

The Restoration and Modernization of Education Benefits under the Post-9/11 Veterans Assistance Act of 2008

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INTRODUCTION

With the stroke of his pen, President Roosevelt transformed the face and future of American Society. Higher education, which had been the privilege of the fortunate few, became part of the American dream—available to all citizens who served their country through military service. No longer were the hopes and expectations of young Americans of modest economic means restricted because the key to advancement—higher education—was beyond their reach. Few, if any, more important pieces of legislation have been enacted by Congress, and no government investment has paid higher dividends to us all.²

The Servicemen’s Readjustment Act of 1944 (GI Bill of 1944)³ is viewed by most historians as a resounding legislative achievement, which resulted not only in the successful reintegration of millions of World War II veterans, but also the renewal of the American dream through expanded access to higher education and home ownership.⁴ On June 30, 2008, President George W. Bush signed the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill) into law.⁵ The Post-9/11 GI Bill is viewed by many as a renewal of

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² MILTON GREENBURG, *THE GI BILL: THE LAW THAT CHANGED AMERICA* 106 (1997) (quoting Representative G.V. “Sonny” Montgomery on the fiftieth anniversary of the GI Bill).

³ Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (codified as amended in scattered sections of 38 U.S.C. (2006)).

⁴ GREENBURG, *supra* note 2, at 9.

⁵ Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, 122 Stat. 2357 (codified at 38 U.S.C. §§ 101, 3301, 3311-19, 3321-24).

the promises made to America's servicemen and women in the GI Bill of 1944. Under this new bill, each eligible veteran is entitled to educational benefits sufficient to cover the full cost of tuition and fees up to the cost of the most expensive public undergraduate institution in the veteran's home state, in addition to a monthly housing benefit and a \$1,000 annual book stipend.⁶

A key legacy of the original GI Bill of 1944 is "the acceptance of continuing lifelong education, of the continuing upgrading of skills and the joining of government, employers and workers in making educational opportunities available" to an expanded population.⁷ The promise of a free education in return for military service has frequently been cited as a primary reason that young men and women choose to enlist.⁸ However, changing economic, societal, and political priorities throughout the years have led to modifications of the original GI bill, which effectively reduced the impact of the available benefits.⁹ Crucially, the cumulative impact of years of lobbying efforts, as well as, the tragedies of September 11, 2001, and the on-going wars in Iraq and Afghanistan have once again led to overwhelming political and public support for expanding veterans' benefits.¹⁰ With the signing of the Post-9/11 GI Bill, proponents argue that the federal government is finally "getting it right" by reinstating the 1944 model of education benefits which led to the transformation of American society.¹¹

This article will detail the benefits afforded under the Post-9/11 GI Bill and discuss the history of the original GI Bill, including

⁶ Elizabeth Redden, *A Tale of Two GI Bills*, INSIDE HIGHER EDUC., Oct. 3, 2008, <http://www.insidehighered.com/news/2008/10/03/gi>.

⁷ GREENBURG, *supra* note 2, at 62.

⁸ Charles M. Sennott, *GI Bill Falling Short of College Tuition Costs: Pentagon Resists Boost in Benefits*, THE BOSTON GLOBE, Feb. 10, 2008, at 1A.

⁹ *See id.* (noting that the original GI Bill provided full educational, housing, and living benefits; however, in the mid 1980s, during the peacetime era, the veterans benefits program was scaled back to paying a flat sum).

¹⁰ *Id.* This article also highlights recent efforts to increase the "payout of the GI Bill, to provide a true war-time benefit for war-time service." *Id.*

¹¹ *See id.*

its multiple manifestations in the intervening years. Although both the original GI Bill of 1944 and the Post-9/11 GI Bill provided for the expansion of numerous benefits to veterans and their families, this article will focus primarily on the introduction and progression of educational benefits through the original GI Bill and its subsequent incarnations. Lastly, the article will provide an overview of the Post-9/11 GI Bill and discuss the challenges faced with its implementation.

I. A HISTORICAL REVIEW OF THE GI BILL

A. The Servicemen's Readjustment Act of 1944

Although the United States of America has a substantial history of providing benefits to disabled combat veterans, prior to World War II the federal government had done little to support non-disabled veterans.¹² Upon their discharge from military service, World War I veterans were provided \$60, a train ticket home, and a future \$500 'bonus' to be paid in 1944.¹³ The 1929 stock market crash and the following Great Depression led to increasing desperation among the nearly five million veterans of World War I, who awaited the promised \$500 bonus.¹⁴ As a result of this unrest, over twenty thousand veterans congregated in Washington D.C. in 1932 demanding early bonus payments.¹⁵ President Herbert Hoover ordered the United States Army to control the "Bonus Marchers" and the resulting conflict was one of the more tragic in American history, when tanks and artillery were used against the nation's own veterans.¹⁶ The \$500 bonus was eventually prepaid in 1936.¹⁷

Fears of the conditions that brought on the "Bonus March" tragedy, including unemployment, disenfranchisement, and social disparities, generated substantial governmental support for the creation

¹² GREENBURG, *supra* note 2, at 24.

¹³ *Id.*

¹⁴ *Id.* at 25.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

of expanded benefits for the veterans of World War II.¹⁸ The GI Bill of 1944 was designed to reintegrate the sixteen million returning veterans of World War II into American society, while preventing the return to economic stagnation that had precipitated the war.¹⁹

Proponents of the Bill argued that American citizens and their government owed a moral debt to those who had sacrificed themselves in the Armed Forces during World War II.²⁰ President Roosevelt supported the program as a means “to economically empower the nation’s human resources to the maximum extent possible.”²¹ The GI Bill of 1944 also met the socioeconomic challenges facing the recovering nation. Most returning veterans of World War II had grown up during the Great Depression.²² Few had completed their high school educations and few had worked.²³ Therefore, the priority of the original GI Bill was to provide funding to veterans for higher education and vocational training.²⁴ In addition to enabling veterans to develop new skills or continue interrupted training, the educational and vocational benefits provisions of the GI Bill of 1944 “were also intended to delay the re-entry of veterans into the labor force by channeling

¹⁸ See Melissa E. Murray, *Whatever Happened to G.I. Jane?: Citizenship, Gender, and Social Policy in the Post-War Era*, 9 MICH. J. GENDER & L. 91, 106 (2002) (explaining that the GI Bill of 1944 was created in such a way that it not only rewarded veterans for services rendered, but also promoted a sustained wage-earning workforce); see generally MICHAEL J. BENNETT, *WHEN DREAMS CAME TRUE: THE GI BILL AND THE MAKING OF MODERN AMERICA* 44-75 (1996) (discussing the social, economical, and political climate in America during the post-World War I era, and the events leading up to the creation and passing of the GI Bill of 1944).

¹⁹ GREENBURG, *supra* note 2, at 9; Anna Quindlen, *Because It’s Right*, NEWSWEEK, Mar. 31, 2008, at 68.

²⁰ Quindlen, *supra* note 19; see BENNETT, *supra* note 18, at 136 (quoting Henry Colmery’s December 1943 testimony before Congress, “[t]he American Legion proposed this bill first because we believed it to be the duty, the responsibility and the desire of our grateful people to see to it that those who served actively in the armed services in this war not only should not be penalized as a result of their war service, but also that upon their return, they should be aided in reaching that position which they might normally have expected had the war not interrupted their careers. And secondly, we urge its enactment as sound national policy, for the good of the nation.”).

²¹ Steven A. Ramirez, *The Law and Macroeconomics of the NewDeal* at 70, 62 MD. L. REV. 515, 557 (2003).

²² GREENBURG, *supra* note 2, at 9.

²³ *Id.*

²⁴ Ramirez, *supra* note 21, at 557.

them to college or vocational schools because labor capacity would outpace available jobs.”²⁵ The influx of millions of unemployed veterans following World War II could have triggered another economic collapse.²⁶ Instead, the 7.8 million servicemen who enrolled in educational and training programs ultimately established a broad new middle class and ushered in an era of national prosperity.²⁷ Commentators have stated that “[e]very dollar spent on the GI Bill was multiplied many times over in benefits to the postwar U.S. economy.”²⁸

Those eligible for educational benefits under the GI Bill of 1944 included “[a]ny person who served in the active military or naval forces on or after September 16, 1940,” who was discharged or released from such service under conditions other than dishonorable.²⁹ To be eligible, a veteran had to have served ninety days or more, exclusive of any specialized education or college training program in which he may have participated while in service.³⁰ A veteran could also be eligible to receive educational benefits if he had been discharged or released from active service due to a service-incurred injury or disability.³¹ Moreover, an eligible veteran must have had his “education or training . . . impeded, delayed, interrupted, or interfered with by reason of his entrance into the service” or desire “a refresher or retraining course.”³² Any serviceman who entered the service before the age of twenty-five was considered to have had his education or training impeded, delayed, interrupted, or interfered with.³³ Educational benefits were to be initiated no more than two years after the

²⁵ Murray, *supra* note 18, at 106.

²⁶ Quindlen, *supra* note 19.

²⁷ *See id.* (explaining that providing a free education to returning veterans prevented the labor force from being flooded by unemployed and untrained men); *see also* GREENBURG, *supra* note 2, at 108 (estimating that the number of veterans who participated in educational or training programs through the GI Bill of 1944 was some 7.8 million; 2.2 million of them were enrolled at colleges or universities).

²⁸ Quindlen, *supra* note 19.

