, seeks "To amend Title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes." The legislation would make eligibility retroactive to after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008 (Public Law 110-252).

TAB
B



Subcommittee on Supporting and Sustaining Reserve Component Personnel

7 JUNE 2017

As approved by RFPB – 7 June 2017

***Lt Gen Charles Stenner (Ret)
Subcommittee Chair***

Pre-Decisional



12301(h) – Medical Hold Status for RC Members



12301(h) Background

- **Issue:** 12301(h), RC members on medical hold duty status do not qualify for the accrual of Post-9/11 GI Bill benefits.
- Current definition of active duty for reservists in Title 38, *Veterans Benefits*, Section 3301 (1)(B) excludes Title 10, 12301(h) as active duty when considered for the purposes of Post-9/11 GI Bill entitlement.
- Presented by the NGB to OASD-RA and approved as a Unified Legislative Budget (ULB) Change Proposal in 2014.
 - ULB would have added Title 10 12301(h) as a period of "active duty" to Title 38, Section 3301 (1)(B) for the purpose of accruing Post-9/11 GI Bill benefits
- Per year (FY16-20 FYDP): Requires ~\$8.2M and benefits ~2960 people
- Costs borne by Department of Veterans Administration



12301(h) Background

- At its meeting on 10 September 2014, the RFPB voted to recommend the Department ask Congress to change the law regarding the definition of active duty as it relates to reservists under Title 38 – Veterans Benefits.
 - Recommended support for a ULB Change Proposal (OLC-104) that added Title 10 12301(h) to the definition of “active duty” under Title 38, Section 3301 (1)(B).
- This ULB was not adopted - reason why is unknown



12301(h) Current Status

- **The GI Bill Fairness Act of 2017**
 - Seeks *“To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes.”*
 - Would make it retroactive to after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008 (Public Law 110–252).
- **S.844** – Introduced by Sen. Ron Wyden with 2 cosponsors
- **H.R. 2099** – Introduced by Rep Takano
- Supported by NGAUS, American Legion, and others.



Recommendation



- The Personnel Subcommittee proposes the Board vote on the following recommendation:
 - *The Department support the GI Bill Fairness Act of 2017, adding Title 10 12301(h) as a period of "active duty" to Title 38, Section 3301 (1)(B) for the purpose of accruing Post-9/11 GI Bill benefits.*

**Voted on and unanimously
approved by RFPB**

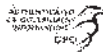


Questions?

Lt Gen Charles Stenner (Ret)
Subcommittee Chair

Pre-Decisional

TAB
C



Aug. 6, 1991, 105 Stat. 406, section 1643 of this chapter, added Pub. L. 94-502, title IV, § 404, Oct. 15, 1976, 90 Stat. 2397, and amended Pub. L. 97-295, § 4(37), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 101-237, title IV, § 423(b)(1)(A), (4)(A), Dec. 18, 1989, 103 Stat. 2092, was repealed by Pub. L. 102-16, § 5(a), Mar. 22, 1991, 105 Stat. 50.

§ 3243. Deposits; reports

Deductions made by the Department of Defense from the military pay of any participant shall be promptly transferred to the Secretary for deposit in the fund. The Secretary of Defense shall also submit to the Secretary a report each month showing the name, service number, and the amount of the deduction made from the military pay of each initial enrollee, any contribution made by the Secretary of Defense pursuant to section 3222(c) of this title, as well as any changes in each participant's enrollment and/or contribution. The report shall also include any additional information the Secretary and the Secretary of Defense deem necessary to administer this program. The Secretary shall maintain accounts showing contributions made to the fund by individual participants and by the Secretary of Defense as well as disbursements made from the fund in the form of benefits.

(Added Pub. L. 94-502, title IV, § 404, Oct. 15, 1976, 90 Stat. 2397, § 1643; amended Pub. L. 98-160, title VII, § 702(9), Nov. 21, 1983, 97 Stat. 1009; Pub. L. 101-237, title IV, § 423(b)(1)(A), (4)(D), Dec. 18, 1989, 103 Stat. 2092; renumbered § 3243 and amended Pub. L. 102-83, § 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

PRIOR PROVISIONS

Prior sections 3301 to 3305 and 3311 to 3313, which comprised chapter 57, were renumbered sections 5701 to 5705 and 5711 to 5715, respectively, of this title.