²⁹ Servicemen’s Readjustment Act, Pub. L. No. 78-346 § 400, 58 Stat. 284, 288 (1944).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

veteran's date of discharge or the termination of World War II, whichever was later.³⁴ Additionally, the benefits would not be administered beyond seven years after the end of World War II (December 31, 1946).³⁵

Central to the GI Bill of 1944 was the “open-ended right,” which allowed veterans the freedom to choose their own schools and courses of study with the government assuming the entire cost.³⁶ Specifically, a veteran was permitted to apply to the education or training program of his choice.³⁷ The Veterans Administration [VA] then certified the veteran's eligibility and a check was issued directly to the school to cover tuition, fees, books, and supplies – up to \$500 per year.³⁸ With the yearly cost of tuition only \$400 at top schools such as Harvard, the tuition benefits under the GI Bill of 1944 more than covered the cost of higher education.³⁹ In addition, a single veteran was entitled to a stipend of \$50 per month and a married veteran was provided \$75 per month with an additional \$15 for one or more children.⁴⁰

An eligible veteran was entitled to this subsidized education or training for a period of one year of full-time enrollment.⁴¹ Satisfactory completion of the first year of study entitled participating veterans to an additional period or periods of education or training not to exceed the time each veteran was enlisted in military service on or after September 16, 1940 and before December 31, 1946, up to a maximum of four years of education or training.⁴²

³⁴ *Id.*

³⁵ *Id.*; 38 C.F.R. § 3.2 (2008).

³⁶ BENNETT, *supra* note 18, at 157.

³⁷ § 400, 58 Stat. 287.

³⁸ GREENBURG, *supra* note 2, at 39.

³⁹ BENNETT, *supra* note 18, at 18.

⁴⁰ GREENBURG, *supra* note 2, at 39.

⁴¹ § 400, 58 Stat. 287.

⁴² *Id.*

As noted by Milton Greenburg, “[t]he GI Bill was rooted in the idea that the individual recipient of a benefit, not the government, could decide how and where to use it.”⁴³ As detailed above, the GI Bill fully covered tuition, books, and fees at any public or private United States college or vocational training program.⁴⁴ Consequently, of the 15.4 million returning veterans of World War II, at least 7.8 million, or nearly 50.5%, took advantage of the expansive opportunities for education and training provided under the Bill.⁴⁵ Notably, the GI Bill of 1944 was responsible for a significantly higher percentage of veterans attending institutions with high academic standards and reputations, including many private institutions which were significantly more expensive than state colleges.⁴⁶ By a ratio of two to one, veterans indicated a preference for more exclusive and generally more expensive private colleges and universities.⁴⁷ Notably, about forty percent of all GI Bill students attended just thirty-eight colleges and universities.⁴⁸ This market advantage of private schools over public schools was deliberately eliminated in future education benefits legislation.⁴⁹

B. The Veterans’ Readjustment Assistance Act of 1952 and The Veterans’ Readjustment Benefits Act of 1966

The overwhelming success of the GI Bill of 1944 led American lawmakers to extend similar education benefits programs to veterans of subsequent wars.⁵⁰ The second and third incarnations of the GI Bill were The Veterans’ Readjustment Assistance Act of 1952 and The Veterans Readjustment Benefits Act of 1966. The overall goal of both bills was to provide veterans with a monthly educational assistance allowance to help with, but not fully cover, the expenses incurred due to education and training.⁵¹

⁴³ GREENBERG, *supra* note 2, at 107.

⁴⁴ Terry J. Allen, *GI Bill Fails Vets*, IN THESE TIMES, Apr. 20, 2007.

⁴⁵ GREENBERG, *supra* note 2, at 108.

⁴⁶ BENNETT, *supra* note 18, at 243.

⁴⁷ *Id.*

⁴⁸ GREENBERG, *supra* note 2, at 44.

⁴⁹ BENNETT, *supra* note 18, at 243.

⁵⁰ GREENBERG, *supra* note 2, at 107.

⁵¹ *Id.* at 108.

The Veterans' Readjustment Assistance Act of 1952 (the Korean Conflict Bill) was signed into law on July 16, 1952.⁵² To be eligible for educational benefits under this bill, a veteran must have received an "other than dishonorable" discharge and have served ninety days after June 27, 1950 or been discharged from active service by reason of an actual service-incurred injury or disability.⁵³

Notably, the Korean Conflict Bill eliminated the payment of full tuition directly from the federal government to approved educational institutions and training programs. Instead, the VA paid \$110 per month to participating veterans without dependents; veterans with a single dependent received \$135 per month and veterans with more than one dependent received \$160 per month.⁵⁴ Each veteran was then responsible for paying for tuition, books, fees, supplies, and other training costs and living expenses out of his allotted educational allowance.⁵⁵ Lawmakers stated that the direct payment to a veteran was intended to help foster the veteran's personal financial interest in his own training.⁵⁶ However, this change was also designed to prevent over-charging that had been identified by the VA as rampant in educational and training institutions during the administration of benefits under the GI Bill of 1944.⁵⁷

Under the Korean Conflict Bill, a veteran must initiate his education or training no later than August 20, 1954, or two years after his discharge or release from active service, whichever is later.⁵⁸ Further, education and training benefits were not afforded to an eligible

⁵² Veterans' Readjustment Assistance Act of 1952, Pub. L. No. 82-550, 66 Stat. 663 (repealed 1966).

⁵³ § 201, 66 Stat. 663.

⁵⁴ §232, 66 Stat. 668.

⁵⁵ § 231(a), 66 Stat. 668. Also, under § 202(b) if a veteran was pursuing a full-time educational or training program which consisted of institutional courses and supplemental on-the-job training, the Veteran was provided a reduced benefit of \$90 per month without dependents, \$110 per month with one dependent, or \$130 with more than one dependent.

⁵⁶ S. REP. NO. 95-468, at 149 (1977), *reprinted in* 1977 U.S.C.C.A.N. 3747, 3884.

⁵⁷ *Id.*

⁵⁸ § 212, 66 Stat. 664. This was later expanded to three years. Pub. L. No. 85-857, § 1612, 72 Stat. 1105, 1176 (1958). Further, under § 917(b), "[t]he program of education and training of an eligible veteran under this title shall, on and after the delimiting date for the veteran to

veteran beyond seven years after his discharge or release from active service or the end of the basic service period, whichever is earlier.⁵⁹ These benefits were available to participating veterans for a period of time not to exceed thirty-six months.⁶⁰

The Veterans' Readjustment Benefits Act of 1966 (the Vietnam-Era GI Bill) was signed into law on March 3, 1966.⁶¹ The stated purpose of this Act was to enhance the appeal of military service, to extend "the benefits of a higher education to qualified and deserving young persons who might not otherwise be able to afford such an education," and to provide vocational readjustment and the restoration of lost employment opportunities to servicemen and women whose careers were interrupted by their call to military service.⁶²

Eligibility for VA educational assistance under the Vietnam-Era GI Bill was established for those veterans who served on active duty for a period of more than 180 days, any part of which occurred after January 31, 1955, and before January 1, 1977, and who were discharged or released therefrom under conditions other than dishonorable;⁶³ who contracted with the Armed Forces and were enlisted

initiate his program, be pursued continuously until completion except that an eligible veteran may suspend the pursuit of his program for periods of not more than 12 consecutive months, and may suspend the pursuit of such program for longer periods if the Administrator finds that the suspension for each such period was due to conditions beyond the control of the eligible veteran." 38 U.S.C. § 917(b) (1952).

⁵⁹ 38 U.S.C. § 918 (1952). This was later expanded to eight years after discharge or release from active duty or the end of basic service period, whichever is earlier. §1613, 72 Stat. 1177.

⁶⁰ § 1611(a)(2), 72 Stat. 1176.

⁶¹ Veterans' Readjustment Benefits Act of 1966, Pub. L. No. 89-358, 80 Stat. 12 (renumbered to 38 U.S.C. § 3451, by Pub. L. No. 102-83, §5(a), 105 Stat. 406).

⁶² 38 U.S.C. § 1651 (2006)(indicating as follows, "The Congress of the United States hereby declares that the education program created by this chapter is for the purpose of (1) enhancing and making more attractive service in the Armed Forces of the United States, (2) extending the benefits of a higher education to qualified and deserving young persons who might not otherwise be able to afford such an education, (3) providing vocational readjustment and restoring lost educational opportunities to those service men and women whose careers have been interrupted or impeded by reasons of active duty after January 31, 1955, and (4) aiding such persons in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country.").

⁶³ *Id.* § 3452(a)(1)(A).

in or assigned to a reserve component prior to January 1, 1977, and as a result of such enlistment or assignment served on active duty for a period of more than 180 days, any part of which began within 12 months after January 1, 1977, and were discharged or released therefrom under conditions other than dishonorable;⁶⁴ or were discharged or released from active duty, any part of which was performed after January 31, 1955, and before January 1, 1977, or following entrance into active service during the above-referenced period because of service-connected disability.⁶⁵

The Vietnam-Era GI Bill was especially significant in that eligibility was extended to all veterans who served after January 31, 1955; thus broadening the availability of educational and vocational benefits to veterans who served in both wartime and peacetime.⁶⁶ All active duty personnel were eligible for benefits, which began at up to \$100 per month and were increased to \$311 per month by 1977.⁶⁷ Eligible veterans under the Vietnam-Era Bill could receive up to forty-five months of educational assistance, depending on their length of service.⁶⁸ Educational benefits were not available to veterans beyond the date ten years after their last discharge or release from active duty after January 31, 1955.⁶⁹ There was no mandated time limit on the commencement of educational or training programs due to the difficulty of

⁶⁴ *Id.*

⁶⁵ *Id.* § 3452(a)(1)(B).