Prior sections 3401 to 3405, which comprised chapter 59, were renumbered sections 5901 to 5905, respectively, of this title.

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1643 of this title as this section and substituted “3222(c)” for “1622(c)”.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing and inserted “of Defense” after “Secretary” in four places.

1983—Pub. L. 98-160 inserted “of this title” after “section 1622(c)”.

CHAPTER 33—POST-9/11 EDUCATIONAL ASSISTANCE

SUBCHAPTER I—DEFINITIONS

Sec.

3301. Definitions.

SUBCHAPTER II—EDUCATIONAL ASSISTANCE

- 3311. Educational assistance for service in the Armed Forces commencing on or after September 11, 2001; entitlement.
- 3312. Educational assistance: duration.
- 3313. Educational assistance; amount; payment.
- 3314. Tutorial assistance.
- 3315. Licensure and certification tests.
- 3315A. National tests.
- 3316. Supplemental educational assistance: members with critical skills or specialty; members serving additional service.
- 3317. Public-private contributions for additional educational assistance.
- 3318. Additional assistance; relocation or travel assistance for individual relocating or traveling significant distance for pursuit of a program of education.

Sec.

3319. Authority to transfer unused education benefits to family members.

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

- 3321. Time limitation for use of and eligibility for entitlement.
- 3322. Bar to duplication of educational assistance benefits.
- 3323. Administration.
- 3324. Allocation of administration and costs.
- 3325. Reporting requirement.

AMENDMENTS

2012—Pub. L. 112-154, title IV, § 402(a)(2), Aug. 6, 2012, 126 Stat. 1189, added item 3325.

2011—Pub. L. 111-377, title I, § 108(a)(2), Jan. 4, 2011, 124 Stat. 4119, added item 3315A.

SUBCHAPTER I—DEFINITIONS

§ 3301. Definitions

In this chapter:

(1) The term “active duty” has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21)(A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10 or section 712 of title 14.

(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, in addition to service described in subparagraph (B), full-time service—

(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) in the National Guard under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(2) The term “entry level and skill training” means the following:

(A) In the case of members of the Army, Basic Combat Training and Advanced Individual Training or One Station Unit Training.

(B) In the case of members of the Navy, Recruit Training (or Boot Camp) and Skill Training (or so-called “A” School).

(C) In the case of members of the Air Force, Basic Military Training and Technical Training.

(D) In the case of members of the Marine Corps, Recruit Training and Marine Corps Training (or School of Infantry Training).

(E) In the case of members of the Coast Guard, Basic Training and Skill Training (or so-called “A” School).

(3) The term “program of education” has the meaning given such term in section 3002, except to the extent otherwise provided in section 3318.

TAB
D

1991—Pub. L. 102-190 inserted “not on the warrant officer active-duty list” after “reserve warrant officers”.

Date of 2001 Amendment note under section 10154 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

§ 12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 599; renumbered § 12243, Pub. L. 103-337, div. A, title XVI, § 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
599	10:600p (as applicable to reserve warrant officers). 34:330g (as applicable to reserve warrant officers). 34:430d (as applicable to reserve warrant officers).	May 29, 1954, ch. 249, § 18 (as applicable to reserve warrant officers), 68 Stat. 165.

The word “may” is substituted for the words “is authorized, in his discretion”. The words “any provision of law” are substituted for the words “all or any part or parts of the several provisions of law”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 599 of this title as this section.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(4) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 341; set out as a note under section 301 of Title 3, The President.

§ 12244. Warrant officers: discharge or retirement for years of service or for age

Each reserve warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the warrant officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the warrant officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107-107, div. A, title V, § 517(e)(1), Dec. 28, 2001, 115 Stat. 1095.)

EFFECTIVE DATE

Section effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107-107, set out as an Effective

CHAPTER 1209—ACTIVE DUTY

Sec.	Reserve components generally.
12301.	Ready Reserve.
12302.	Ready Reserve: members not assigned to, or participating satisfactorily in, units.
12303.	Selected Reserve and certain individual Ready Reserve members: order to active duty other than during war or national emergency.
12304.	Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve: order to active duty to provide assistance in response to a major disaster or emergency.
12304a.	Selected Reserve: order to active duty for preplanned missions in support of the combatant commands.
12304b.	Authority of President to suspend certain laws relating to promotion, retirement, and separation.
12305.	Standby Reserve.
12306.	Retired Reserve.
12307.	Retention after becoming qualified for retired pay.
12308.	Reserve officers: use of in expansion of armed forces.
12309.	Reserves: for organizing, administering, etc., reserve components.
12310.	Active duty agreements.
12311.	Active duty agreements: release from duty.
12312.	Reserves: release from active duty.
12313.	Reserves: kinds of duty.
12314.	Reserves: duty with or without pay.
12315.	Payment of certain Reserves while on duty.
12316.	Reserves: theological students; limitations.
12317.	Reserves on active duty: duties: funding.
12318.	Ready Reserve: muster duty.
12319.	Reserve officers: grade in which ordered to active duty.
12320.	Reserve Officer Training Corps units: limitation on number of Reserves assigned.
12321.	Active duty for health care.
12322.	Active duty pending line of duty determination required for response to sexual assault.
12323.	

AMENDMENTS

2013—Pub. L. 112-239, div. A, title V, § 571(b), Jan. 2, 2013, 126 Stat. 1753, added item 12323.

2011—Pub. L. 112-81, div. A, title V, §§ 515(a)(2), 516(a)(2), Dec. 31, 2011, 125 Stat. 1394, 1397, added items 12304a and 12304b.

1999—Pub. L. 105-65, div. A, title VII, § 705(a)(2), Oct. 5, 1999, 113 Stat. 683, added item 12322.

1997—Pub. L. 105-85, div. A, title V, § 511(e)(2), Nov. 18, 1997, 111 Stat. 1729, inserted “and certain individual Ready Reserve members” after “Selected Reserve” in item 12304.

1996—Pub. L. 104-106, div. A, title XV, § 1501(b)(16), Feb. 10, 1996, 110 Stat. 496, substituted a semicolon for a colon in item 12304 and struck out “on active duty” after “Retention” in item 12308.

§ 12301. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may

not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty as provided in subsection (a), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being so ordered to active duty.

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e) The period of time allowed between the date when a Reserve ordered to active duty as provided in subsection (a) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f) The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)(1) A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

(2) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A

determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

(3) In this section, the term "captive status" means the status of a member of the armed forces who is in a missing status (as defined in section 551(2) of title 37) which occurs as the result of a hostile action and is related to the member's military status.

(h)(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes; or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2) A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27, §672; Pub. L. 85-861, §§1(13), 33(a)(5), Sept. 2, 1958, 72 Stat. 1440, 1564; Pub. L. 96-357, §6, Sept. 24, 1980, 94 Stat. 1182; Pub. L. 96-584, §1, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 99-500, §101(c) [title IX, §9122], Oct. 18, 1986, 100 Stat. 1783-82, 1783-127, and Pub. L. 99-591, §101(c) [title IX, §9122], Oct. 30, 1986, 100 Stat. 3341-82, 3341-127; Pub. L. 99-661, div. A, title V, §§522, 524(a), Nov. 14, 1986, 100 Stat. 3871; Pub. L. 100-456, div. A, title XII, §1234(a)(1), (2), Sept. 29, 1988, 102 Stat. 2059; renumbered §12301 and amended Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(1), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 106-65, div. A, title V, §512, Oct. 5, 1999, 113 Stat. 592; Pub. L. 108-375, div. A, title V, §514(a), Oct. 28, 2004, 118 Stat. 1892.)