⁶⁶ GREENBERG, *supra* note 2, at 108.

⁶⁷ *Id.*

⁶⁸ 38 U.S.C. § 3461(c) (indicating, “[i]f an eligible veteran has served a period of 18 months or more on active duty after January 31, 1955, and has been released from such service under conditions that would satisfy the veteran’s active duty obligation, the veteran shall be entitled to educational assistance under this chapter for a period of 45 months (or the equivalent thereof in part-time educational assistance). In the case of any person serving on active duty on December 31, 1976, or a person whose eligibility is based on section 3452(a)(1)(B) of this chapter, the ending date for computing such person’s entitlement shall be the date of such person’s first discharge or release from active duty after December 31, 1976.”).

⁶⁹ *Id.* § 3462(a). This section also establishes an exception and certain extensions in the case of any eligible veteran who was prevented from initiating or completing his chosen program of education within the prescribed time period because of physical or mental disability which was not the result of such veteran’s own willful misconduct.

administering such a restriction.⁷⁰ However, by congressional action, the entire Vietnam-Era GI Bill expired on December 31, 1989.⁷¹

Both the Korean Conflict Bill and the Vietnam-Era Bill assisted millions of Veterans in obtaining education or training⁷² and the GI bill quickly became the single largest federal program providing postsecondary educational assistance.⁷³ However, by 1969, legislators and veterans' advocates had begun to suggest that "the purchasing power of the Vietnam-era benefit lagged behind that of the Korean War, leading to low participation rates."⁷⁴ Although, as indicated above, educational assistance was increased to \$310 per month in 1977, inflation continued to significantly affect the overall benefit afforded by the Vietnam Era Bill.⁷⁵

C. The Veterans' Educational Assistance Program

The Veterans' Education Assistance Program (VEAP) was enacted effective December 1976.⁷⁶ As indicated above, military

⁷⁰ S. REP. NO. 95-468, at 151 (1977), *reprinted in* 1977 U.S.C.C.A.N. 3747, 3885.

⁷¹ 38 U.S.C. § 3462(e). Further, 38 U.S.C. § 3462(e) states that no educational assistance shall be afforded any Chapter 34 eligible veteran after December 31, 1989. However, veterans who were eligible for educational benefits under Chapter 34 as of December 31, 1989 may, under certain circumstances, convert Chapter 34 benefits to Chapter 30 benefits (Montgomery GI Bill benefits, which will be detailed below). Those circumstances are set forth in 38 C.F.R. § 21.7044 (2008). To convert Chapter 34 benefits to Chapter 30 benefits, a veteran must [in pertinent part]: (1) have met the requirements of 38 U.S.C. Chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter; (2) as of December 31, 1989, have entitlement remaining for educational assistance allowance under 38 U.S.C. chapter 34; (3) before apply for educational assistance, must: (i) complete the requirements for a secondary school diploma or an equivalency certificate or (ii) successfully complete (or otherwise receive academic credit for) 12 semester hours in a program of education leading to a standard college degree; (4) after June 30, 1985 (i) serve at least three years continuous active duty in the Armed Forces; (5) upon completion of the requisite active duty service (i) continue on active duty; or (ii) be discharged from active duty with an honorable discharge; (6) have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service. 38 C.F.R. § 21.7044(a) (2008).

⁷² S. REP. NO. 95-468, at 18 (1977), *reprinted in* 1977 U.S.C.C.A.N. 3747, 3753-54.

⁷³ *Id.*

⁷⁴ David Rogers, *New GI Bill Shows Changed Priorities*, POLITICO, July 9, 2008.

⁷⁵ S. REP. NO. 95-468, at 27 (1977), *reprinted in* 1977 U.S.C.C.A.N. 3747, 3763.

⁷⁶ Veterans' Education and Employment Assistance Act of 1976, Pub. L. No. 94-502; 90 Stat. 2383 (codified at 38 U.S.C. § 3201); GREENBERG, *supra* note 2, at 105.

enlistment was low following the Vietnam War and the VEAP was enacted as an incentive to encourage young men and women to participate in the Armed Forces.⁷⁷ To be eligible for educational benefits under the VEAP, a veteran must not have been eligible for educational assistance under the Vietnam Era Bill;⁷⁸ have entered the military service on or after January 1, 1977 and before July 1, 1985; have served for more than 180 days commencing on or after January 1, 1977; and have been discharged or released from service under conditions other than dishonorable.⁷⁹ An eligible veteran who entered military services on or after January 1, 1977 and before July 1, 1985 has the right to enroll in the VEAP at any time during his service prior to July 1, 1985.⁸⁰ Upon enrollment in an educational program, a veteran was required to participate for at least twelve consecutive months before disenrolling or suspending participation.⁸¹

“Under VEAP, service members voluntarily contributed funds to the program in return for matching funds” from the federal government.⁸² Participants in the program agreed to a monthly

⁷⁷ 38 U.S.C. § 3201 (2006) (indicating, “[i]t is the purpose of this chapter (1) to provide educational assistance to those men and women who enter the Armed Forces after December 31, 1976, and before July 1, 1985, (2) to assist young men and women in obtaining an education they might not otherwise be able to afford, and (3) to promote and assist the all volunteer military program of the United States by attracting qualified men and women to serve in the Armed Forces.”).

⁷⁸ 38 U.S.C. § 3202(1)(A). Under 38 U.S.C. § 3202(1)(D)(i), the requirement of ineligibility for educational assistance under chapter 34 of this title shall be waived in the case of a veteran who elects to receive benefits under this chapter instead of assistance under Chapter 34. A veteran who makes such an election shall be ineligible for assistance under Chapter 34, because such an election is irrevocable. *Id.*

⁷⁹ *Id.* § 3202(1)(A). Under § 3202(1)(B), “[t]he requirement of discharge or release, prescribed in subparagraph (A), shall be waived in the case of any participant who has completed his or her first obligated period of active duty (which began after December 31, 1976) or 6 years of active duty (which began after December 31, 1976), whichever period is less.” *Id.* § 3202(1)(B).

⁸⁰ *Id.* § 3221(a).

⁸¹ *Id.* Also, under subsection (b), “[t]he requirement for 12 consecutive months of participation required by subsection (a) . . . shall not apply when (1) the participant suspends participation or disenrolls from the program because of personal hardship . . . or (2) the participant is discharged or released from active duty.” *Id.* § 3221(b).

⁸² Major Charles C. Poché, *Whose Money Is It: Does the Forfeiture of Voluntary Educational Benefit Contributions Raise Fifth Amendment Concerns?*, 2004 ARMY LAW. 1, 2.

deduction from their military pay of at least \$25, but no more than \$100.⁸³ The withheld money was deposited in the “Post-Vietnam Era Veterans Education Account” with the U.S. Treasury.⁸⁴ The VA matched contributions at a rate of \$2 for every \$1 contributed by participating veterans.⁸⁵ Each participating veteran was also permitted to make a lump-sum contribution to the VEAP fund while serving on active duty.⁸⁶ A veteran’s total VEAP contributions were limited to a maximum of \$2700 per person.⁸⁷

Similar to the Korean Conflict Bill and the Vietnam-Era Bill, the VEAP educational allowance was paid directly to the Veteran, in order to cover tuition, fees, books, and other educational costs. The applicable statute provided a rather complicated manner of determining the monetary amount of educational assistance an eligible veteran would receive on a monthly basis.⁸⁸ The VEAP education benefits were paid for up to thirty-six months.⁸⁹ Although certain exceptions were permitted,⁹⁰ the VEAP benefits were generally available for only ten years after a veteran’s last discharge or his release from active duty.⁹¹

Over 668,000 veterans received educational and training benefits under the VEAP.⁹² However, the VEAP was widely

⁸³ 38 U.S.C. § 3222(a).

⁸⁴ *Id.*

⁸⁵ Greenburg, *supra* note 2, at 108.

⁸⁶ *See* 38 U.S.C. § 3222(d) (noting that “[a] lump sum contribution to the fund by a participant shall be in addition to or in lieu of monthly deductions made from such participant’s military pay.”).

⁸⁷ *Id.* § 3222(a), (d).

⁸⁸ *See id.* § 3231(a)(2) (providing the formula for calculating the amount of the monthly payment to which any eligible veteran was entitled).

⁸⁹ *Id.* § 3231(a)(1).

⁹⁰ *Id.* § 3232(a)(2).

⁹¹ 38 U.S.C. § 3232(a)(1) (indicating under subparagraph (2)(A), “[i]f any eligible veteran was prevented from initiating or completing such veteran’s chosen program of education during the delimiting period determined under paragraph (1) of this subsection because of a physical or mental disability which was not the result of such veteran’s own willful misconduct, such veteran shall, upon application made in accordance with subparagraph (B) of this paragraph, be granted an extension of the applicable delimiting period for such length of time as the Secretary determines, from the evidence, that such veteran was so prevented from initiating or completing such program of education.”).

⁹² Greenburg, *supra* note 2, at 108.

considered to be a failure because of its ineffectiveness as a recruiting tool.⁹³ During the time the VEAP was available to service members, the Army was unable to meet its recruiting goals.⁹⁴ In response to the unpopularity and failures of the VEAP, lawmakers and veterans' advocates pushed for the establishment of "a more effective educational assistance program."⁹⁵ These legislative and lobbying efforts led to the development of a temporary "new GI bill" in 1984.⁹⁶

D. The Veterans' Educational Assistance Act of 1984 and The Montgomery G.I. Bill

The Veterans' Educational Assistance Act of 1984 (VEAA) was enacted on July 1, 1985, as a temporary solution to the poorly received VEAP and was to expire on June 30, 1988.⁹⁷ The stated purpose of the VEAA was essentially to establish "a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve... to aid in the recruitment and retention of highly qualified personnel" for military service.⁹⁸ The program was innovative as it extended educational assistance to members of both the active and reserve Armed Forces.⁹⁹

⁹³ Poché, *supra* note 88, at 2.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Greenburg, *supra* note 2, at 105.

⁹⁷ Poché, *supra* note 88, at 2.

⁹⁸ 38 U.S.C. § 3001 (2006) (indicating, "[t]he purposes of this chapter are – (1) to provide a new educational assistance program to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service; (2) to extend the benefits of a higher education to qualifying men and women who might not otherwise be able to afford such an education; (3) to provide for vocational readjustment and to restore lost educational opportunities to those service men and women who served on active duty after June 30, 1985; (4) to promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or combination of service on active duty and in the Selected Reserve . . . to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces; (5) to give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces; and (6) to enhance our Nation's competitiveness through the development of a more highly educated and productive work force.").

⁹⁹ *See id.*

The VEAA, although initiated as a temporary program, was a highly effective recruiting tool for the Armed Forces.¹⁰⁰ The New GI Bill Continuation Act of 1987 extended the VEAA and renamed it in honor of Representative G.V. “Sonny” Montgomery of Mississippi, who had campaigned for many years in support of increasing veterans’ education benefits.¹⁰¹ In 1987, the Montgomery GI Bill (MGIB) was signed into law by President Ronald Reagan.¹⁰²

The MGIB continued the requirements for eligibility set forth in the VEAA. Under the MGIB, a service member “had to meet three basic requirements to earn educational benefits upon leaving active duty. . . . They involve time in service, educational status, and characterization of discharge.”¹⁰³ Specifically, an active duty veteran is eligible for educational benefits if he first became a member of the Armed Forces or first entered active duty as a member of the Armed Forces after June 30, 1985 and served at least three years of continuous active duty in the Armed Forces (or in the case of a veteran whose obligated period of active duty was less than three years, served at least two years of continuous active duty); or was discharged or released from active duty for a service-connected disability or for the convenience of the government.¹⁰⁴

A member of the Selected Reserve is eligible to enroll in the MGIB program if he first became a member of the Armed Forces or first entered active duty as a member of the Armed Forces after June 30, 1985, served an obligated period of active duty of at least two years of continuous, honorable active duty service, and beginning within one year after completion of the requisite active duty service, served at least four years of continuous duty in the Selected Reserve during which the member participated satisfactorily in training.¹⁰⁵

¹⁰⁰ Poché, *supra* note 88, at 4.

¹⁰¹ Greenburg, *supra* note 2, at 105-06.

¹⁰² *Id.*

¹⁰³ Poché, *supra* note 88, at 3.

¹⁰⁴ 38 U.S.C. § 3011(a)(1)(A) (2006).

¹⁰⁵ *Id.* § 3012(a)(1)(A).

Basic enrollment in the MGIB program begins at enlistment.¹⁰⁶ A service member has the option of waiving his right to participate in the program by making an election not to receive educational assistance benefits.¹⁰⁷ Under the MGIB, an active duty service member's enrollment obligations include having \$100 per month withheld from his basic pay for his first twelve months of service—an overall contribution of \$1200.¹⁰⁸ A member of the Selected Reserve is required to contribute \$1200 not later than one year after completion of the two years of service on active duty.¹⁰⁹

After a service member fulfills the requisite service obligations and elects to participate in an approved educational or training program, the VA sends the allotted educational allowance directly to the service member “to help meet, in part, the expenses of such individual's subsistence, tuition, fees, supplies, books, equipment, and other educational costs.”¹¹⁰ The current level of benefits payable under the basic MGIB is \$1321 per month.¹¹¹

As detailed above, “voluntary contributions were the sole means of enrollment and participation in the unpopular VEAP before the Montgomery GI Bill.”¹¹² In an attempt to provide greater flexibility, an amendment to the MGIB was enacted in 2000 which allows service members to make voluntary contributions to their MGIB funds.¹¹³ Accordingly, under the amended MGIB, a service member may

¹⁰⁶ *Id.* §§ 3011(b)(1), 3011(c)(1), 3012(c)(1).

¹⁰⁷ *Id.* §§ 3011(c)(1), 3012(d)(1); *see id.* § 3018 (providing that a service member's election not to enroll in the MGIB program is revocable under certain circumstances); *see also* Veterans Education Improvement Act of 2009, H.R. 1336, 111th Cong. § 5 (2009) (proposing legislation that would allow a service member to withdraw his election not to receive educational benefits at any time and, after making such a withdrawal, said service member would be entitled to educational assistance under Chapter 30 in the same manner as if the individual had never made the election).

¹⁰⁸ 38 U.S.C. § 3011(b)(1).

¹⁰⁹ *Id.* § 3011(b)(2).

¹¹⁰ *Id.* § 3014(a).

¹¹¹ Redden, *supra* note 6.

¹¹² Poché, *supra* note 88, at 4.

¹¹³ Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. No. 106-419, § 105, 114 Stat. 1822 (codified as amended at 38 U.S.C. §§ 3011(e), 3012(f), 3015 (2006)).

elect to make additional monetary contributions in excess of the standard \$100 reduction in basic pay.¹¹⁴ The maximum permitted voluntary contribution is \$600.¹¹⁵ These additional voluntary contributions are then matched by the VA at an amount equal to \$5 for each \$20 contribution.¹¹⁶ By contributing the maximum voluntary amount of \$600, a service member's monthly educational assistance benefit would increase by \$150.¹¹⁷

Further, under the MGIB, supplemental educational assistance is available for additional periods of service.¹¹⁸ Specifically, to be eligible for supplemental educational assistance, a service member must first be eligible for basic educational assistance under section 3011 or 3018 and must have served five or more consecutive years of active duty in the Armed Forces counted under section 3011(a)(1) without a break in such service and, after the completion of said service, be discharged from service with an honorable discharge, placed on the retired list, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or placed on the temporary disability retired list; continue on active duty without a break in service; or be released from active duty for further services in a reserve component of the Armed Forces after honorable active duty service.¹¹⁹ Members of the Selected Reserve are also eligible for supplemental educational assistance under modified service requirements.¹²⁰ The

¹¹⁴ 38 U.S.C. § 3011(e)(1); *see id.* § 3011(e)(2) (indicating, “[a]n individual covered by paragraph (1) may make the contributions authorized by that paragraph at any time while on active duty, but not more frequently than monthly.”).

¹¹⁵ *Id.* § 3011(e)(3).

¹¹⁶ *Id.* § 3015(g).

¹¹⁷ Poché, *supra* note 88, at 5.

¹¹⁸ *See generally* 38 U.S.C. § 3021 (setting forth the statutory requirement for supplemental educational assistance for additional service).

¹¹⁹ *Id.* § 3021(a).

¹²⁰ *Id.* § 3021(b) (stating that to be so eligible, a member of the Selected Reserve must be eligible for basic educational assistance benefits under § 3012 or § 3018 and (1) have served two or more consecutive years of active duty in the Armed Forces after the years of active duty counted under section 3012 (a)(1) of this title and four or more consecutive years of duty in the Selected Reserve after the year of duty in the Selected Reserve counted under such section without a break in service; and (2) after completion of this service (A) be discharged from service with an honorable discharge, be placed on the retired list, be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or be placed on the temporary disability retired list; or (B) continue on active duty or in the Selected Reserve).

current rate of supplemental educational assistance under the MGIB is \$300 per month.¹²¹

Additionally, service members who are determined to have a skill or specialty, in which VA has determined there to be a critical shortage of personnel, may be eligible for additional educational benefits.¹²² The monthly educational assistance benefit for a veteran deemed to have critical skills is not to exceed \$950 per month.¹²³

The duration of MGIB educational benefits is limited to thirty-six months, with certain exceptions.¹²⁴ General entitlement to educational benefits under the MGIB ends no later than ten years after the date of an eligible veteran's last separation from active service.¹²⁵ The veteran may extend this deadline if he was unable to participate in an educational or training program as a result of a disability or because he was held by a foreign government or power.¹²⁶

The duplication of educational assistance benefits is barred.¹²⁷ A service member who is entitled to MGIB benefits and who is also eligible for educational assistance under another program may not concurrently receive assistance under two or more such programs.¹²⁸ Rather, such an individual must formally elect a program under which to receive educational benefits.¹²⁹

¹²¹ 38 U.S.C. § 3022(a)(1); see 38 C.F.R. § 21.7138(a)(2) (2008) (stating that a veteran pursuing apprenticeship or other on-the-job training is afforded supplemental educational assistance at a rate of \$225 for the first six months of the program, \$165 for the second six months, and \$105 per month for the remainder of the program).

¹²² 38 U.S.C. § 3015(d)(1).

¹²³ *Id.*

¹²⁴ *Id.* § 3013(a)(1).

¹²⁵ *Id.* § 3031(a). Certain exceptions apply to this ten-year period. *Id.*

¹²⁶ GREENBURG, *supra* note 2, at 109.

¹²⁷ See generally 38 U.S.C. § 3033 (setting forth the statutory bar to duplication of educational assistance benefits).

¹²⁸ *Id.* § 3033(a)(1).