HISTORICAL AND REVISION NOTES 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
672(a)	50:961(a).	July 9, 1953, ch. 508, §§233 (less (b) and (f)), 234 (1st sentence), 66 Stat. 489, 490.
672(b)	50:961(c).	
672(c)	50:961(g).	
672(d)	50:961(d).	
672(e)	50:962 (1st sentence).	
672(e)	50:961(e).	

In subsection (a), the word "hereafter" is omitted as surplusage. The words "there are not enough * * * who are" are substituted for the words "adequate numbers of * * * are not". The words "without the consent of the persons affected" and "under the jurisdiction of that Secretary" are inserted for clarity. The words "and the members thereof" are omitted as surplusage.

In subsection (b), the words "without the consent of the persons affected" are substituted for the words "without his consent", since units as well as individuals are covered by the revised subsection. The words "and the members thereof", "and required to perform",

"or required to serve on", and "in the service of the United States" are omitted as surplusage.

In subsections (b) and (d), the words "active duty for training" are omitted as covered by the words "active duty".

In subsection (c), the words "to active duty" are substituted for the words "into the active military service of the United States", in 50:961(g) (1st and last sentences). The words "to serve" are substituted for the words "for the purpose of serving". The words "without their consent" are substituted for the word "involuntarily". The words "to that duty" are substituted for the words "into active duty". The last sentence of the revised subsection is substituted for 50:961(g) (last sentence).

In subsection (d), the words "the consent of that member" are substituted for the words "his consent". The words "under his jurisdiction" are inserted for clarity. 50:962 (last 15 words of 1st sentence) is omitted as covered by 50:961(d).

In subsection (e), the words "to active duty (other than for training)" are substituted for the words "into the active military service of the United States". The words "period of" are omitted as surplusage. The word "requirements" is substituted for the word "condition" for clarity.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
672(a)	50:961(a)	Aug. 9, 1955, ch. 685, §2(c), 69 Stat. 699.

The word "hereafter" is omitted as surplusage. The words "there are not enough . . . who are" are substituted for the words "adequate numbers of . . . are not". The words "without the consent of the persons affected" and "under the jurisdiction of that Secretary" are inserted for clarity.

The changes are necessary to reflect section 101(b) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 901(b)), which defines the term "active duty" to exclude active duty for training. This definition applied to the source law for these sections (sections 672 and 673), section 233(a), (b)(1), and (c) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 961(a), (b)(1), (c)).

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375, §514(a)(1), struck out "(other than for training)" after "that Secretary to active duty".

Subsec. (c). Pub. L. 108-375, §514(a)(2), substituted "as provided in subsection (a)" for "(other than for training)" and "so ordered to active duty" for "ordered to active duty (other than for training)".

Subsec. (e). Pub. L. 108-375, §514(a)(3), substituted "as provided in subsection (a)" for "(other than for training)".

1999—Subsec. (h). Pub. L. 106-65 added subsec. (h).

1994—Pub. L. 103-337, §1662(e)(2), renumbered section 672 of this title as this section.

Subsec. (b). Pub. L. 103-337, §1675(c)(1)(A), substituted "(or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard)" for "or Territory or Puerto Rico or the commanding general of the District of Columbia National Guard, as the case may be".

Subsec. (d). Pub. L. 103-337, §1675(c)(1)(B), struck out "or Territory, Puerto Rico, or the District of Columbia, whichever is" after "authority of the State".

1988—Subsec. (b). Pub. L. 100-456, §1234(a)(2), substituted "or Puerto Rico" for " , Puerto Rico, or the Canal Zone".

Subsec. (d). Pub. L. 100-456, §1234(a)(1), struck out "the Canal Zone," after "Puerto Rico".

1986—Subsec. (f). Pub. L. 99-500 and Pub. L. 99-591, §101(c) (§9122), Pub. L. 99-661, §522, amended section identically adding subsec. (f).