¹²⁹ *Id.*

The MGIB has generally been regarded as a successful tool for recruiting men and women to join the Armed Forces.¹³⁰ However, critics argue that the available benefits fall substantially below the rising cost of college tuition.¹³¹ The average cost of post-secondary private education, including tuition, room, and board for 2007-2008 was \$28,846.¹³² With the basic VA educational assistance benefit of \$1321 per month,¹³³ the difference between the available benefit and the actual cost is staggering. Additionally, because many institutions require up-front tuition payments, the slow pace of VA benefits checks frequently causes veterans to pay thousands of dollars in tuition and fees while awaiting repayment by VA.¹³⁴ Further, one author has stated: “Beyond the financial struggle is a daunting bureaucratic obstacle course that can confound veterans and sometimes steer them away from the benefit altogether.”¹³⁵

Military recruitment campaigns rely heavily on educational assistance to advertise the benefits of military service.¹³⁶ However, the limited return on this promise of higher education assistance has become “one of the most common sources of bitterness and frustration that emerge in interviews” with veterans of the wars in Iraq and Afghanistan.¹³⁷ In response to growing complaints from veterans, their advocates, and the American public, lawmakers recently enacted a new GI Bill, which promises to cover the full cost of post-secondary education at any approved public institution and substantially contribute towards the cost of education at most private institutions. Proponents of the Post-9/11 GI Bill hope that it will not only provide for the successful reintegration of veterans of the current wars, but will renew the promise of higher education many feel has not been kept.¹³⁸

¹³⁰ Poché, *supra* note 88, at 4.

¹³¹ *Veterans of Foreign Wars of the United States Legislative Presentation*, 110th Cong. (2008) (statement of George J. Lisicki, Commander-in-Chief, Veterans of Foreign Wars).

¹³² National Center for Education Statistics, *Digest of Education Statistics*, tbl.331 (2008), http://nces.ed.gov/programs/digest/d08/tables/dt08_331.asp.

¹³³ Redden, *supra* note 6.

¹³⁴ Allen, *supra* note 44.

¹³⁵ Sennott, *supra* note 8.

¹³⁶ *See id.*

¹³⁷ *Id.*

¹³⁸ *See id.*

II. AN ANALYSIS OF THE POST-9/11 VETERANS EDUCATIONAL ASSISTANCE ACT OF 2008

A. Post-9/11 GI Bill

On June 30, 2008, the Supplemental Appropriations Act, 2008, was signed into law, included in this law was the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill).¹³⁹ This bill represented the first major overhaul of veterans' education benefits in the more than two decades since the Montgomery GI Bill was enacted.¹⁴⁰ Predicated on the beliefs that active duty military service has become more arduous since September 11, 2001 and that it is in the national interest to provide veterans with educational assistance benefits commensurate with those provided to the veterans of World War II, the Post-9/11 GI Bill is an attempt to deliver on the promise to assist veterans in readjusting to civilian life after wartime service while aiding recruitment efforts.¹⁴¹

1. *General Provisions*

Under this new bill, which went into effect on August 1, 2009, veterans with 36 months or more active duty service after September 10, 2001, or veterans with 30 consecutive days or more active duty service after September 10, 2001, medically discharged for service-connected disability, are entitled to educational assistance equal to 36 months.¹⁴² The veteran's duration of active duty service is generally based on aggregate service, not a single continuous period of service.¹⁴³ These benefits include payment of tuition and fees up to

¹³⁹ Pub. L. No. 110-252, § 5001, 122 Stat. 2323 (2008).

¹⁴⁰ Compare Montgomery GI Bill Act of 1984, Pub. L. No. 100-48, 101 Stat. 331 (1987) with Veterans Education and Employment Assistance Act of 1976, Pub. L. No. 94-502, 90 Stat. 2393 (1976).

¹⁴¹ H.R. Rep. No. 110-720, at 37 (2008).

¹⁴² Supplemental Appropriations Act of 2008, Pub L. No. 110-252, § 3311, 122 Stat. 2359-60 (2008); *id.* § 3312(c)(2) (indicating any education discontinued due to active service does not count against the 36 month maximum).

¹⁴³ § 3311(b), 122 Stat. 2359-61. However, under § 3311(b)(2) an individual qualifying due to discharge for a service-connected disability must have 30 days of *continuous* service. Service as an officer pursuant to an agreement under 10 U.S.C. §§ 2107(b), 4348, 6959, and/or 9348 (2006) (i.e., service in fulfillment of an officer's Reserve Officers Training Corps agreement or a

the regularly-charged cost of the most expensive public institution in the state or the full tuition cost of the actual institution attended, whichever is less, which is made directly to the educational institution.¹⁴⁴ Eligible veterans are also entitled to a housing stipend based on the housing allowance under 37 U.S.C. § 403 for the city in which the institution is situated.¹⁴⁵ They may also receive a stipend for books, supplies, and equipment equal to \$1,000 multiplied by the fraction of the academic year the term constitutes.¹⁴⁶

For veterans with less than 36 months of active duty service, educational assistance benefits are prorated in accordance with 38 U.S.C.A. § 3313(c)(1), as represented by Table I.

Active Duty Service after September 10, 2001¹⁴⁷	Benefit
36 months or more	100%
30 months or more, but less than 36 months	90%
24 months or more, but less than 30 months	80%
18 months or more, but less than 24 months	70%
12 months or more, but less than 18 months	60%
6 months or more, but less than 12 months	50%
90 days or more, but less than 6 months	40%

Table I

military academy graduate's agreement) is not include when calculating a veteran's total active duty service. § 3311(d)(1), (2), 122 Stat 2362. Likewise, service terminated due to defective enlistment and induction, such as a minor enlistee, an erroneous enlistment or induction, or a defective enlistment agreement, is not included in this calculation. § 3311(d)(3), 122 Stat. 2362.

¹⁴⁴ § 3313(c)(1)(A), 122 Stat. 2363.

¹⁴⁵ § 3313(c)(1)(B)(i), 122 Stat. 2363. This stipend is not based on the city in which the veteran resides, but is based on the monthly housing stipend equal to the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the institution of higher education at which the individual is enrolled. *Id.*

¹⁴⁶ § 3313(c)(1)(B)(ii), 122 Stat. 2363; 74 Fed. Reg. 14684 (March 31, 2009) (to be codified at 38 C.F.R. § 21.9640(b)(1)(iii)).

¹⁴⁷ § 3311(b), 122 Stat. at 2362; 74 Fed. Reg. 14673 (to be codified at 38 C.F.R. § 21.9520). For active duty greater than 24 months, entry level and skill training is included when establishing the appropriate level of benefit. § 3311(b)(1), (3)-(4), 122 Stat. at 2362. For active duty less than 24 months, entry level and skill training are not counted towards the active duty service requirement. *Id.* § 3311(b)(5)-(8). If a veteran's active duty exceeds 24 months due to the addition of his or her entry level and skill training, without which that veteran's active duty would be less than 24 months, that veteran will be treated as being entitled to educational benefits as a veteran with 18 months or more, but less than 24 months of active duty. *Id.* § 3311(e). The term "entry level and skill training" is defined at Pub L. No. 110-252, § 3301(2), 122 Stat. 2357 (2008).

Additionally, veterans who choose to pursue their education on a half-time basis or less are entitled to benefits equal to the established charges that a similarly situated nonveteran would have to pay or the maximum amount the veteran is entitled to under the schedule above, whichever is less, and an appropriately reduced stipend for books, supplies, and equipment.¹⁴⁸

These benefits can be used to cover the cost of education pursued while on active duty or after separation.¹⁴⁹ However, these benefits must be used within 15 years of the veteran's discharge, regardless of whether that discharge occurred prior to August 1, 2009, or thereafter.¹⁵⁰

2. *Transfer of Benefits*

Veterans themselves are not the only ones who are able to directly benefit from the Post-9/11 GI Bill's educational benefits. Opponents of increased educational benefits for veterans have argued that such benefits would discourage career military service in favor of single tours of duty.¹⁵¹ In response to this, proponents of increased educational benefits have argued that allowing a career service person to transfer all or some of his or her educational benefits to a dependent would create an incentive for individuals to remain in service.¹⁵²

Provisions in the Post-9/11 GI Bill specifically allow the transfer of benefits from an eligible veteran to his or her spouse and/or children.¹⁵³ Each month transferred counts against the number of

¹⁴⁸ § 3313(f), 122 Stat. 2365. See 74 Fed. Reg. 14694 (to be codified at 38 C.F.R. § 21.9750) (explaining how VA determines whether a veteran's pursuit of education is on a greater than half-time basis).

¹⁴⁹ § 3311(b)(1)(B), 122 Stat. 2359.

¹⁵⁰ § 3321, 122 Stat. 2373; 74 Fed. Reg. 14676 (to be codified at 38 C.F.R. § 21.9530).

¹⁵¹ Sennott, *supra* note 8.

¹⁵² See Rogers, *supra* note 74 (noting "the ability to transfer benefits is a powerful addition to the military's retirement package, because noncommissioned officers can now finish out their careers knowing that their children's cost of college is covered.").

¹⁵³ Pub L. No. 110-252, § 3319(a), (c), 122 Stat. 2369-70 (2008); 74 Fed. Reg. 14676 (to be codified at 38 C.F.R. § 21.9570). While an eligible veteran can transfer benefits to multiple

months of personal educational benefits to which the individual is entitled on a direct basis (i.e., one month transferred equals one month of personal benefit).¹⁵⁴ Ten years of service is required to be eligible for this benefit.¹⁵⁵ The veteran must make the transfer of benefits while still in the Armed Forces and must specifically designate the dependent or dependents, the number of months to be transferred, and the time period of transfer.¹⁵⁶ Any unused portion of the transferred benefit may be modified or revoked at any time with written notice to the Secretary of the military branch concerned and the Secretary of Veterans Affairs.¹⁵⁷

A veteran's spouse may utilize available benefits after the qualifying individual has served six years, if an agreement is in place to serve an additional four.¹⁵⁸ If the qualifying individual fails to complete the term of the additional service agreement, then benefits used during the term of the additional service agreement are treated as overpayment of educational assistance benefits and both the transferor and the transferee are held liable for the amount of overpayment.¹⁵⁹ However, the benefits transferred need not be used during the eligible individual's period of service.¹⁶⁰ A spouse-transferee may utilize these benefits at any time within a fifteen-year time limit.¹⁶¹ A veteran's widow or widower may utilize these benefits as the death of the transferor does not affect their transfer, but a veteran's former spouse cannot seek these benefits in divorce proceedings as educational benefits under this chapter do not constitute marital property for the purposes of civil proceedings.¹⁶²

transferees, the total aggregate amount of benefits cannot exceed 36 months. § 3319(d), 122 Stat. 2370-71. The Secretary of Defense is empowered to further limit the number of transferable months by regulation, so long as this limitation allows for at least 18 months to be transferred. *Id.*

¹⁵⁴ § 3319(h)(1), 122 Stat. 2371.

¹⁵⁵ § 3319(b), 122 Stat. 2370. Individual eligibility may also be affected by regulations by the Secretary of the Defense. § 3319(a), 122 Stat. 2369.

¹⁵⁶ § 3319(e), 122 Stat. 2370.

¹⁵⁷ § 3319(f)(2), 122 Stat. 2370.

¹⁵⁸ § 3319(b)(1), 122 Stat. 2370.

¹⁵⁹ § 3319(i), 122 Stat. 2372.

¹⁶⁰ § 3319(h)(4), 122 Stat. 2369.

¹⁶¹ §§ 3319(h)(2)(a), 3321(a), 122 Stat. 2371, 2373.

¹⁶² § 3319(h)(4), (f)(3), 122 Stat. 2370-71.

In order to transfer educational benefits to a child, the eligible individual must serve for ten years.¹⁶³ As stated above, the death of the parent-transferor prior to use does not affect the transfer of benefits.¹⁶⁴ The child must either be at least 18 years old or must have completed the requirements for a high school diploma or its equivalent.¹⁶⁵ While the fifteen-year time limit does not apply for child-transferees, a benefit may not be used by a child-transferee who is 26 years old or older.¹⁶⁶

Additionally, these benefits can be used to pursue and complete the requirements of a secondary school diploma or equivalent, so long as the transferee is eligible to receive benefits (i.e., a child-transferee would only be able to receive benefits for use towards their secondary school diploma after reaching age 18).¹⁶⁷

3. *Additional Benefits*

In addition to the educational benefits described above, eligible veterans can receive additional benefits in the form of tutorial assistance, licensing or certification test payment, or travel assistance.¹⁶⁸

A veteran who qualifies for educational benefits also qualifies for tutorial assistance not to exceed \$100 per month and not to exceed \$1200 total, which does not count against any general education benefit to which a veteran is entitled, if the veteran is enrolled at a rate of pursuit of at least 50 percent in an institution of higher learning and the instructor of the course certifies that tutorial assistance is essential to correct a deficiency of the individual in such course and the course is required for, a prerequisite of, or indispensable to an approved program of education.¹⁶⁹ An individual's rate of pursuit

¹⁶³ § 3319 (g)(2)(A), 122 Stat. 2371.

¹⁶⁴ § 3319 (h)(4), 122 Stat. 2371.

¹⁶⁵ § 3319 (g)(2)(B), 122 Stat. 2371.

¹⁶⁶ § 3319 (h)(5), 122 Stat. 2371.

¹⁶⁷ § 3319 (h)(6), 122 Stat. 2372.

¹⁶⁸ §§ 3314, 3315, 3318, 122 Stat. 2366-67, 2369.

¹⁶⁹ § 3314, 122 Stat. 2366-67; 74 Fed. Reg. 14691 (March 31, 2009) (to be codified at 38 C.F.R. § 21.9685).

is determined by dividing the number of credit hours in which he or she is enrolled by the number of credit hours considered to be a full-time course load at that institution. (FN) For example, if an institution requires 12 credit hours per semester to be considered a full-time student, then a student enrolled in six credit hours would be considered to be enrolled at a rate of pursuit of 50 percent.¹⁷⁰ Likewise, a veteran who qualifies for educational benefits also qualifies for payment for one licensing or certification test equal to the actual cost of the test or \$2000, whichever is less.¹⁷¹ Travel assistance, also called a rural relocation benefit, is available for a veteran whose county or similar Census entity of residence, as shown by DD-214, federal tax return or other evidence, has a population density of less than seven people per square mile and who relocates at least 500 miles for education or travels any distance by air due to lack of roads or infrastructure.¹⁷² This benefit consists of a one time payment of \$500, which does not count against the general education benefit to which a veteran is entitled.¹⁷³

The Post-9/11 G.I. Bill also allows for the Secretary to authorize additional benefits for individuals with critical skills or to individuals who have provided additional service.¹⁷⁴ This additional benefit or “kicker” may not exceed \$50 per month or the appropriate percentage of that full amount as based on the individual’s rate of pursuit.¹⁷⁵

4. *Yellow Ribbon Program*

Colleges and universities with established charges exceeding that which the bill covers may participate in the Yellow Ribbon G.I. Education Enhancement Program (“Yellow Ribbon Program”).¹⁷⁶

¹⁷⁰ 74 Fed. Reg. 14676 (to be codified at 38 C.F.R. § 21.9505).

¹⁷¹ § 3315, 122 Stat. 2367; 74 Fed. Reg. 14688 (to be codified at 38 C.F.R. § 21.9665).

¹⁷² § 3318, 122 Stat. 2369.

¹⁷³ *Id.*

¹⁷⁴ § 3316, 122 Stat. 2367-68.

¹⁷⁵ 74 Fed. Reg. 14687 (to be codified at 38 C.F.R. § 21.9650).

¹⁷⁶ Pub. L. No. 110-252, § 3317, 122 Stat. 2368-69 (2008); 74 Fed. Reg. 14692 (to be codified at 38 C.F.R. § 21.9700).

Under the Yellow Ribbon Program, colleges and universities can voluntarily enter into an agreement with the Secretary of Veterans Affairs to cover a portion of those charges, up to 50 percent of the total remaining charges, which VA will match.¹⁷⁷ This will assist veterans for whom the full educational assistance benefit is insufficient to cover the cost of their education, such as those who wish to attend private institutions, public institutions out-of-state, or graduate school.¹⁷⁸

This program is only available to veterans entitled to the maximum benefits under Post-9/11 G.I. Bill (i.e., those with 36 months or more of active duty service after September 10, 2001, or those medically discharged for a service-connected disability). Veterans who do not qualify for the maximum benefit (i.e., veterans who served on active duty for less than 36 months) are not eligible to participate in this program.¹⁷⁹

The deadline for colleges and universities to sign up for the Yellow Ribbon Program for the 2009-2010 academic year was June 15, 2009.¹⁸⁰ VA will maintain a website listing all of the participating schools.¹⁸¹

5. *Early Criticism*

Senator Jim Webb introduced the Post-9/11 Veterans Educational Assistance Act of 2007 in January 2007.¹⁸² Ultimately, this bill was enacted as part of a larger appropriations bill.¹⁸³ Early opposition and

¹⁷⁷ § 3317, 122 Stat. 2368-69; 74 Fed. Reg. 14692 (to be codified at 38 C.F.R. § 21.9700).

¹⁷⁸ 74 Fed. Reg. 14692 (to be codified at 38 C.F.R. § 21.9700); Dep't of VA, Yellow Ribbon Program, http://gibill.va.gov/School_Info/Yellow_Ribbon/index.htm (last visited July 28, 2009).

¹⁷⁹ 74 Fed. Reg. 14687-92 (to be codified at 38 C.F.R. §§ 21.9640, 21.9700).

¹⁸⁰ Dep't of VA, Yellow Ribbon Program, http://gibill.va.gov/School_Info/Yellow_Ribbon/index.htm (last visited July 28, 2009).

¹⁸¹ Pub. L. No. 110-252, § 3317, 122 Stat. 2368-69 (2008). As of June 1, 2009, VA will be maintaining a searchable database of participating schools. The link for this website is http://www.gibill.va.gov/GI_Bill_Info/CH33/Yellow_ribbon.htm.

¹⁸² Post-9/11 Veterans Educational Assistance Act of 2007, S. 22, 110th Cong. (2007).