Subsec. (g). Pub. L. 99-661, §524(a), added subsec. (g). 1980—Subsec. (a). Pub. L. 96-357 struck out cl. (1) designation for second sentence and cl. (2) prohibition against ordering a member of the Standby Reserve to active duty unless the Director of Selective Service determined that the member was available for active duty.

Subsec. (e). Pub. L. 96-584 substituted provisions respecting determination of the allowable time in terms of military requirements for provisions authorizing a reasonable time.

1958—Subsec. (a). Pub. L. 85-861, §§1(13), 33(a)(5), inserted "(other than for training)" after "active duty", substituted "inactive National Guard" for "inactive Army National Guard or in the inactive Air National Guard", and inserted provisions prohibiting a member of the Standby Reserve from being ordered to active duty under this subsection unless the Director of Selective Service determines that the member is available for active duty.

Subsec. (c). Pub. L. 85-861, §33(a)(5), inserted "(other than for training)" after "active duty".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title V, §524(b), Nov. 14, 1986, 100 Stat. 3872, provided that: "Section 672(g) [now 12301(g)] of title 10, United States Code, as added by subsection (a), does not authorize a member of a reserve component to be ordered to active duty for a period before the date of the enactment of this Act [Nov. 14, 1986]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(a)(5) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS: 99-500, 99-591, AND 99-661

For rule of construction for certain duplicate provisions of Public Laws 99-500, 99-591, and 99-661, see Pub. L. 100-26, §6, Apr. 21, 1987, 101 Stat. 274, set out as a note under section 2302 of this title.

LIMITATIONS ON CANCELLATIONS OF DEPLOYMENT OF CERTAIN RESERVE COMPONENT UNITS AND INVOLUNTARY MOBILIZATIONS OF CERTAIN RESERVES

Pub. L. 113-66, div. A, title V, §513, Dec. 26, 2013, 127 Stat. 752, provided that:

"(a) LIMITATION ON CANCELLATION OF DEPLOYMENT OF CERTAIN UNITS WITHIN 180 DAYS OF SCHEDULED DEPLOYMENT.—

"(1) LIMITATION.—The deployment of a unit of a reserve component of the Armed Forces described in paragraph (2) may not be cancelled during the 180-day period ending on the date on which the unit is otherwise scheduled for deployment without the approval, in writing, of the Secretary of Defense.

"(2) COVERED DEPLOYMENTS.—A deployment of a unit of a reserve component described in this paragraph is a deployment whose cancellation as described in paragraph (1) is due to the deployment of a unit of a regular component of the Armed Forces to carry out the mission for which the unit of the reserve component was otherwise to be deployed.

"(3) NOTICE TO CONGRESS AND GOVERNORS ON APPROVAL OF CANCELLATION OF DEPLOYMENT.—On approving the cancellation of deployment of a unit under paragraph (1), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and the Governor concerned a notice on the approval of cancellation of deployment of the unit.

"(b) ADVANCE NOTICE TO CERTAIN RESERVES ON INVOLUNTARY MOBILIZATION.—

"(1) **ADVANCE NOTICE REQUIRED.**—The Secretary concerned may not provide less than 120 days advance notice of an involuntary mobilization to a member of the reserve component of the Armed Forces described in paragraph (2) without the approval, in writing, of the Secretary of Defense.

"(2) **COVERED RESERVES.**—A member of a reserve component described in this paragraph is a member as follows:

"(A) A member who is not assigned to a unit organized to serve as a unit.

"(B) A member who is to be mobilized apart from the member's unit.

"(3) **COMMENCEMENT OF APPLICABILITY.**—This subsection shall apply with respect to members who are mobilized on or after the date that is 120 days after the date of the enactment of this Act [Dec. 26, 2013].

"(4) **SECRETARY CONCERNED DEFINED.**—In this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.

"(5) **SUNSET.**—This subsection shall cease to apply as of the date of the completion of the withdrawal of United States combat forces from Afghanistan.

"(c) **NONDELEGATION OF APPROVAL.**—The Secretary of Defense may not delegate the approval of cancellations of deployments of units under subsection (a) or the approval of mobilization of Reserves without advance notice under subsection (b)."