¹⁸³ Military Construction and Veterans Affairs and Related Agencies Appropriations Act, H.R. 2642, 110th Congress (2008); President Bush Signs H.R. 2643 the Supplemental Appropriations Act, 2008, <http://georgewbush-whitehouse.archives.gov/news/releases/2008/06/20080630.html>.

criticism of the bill came in the form of an alternative bill sponsored by Senators Lindsey Graham, John McCain, and Richard Burr, entitled Enhancement of Recruitment, Retention, and Readjustment Through Education Act of 2008.¹⁸⁴ As apparent in the title, supporters of that bill found fault with the Webb bill because it “view[ed] the military as a transition to another career” and sought to revise the Montgomery GI Bill in a way that would not discourage members of the Armed Forces from becoming career military personnel.¹⁸⁵ Specifically, the Graham-Burr-McCain plan provided for an increase in the available benefit for individuals who served on active duty in the Armed Forces for 12 years or more and allowed for individuals who qualified for education benefits to use their benefits to repay Federal student loans, whereas the Webb bill authorized additional education benefits for additional service at the discretion of the Secretary of Defense.¹⁸⁶ Additionally, unlike the Webb bill, the Graham-Burr-McCain bill provided for a uniform monthly educational benefit.¹⁸⁷

6. *Challenges*

The Post-9/11 G.I. Bill attempts to restore the educational benefits provided to the nation’s veterans to the level of the G.I. Bill of Rights while addressing the needs of modern day veterans attempting to reintegrate into civilian life. Such lofty goals inevitably will encounter challenges. Likewise, while this new legislation was developed with the input and support of several veterans’ service organizations (VSOs) as a substantial improvement upon the existing educational benefits program, the enacted bill did not rise to the level

¹⁸⁴ Enhancement of Recruitment, Retention, and Readjustment Through Education Act of 2008, S. 2938, 110th Cong. (2008).

¹⁸⁵ Senator John Cornyn’s Website, Webb-Hagel GI Bill (S. 22) vs. the Graham-Burr-McCain Bill, http://www.johncornyn.com/files/S22vsGraham-Burr-McCain_VetsBill.pdf. (last visited July 29, 2009).

¹⁸⁶ Compare S. 2938 §§ 4, 9 (increasing the rates of basic educational assistance under the MGIB and allowing basic educational assistance benefits for the repayment of federal student loans), with S. 22 (allowing more service members to access VA educational benefits).

¹⁸⁷ S. 2938 § 4.

that some of those organizations had envisioned. While by no means an exhaustive discussion of those challenges, this section will address some immediate challenges already encountered by the Post 9/11 G.I. Bill as well as those challenges which lay ahead for the Post-9/11 G.I. Bill. As with any new piece of legislation, the full administrative impact of implementing the Post-9/11 G.I. Bill can only be estimated at the onset.

One of the obstacles VA has encountered in the administration of the Post 9/11 G.I. Bill involved the information technology (IT) component of implementation.¹⁸⁸ Specifically, VA initially proposed outsourcing some of the IT aspects of the administration of the Post 9/11 G.I. Bill to private contractors.¹⁸⁹ This plan was strongly opposed by the American Legion, which passed a resolution to that effect during its 90th National Convention in Phoenix, Arizona, in August 2008.¹⁹⁰ Representatives of the American Legion also testified before Congress, urging VA to “retain ownership of one of its most significant and successful programs,” by keeping the IT component in-house.¹⁹¹ Ultimately, in October 2008, VA announced that it would “rely on its own workforce to set up the information technology programs needed to implement the educational benefits of the new Post-9/11 G.I. Bill.”¹⁹²

A second major obstacle faced by VA in the implementation of the Post 9/11 G.I. Bill involved the amount of educational benefits afforded to veterans of different jurisdiction. Since the Post-9/11

¹⁸⁸ *VA Testimony of Keith Pedigo Before the Subcomm. on Economic Opportunity, H. Comm. on Veterans' Affairs*, 110th Cong. (2008) (statement of Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration), available at <http://www.va.gov/OCA/testimony/hvac/seo/080924KP.asp>.

¹⁸⁹ *Id.*

¹⁹⁰ Press Release, The Am. Legion, The American Legion Takes Strong Stand Against Outsourcing Administration of New GI Bill Benefits (Sept. 16, 2008), available at <http://www.legion.org/pressrelease/2422/american-legion-takes-strong-stand-against-outsourcing-administration-new-gi-bill->

¹⁹¹ *Follow-up Oversight Hearing on GI Bill Implementation: Hearing Before the Subcomm. on Economic Opportunity of the H. Comm. on Veterans' Affairs*, 110th Cong. (2008) (statement of Joseph Sharpe, Jr., Deputy Director, National Economic Commission, The Am. Legion).

¹⁹² Press Release, U.S. Dep't of Veterans Affairs, VA Announces “In House” Option to Implement IT Aspects of New GI Bill (Oct. 10, 2008), available at <http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1593>.

G.I. Bill's benefits are tied to the regularly-charged cost of the most expensive public institution in the state in which the institution is located and not a uniform national rate, VA is charged with the additional administrative burden of maintaining accurate information for all fifty states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and certain foreign schools. In doing so, VA must also maneuver the idiosyncrasies of each jurisdiction. For example, under California's Master Plan for Higher Education, all California residents are entitled to tuition-free attendance at public colleges and universities in that state, despite budgetary restrictions.¹⁹³ However, California public colleges and universities officially do charge student fees which some argue are the equivalent of other states' in-state tuition rates.¹⁹⁴ This distinction was of particular concern to veterans who wished to attend private colleges and universities in California.¹⁹⁵ These veterans would receive no tuition benefit. While the maximum benefit allowed for fees was relatively high, their benefit was limited to the actual amount of fees charged. In August 2009, VA announced that solution had been reached.¹⁹⁶ Specifically, California public universities have introduced a new billing item, "Educational Fee/Tuition," which VA will use to calculate the state's maximum tuition benefits under the Post 9/11 G.I. Bill.¹⁹⁷

Third, the Yellow Ribbon Program component alone faces many challenges in its implementation. First, in terms of encouraging colleges and universities to participate, the fluctuation of educational benefits between states can be an impediment to participation. The cost of participation for private institutions varies widely from state to state.¹⁹⁸ One extreme example to

¹⁹³ Univ. of Cal. Office of the President, Major Features of the California Master Plan for Higher Education (Jan. 2007), <http://www.ucop.edu/acadinit/mastplan/mpsummary.htm>.

¹⁹⁴ Elizabeth Redden, *To Tie the Yellow Ribbon?*, INSIDE HIGHER EDUC., May 1, 2009, available at <http://www.insdehighered.com/layout/set/print/news/2009/05/01/yellowribbon>.

¹⁹⁵ Matthew B. Stannard, *GI Bill's Wording Costs State's Students Vets*, S. F. CHRONICLE, May 23, 2009, at A1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/05/23/MNKH17PG4R.DTL>.

¹⁹⁶ Press Release, U.S. Dep't of Veterans Affairs, Obama Administration and the State of California Fix Post 9/11 GI Bill Tuition Glitch (Aug. 4, 2009), <http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1741>.

¹⁹⁷ *Id.*

¹⁹⁸ Press Release, Iraq and Afg. Veterans of Am., IAVA Statement Regarding GI Bill

highlight this point is the discrepancy between the cost of attendance at The George Washington University (GW) in Washington, DC, and the cost of attendance at the University of the District of Columbia (UDC), the District's only public institution.¹⁹⁹ GW's tuition for the 2009/2010 academic year is \$41,610 per year,²⁰⁰ while the maximum charge per credit hour for a DC public institution of higher learning was \$197.92.²⁰¹ Assuming a 24 credit hour year, this creates a shortfall of over \$35,000.²⁰² Meanwhile, nearby private schools in Maryland and Virginia have a much smaller gap to cover with the educational benefit for those states currently set at \$458 and \$326 per credit hour, respectively.²⁰³ Second, regardless of whether a particular institution has a large or small shortfall between the baseline Post-9/11 G.I. Bill benefits and the cost of tuition and fees, that institutional contribution has to come from somewhere. In many cases, this contribution comes from the same pool of financial aid as their need-based programs.²⁰⁴ As such, some institutions, such as Princeton University, which prides itself on its need-based financial aid program,²⁰⁵ have declined to participate in the Yellow Ribbon Program.²⁰⁶ Veterans who enroll in these institutions will be considered for financial aid with the rest of the applicant pool.

Benefits (Feb. 24, 2009), <http://iava.org/press-room/press-releases/iava-statement-gi-bill-benefits>; Elizabeth Redden, *GI Bill Math*, INSIDE HIGHER EDUC., July 13, 2009, available at <http://insidehighered.com/news/2009/07/13/gibill>.

¹⁹⁹ About the Univ. of the District of Columbia, http://www.udc.edu/welcome/about_udc.htm (last visited July 30, 2009).

²⁰⁰ Press Release, The George Wash. Univ., The George Washington University Continues Guaranteed Fixed Tuition and Financial Aid Program (Feb. 13, 2009), http://gwu.edu/~media/pressrelease.cfm?ann_id=30147.

²⁰¹ GI Bill Website, 2009-2010 Maximum In-State Tuition & Fees, http://www.gibill.va.gov/GI_Bill_Info/CH33/Tuition_and_fees.htm (last visited Oct. 18, 2009).

²⁰² See 74 Fed. Reg. 14684 (March 31, 2009) (to be codified at 38 C.F.R. § 21.9640(b)(1)(B)(iii)) (noting that "twenty-four credit hours [is] (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year).").

²⁰³ GI Bill Website 2009-2010 Maximum In-State Tuition & Fees, http://www.gibill.va.gov/GI_Bill_Info/CH33/Tuition_and_fees.htm (last visited Aug. 23, 2009).

²⁰⁴ See Redden, *supra* note 199 (noting that some of Harvard University's undergraduate schools may be unable to participate in the Yellow Ribbon Program for the upcoming academic year because they have already allocated their aid dollars).

²⁰⁵ Princeton University Costs and Financial Aid, <http://www.princeton.edu/admission/financialaid/> (last visited Aug. 3, 2009).

²⁰⁶ See Redden, *supra* note 199 (noting that Princeton University and at least two of Columbia University's undergraduate schools have opted not to participate).