ADVANCE NOTICE TO MEMBERS OF RESERVE COMPONENTS OF DEPLOYMENT IN SUPPORT OF CONTINGENCY OPERATIONS.

Pub. L. 110-181, div. A, title V, § 515, Jan. 28, 2008, 122 Stat. 99, provided that:

"(a) **ADVANCE NOTICE REQUIRED.**—The Secretary of a military department shall ensure that a member of a reserve component under the jurisdiction of that Secretary who will be called or ordered to active duty for a period of more than 30 days in support of a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) receives notice in advance of the mobilization date. In so far as is practicable, the notice shall be provided not less than 30 days before the mobilization date, but with a goal of 90 days before the mobilization date.

"(b) **REDUCTION OR WAIVER OF NOTICE REQUIREMENT.**—The Secretary of Defense may waive the requirement of subsection (a), or authorize shorter notice than the minimum specified in such subsection, during a war or national emergency declared by the President or Congress or to meet mission requirements. If the waiver or reduction is made on account of mission requirements, the Secretary shall submit to Congress a report detailing the reasons for the waiver or reduction and the mission requirements at issue."

§ 12302. Ready Reserve.

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty, without their consent, under this section at any one time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 28, § 673; Pub. L. 85-861, §§ 1(14), 33(a)(5), Sept. 2, 1958, 72 Stat. 1441, 1564; Pub. L. 93-155, title III, § 303(a), Nov. 16, 1973, 87 Stat. 607; renumbered § 12302, Pub. L. 103-337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 104-106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, § 1031(a)(61), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 108-375, div. A, title V, § 514(b), Oct. 28, 2004, 118 Stat. 1883; Pub. L. 112-81, div. A, title X, § 1061(28), (30), Dec. 31, 2011, 125 Stat. 1584.)

**HISTORICAL AND REVISION NOTES
1956 ACT**

Revised section	Source (U.S. Code)	Source (Statutes at Large)
673(a)	50:961(b)(1).	July 9, 1952, ch. 406, § 233(b), 66 Stat. 489.
673(b)	50:961(b)(2).	

In subsection (a), the words "after January 1, 1953" are substituted for the word "hereafter", to reflect the effective date of the source statute. The words "without the consent of the persons concerned" are substituted for the word "involuntarily".

The words "under the jurisdiction of that Secretary" are inserted for clarity. The last sentence of the revised subsection is substituted for 50:961(b)(1) (proviso). The words "and the members thereof" and "and required to perform" are omitted as surplusage.

In subsection (b), the words "to achieve" are substituted for the words "in the interest of". The words "without their consent" are substituted for the word "involuntarily". The words "who are being considered for" are inserted for clarity. The words "prescribe such policies and procedures" are substituted for the words "promulgate such policies and establish such procedures". The words "as he considers necessary" are substituted for the words "as may be required in his opinion". The words "this subsection" are substituted for the words "our intent here declared". The words "at least once a year" are substituted for the words "from time to time, and at least annually". The words "Senate and the House of Representatives" are substituted for the word "Congress". 50:961(b)(2) (1st 18 words) is omitted as surplusage. The words "with the objective" and "found to be" are omitted as surplusage.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
673(a)	50:961(b)(1) (less proviso).	Aug. 9, 1955, ch. 665, § 2(f), 69 Stat. 589.
673(c)	50:961(b)(1) (proviso).	

In subsection (c), the words "on active duty (other than for training)" are substituted for the words "may be required to perform active duty" for clarity. The words "without their consent" are substituted for the word "involuntarily". The words "of all reserve components" and "unless the Congress shall have authorized the exercise of the authority contained in this subsection" are omitted as surplusage.

The changes are necessary to reflect section 101(b) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 901(b)).

TAB E

115TH CONGRESS
1ST SESSION

S. 844¹

To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5 (legislative day, APRIL 4), 2017

Mr. WYDEN (for himself, Mr. BOOZMAN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “GI Bill Fairness Act of 2017”.

¹ <https://www.congress.gov/bill/115th-congress/senate-bill/844/text?q=%7B%22search%22%3A%5B%22S.+844%22%5D%7D&r=1>

SEC. 2. CONSIDERATION OF CERTAIN TIME SPENT RECEIVING MEDICAL CARE FROM SECRETARY OF DEFENSE AS ACTIVE DUTY FOR PURPOSES OF ELIGIBILITY FOR POST-9/11 EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Section 3301(1)(B) of title 38, United States Code, is amended by inserting “12301(h),” after “12301(g),”.

(b) RETROACTIVE APPLICATION.—The amendment made by subsection (a) shall apply as if such amendment were enacted immediately after the enactment of the Post-9/11 Veterans Educational Assistance Act of 2008 ([Public Law 110–252](#)).

TAB F

115TH CONGRESS
1ST SESSION

H. R. 2099²

To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2017

Mr. TAKANO introduced the following bill; which was referred to the Committee on Veterans' Affairs.

A BILL

To amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “GI Bill Fairness Act of 2017”.

SEC. 2. CONSIDERATION OF CERTAIN TIME SPENT RECEIVING MEDICAL CARE FROM SECRETARY OF DEFENSE AS ACTIVE DUTY FOR PURPOSES OF ELIGIBILITY FOR POST-9/11 EDUCATIONAL ASSISTANCE.

² <https://www.congress.gov/bill/115th-congress/house-bill/2099/text>

(a) IN GENERAL.—Section 3301(1)(B) of title 38, United States Code, is amended by inserting “12301(h),” after “12301(g),”.

(b) RETROACTIVE APPLICATION.—The amendment made by subsection (a) shall apply as if such amendment were enacted immediately after the enactment of the Post- 9/11 Veterans Educational Assistance Act of 2008 ([Public Law 110–252](#)).

TAB
G

The Reserve Forces Policy Board – Basic Overview

The Reserve Forces Policy Board (RFPB) is a federal advisory committee mandated by law in the Office of the Secretary of Defense to "serve as an independent adviser to the Secretary of Defense to provide advice and recommendations to the Secretary on strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components." As required by statute, the board also produces an annual report which the Secretary of Defense transmits to the President and Congress on reserve component matters the board considers appropriate to include in the report.

The board consists of 20 members; a civilian chairman, a general/flag officer from each of the seven reserve components, a two-star military executive, a senior enlisted advisor, plus ten other U.S. citizens, who may or may not be government employees, with significant knowledge of and experience in policy matters relevant to national security and reserve component matters.

The board is supported by a staff consisting of a Colonel or Navy Captain from each of the six DoD reserve components. There is also a Coast Guard staff officer. These officers also serve as liaisons between their respective components and the board. The law requires them "to perform their staff and liaison duties under the supervision of the military executive officer of the board in an independent manner reflecting the independent nature of the board."

Established in 1951, the board is one of the oldest advisory committees in the Department of Defense.

In the National Defense Authorization Act of 2011, Congress significantly revised the operating framework and membership of the RFPB. Previously, other than the chairman, the board included only DoD officials and made recommendations through the Assistant Secretary of Defense for Reserve Affairs. In 2008, the Commission on the National Guard and Reserves recommended that the RFPB's governing statute (10 USC 10301) be amended because the board was not structured to obtain and provide directly to the Secretary of Defense a wide range of independent advice on National Guard and Reserve matters due to the nature of its membership and its subordination to other offices within DoD. The revised law was effective 1 July 2011.

On 12 September 2011, retired Marine Corps Major General Arnold Punaro was sworn in as the first chairman of the board under the revised structure. Other new members were sworn in at an organizational meeting on 13 October.

The board is organized into three subcommittees: Ensuring a Ready, Capable, Available and Sustainable Operational Reserve; Enhancing DoD's Role in the Homeland; and Supporting and Sustaining Reserve Component Personnel. Subcommittees meet as required. The full board meets quarterly. The RFPB website is at <http://rfpb.defense.gov/>.