Finally, one of the primary concerns and lasting challenges to the implementation and administration of the Post 9/11 G.I. Bill is the sheer fiscal impact of this mammoth benefits program.²⁰⁷ As stated above, the amount of benefits is tied to the highly variable cost of in-state tuition set by the various state jurisdictions.²⁰⁸ Therefore, the actual cost of the Post-9/11 G.I. Bill is difficult to determine. It has been estimated at \$2.5 to \$4 billion a year.²⁰⁹ However, the original G.I. Bill was estimated at \$6.5 billion and the actual cost was \$14.5 billion.²¹⁰

7. *Post-9/11 G.I. Bill versus the Montgomery G.I. Bill*

The implementation of the Post-9/11 G.I. Bill has resulted in the overlap of educational benefits available under the MGIB.²¹¹ The Post-9/11 G.I. Bill will be implemented nearly eight years after September 11, 2001.²¹² Veterans who now qualify for its benefits enlisted in the Armed Forces under the MGIB and are being asked to choose which benefit he or she will receive for a particular period of training.²¹³ Therefore, in-depth comparison between the two bills is both inevitable and necessary so that each veteran may maximize the educational benefit that he or she is entitled to receive under each program. Many of the differences between the two may be seen as

²⁰⁷ See U.S. Gov't Accountability Office, Report Under 5 U.S.C. § 801(a)(2)(A) on a Major Rule Issued by the Department of Veterans Affairs Entitled "Post-9/11 GI Bill," GAO-09-565R, at 3 (Apr. 13, 2009), <http://www.gao.gov/decisions/majrule/d09565r.pdf> (noting "that the impact of this rule will be primarily to the federal budget" and that the estimated cost is \$78.1 billion through fiscal year 2018 with additional discretionary costs of \$78 million in fiscal year 2009 and \$452.6 million over the next 10 years).

²⁰⁸ See GI Bill Website 2009-2010 Maximum In-State Tuition & Fees, http://www.gibill.va.gov/GI_Bill_Info/CH33/Tuition_and_fees.htm (last visited Aug. 23, 2009).

²⁰⁹ 154 CONG. REC. 82, S4292-93 (daily ed. May 19, 2008) (statement of Sen. Salazar).

²¹⁰ BENNETT, *supra* note 18, at 171.

²¹¹ Compare 38 U.S.C. § 3011 (2006) (stating that individuals eligible for education assistance benefits include those who first entered service any time after June 30, 1985), with Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, § 5003, 122 Stat. 2357, 2359-60 (2008) (providing that individuals eligible for education assistance benefits are those who entered service on or after September 2001) (to be codified at 38 U.S.C. § 3311).

²¹² Post-9/11 GI Bill Final Rule, 74 Fed. Reg. 14,654-14,694 (Mar. 31, 2009) (effective Aug. 1, 2009) (to be codified at 38 C.F.R. pt. 21).

²¹³ § 3322, 122 Stat. 2373; 38 C.F.R. § 21.3022 (2008).

a direct response to perceived problems in the MGIB that the Post-9/11 G.I. Bill attempts to correct. However, the new bill is not necessarily the better option for all veterans who have served in the Armed Forces after September 10, 2001.

In order to bridge the benefits gap between the two programs, the Post-9/11 G.I. Bill's passage was accompanied by some notable changes to the MGIB. These changes included an increase in the monthly benefit and adjustments to the transfer policy.²¹⁴ Specifically, the maximum monthly educational benefit has been increased from \$1004 to \$1101.²¹⁵ This is due, in part, to changes to the MGIB which no longer ties the benefit to the Consumer Price Index (CPI).²¹⁶ Instead, the annual increase of benefits will be based on the percentage increase in the average cost of undergraduate education as determined by the National Center for Education Statistics.²¹⁷ With regard to the transfer of benefits, the new legislation extends benefits for reservists and increases the maximum number of months that can be transferred to 36.²¹⁸

While the MGIB is comprised of a series of rates tied to the yearly percentage increase in the average cost of undergraduate education,²¹⁹ the Post-9/11 G.I. Bill is tied to the actual cost of in-state tuition of the most expensive public college or university

²¹⁴ See Increase in Rates Payable Under the Montgomery GI Bill, 73 Fed. Reg. 65,260, 65265-66 (Nov. 3, 2008) (to be codified at 38 C.F.R. § 21.7136) (increasing education assistance rates); see also § 5006, 122 Stat. 2323, 2380 (decreasing eligibility requirements for transfer of education assistance benefits) (to be codified at 38 U.S.C. § 3020).

²¹⁵ 38 C.F.R. § 21.7136(b)(1)(iii) (2008). The \$1101 amount represents the monthly rate for full time training that occurs after September 30, 2007 and before August 1, 2008. *Id.* For the complete schedule, see the latest version of the C.F.R. at 74 Fed. Reg. 65,260 (to be codified at 38 C.F.R. § 21.7136(b)).

²¹⁶ Compare 38 U.S.C. § 3015(h) (2006) (providing that VA must increase education assistance rates by the percentage by which the most recent year's CPI exceeds the previous year's CPI), with § 5004, 122 Stat. 2379 (providing that VA must increase education assistance rates by the percentage which the average cost of undergraduate cost of tuition for the most recent academic year exceeds the average cost of undergraduate tuition cost for the prior academic year) (amending 38 U.S.C. § 3015).

²¹⁷ § 3015(h)(1), 122 Stat. 2379.

²¹⁸ § 3020, 122 Stat. 2380.

²¹⁹ 38 C.F.R. § 21.7136 (2008).

in each state.²²⁰ This means that a veteran who wishes to enroll in an educational institution in a state with an above-average level of tuition and fees might find the benefits under the MGIB to be inadequate. Conversely, veterans who wish to enroll in an educational institution in a state with a below-average level of tuition and fees might be entitled to more benefits under the MGIB.

Despite these recent updates to the MGIB, the Post-9/11 G.I. Bill has advantages for certain veterans, most notably reservists and veterans who did not choose to participate in the MGIB. For veterans who either intentionally or inadvertently opted out of the MGIB during their first year of service, the new copy offers a second chance at educational benefits.²²¹ Additionally, the Post-9/11 G.I. Bill's reliance on aggregate service, instead of the length of a single period of continuous service, will make a difference not only in the time it takes for veterans to become eligible for educational benefits, but in the case of many reservists, it will provide the only avenue for eligibility at all.²²²

Under the MGIB, veterans paid their tuition out of their monthly stipend.²²³ In the past, delays in the receipt of educational benefits under the MGIB placed educational institutions in the unenviable position of either denying a veteran-student admission for a given semester until that student could pay the tuition or allowing that veteran-student to attend classes for months without payment until those benefits were received on the expectation and hope that the veteran-student would fulfill their promise to pay.²²⁴ Educational institutions therefore may be reassured by the new bill's requirement that tuition fees be paid to the educational institutions themselves.

²²⁰ 74 Fed. Reg. 14686 (to be codified at 38 C.F.R. § 21.9640 (b)(1)(i)(A), (c)(1)(i)(A)).

²²¹ 38 U.S.C. §§ 3011(c)(1), (e)(1), 3012(d)(1), 3015(g) (2006).

²²² *Id.* §§ 3311(e)(1), 3012(f)(1).

²²³ *Id.* § 3014(b)(2)(A).

²²⁴ *See* Allen, *supra* note 44 (discussing how benefits paid by VA under the MGIB are often delayed and paid directly to the veteran student, which would leave the educational institution without tuition payment well into the academic semester).

For some veterans, however, the MGIB may offer additional benefits. Veterans, who served both before and after the September 11th attacks, may find that their benefits under the Post-9/11 G.I. Bill are less than those under the MGIB because their service after September 10, 2001 is less than the 36 months required for the maximum benefit.²²⁵ Further, veterans who choose to pursue apprenticeships or on-the-job training would not be eligible for educational assistance benefits under the Post-9/11 G.I. Bill's definition of "approved program of education."²²⁶ For these veterans, the benefits provided under the MGIB would allow them to receive a percentage of the full monthly educational assistance while pursuing an apprenticeship or receiving on-the-job training.²²⁷ Additionally, the state-by-state variation in the amount of educational assistance benefits available under the Post-9/11 G.I. Bill could make the nationally standardized benefits under the Montgomery G.I. Bill favorable for veterans in states with a relatively low in-state cost of attendance.

The duplication of educational benefits is prohibited.²²⁸ A veteran who is eligible for benefits under the Post-9/11 G.I. Bill and another program must specify in writing under which program he or she wishes to receive benefits.²²⁹

²²⁵ Pub. L. No. 110-152, § 3311(b), 122 Stat. 2359 (2008).

²²⁶ § 3313(b), 122 Stat. 2363. This section also defines an "approved program of education" as a program offered by an institution of higher learning and approved for purposes of Chapter 30, the Montgomery G.I. Bill. *Id.*; see 74 Fed. Reg. 14694 (March 31, 2009) (to be codified at 38 C.F.R. § 21.9765) (incorporating the course requirements of 38 C.F.R. §§ 21.7220 and 21.7222).

²²⁷ 74 Fed. Reg. 65260 (to be codified at 38 C.F.R. § 21.7136). For training which occurs after September 30, 2005 and before January 1, 2008, these percentages are 85 percent for the first six months of training, 65 percent for the second six months of training, and 45 percent for the remaining pursuit of training. For training which occurs after December 31, 2008 and before August 1, 2008, these percentages are 75 percent for the first six months of training, 55 percent for the second six months of training, and 35 percent for the remaining pursuit of training.

²²⁸ § 3322, 122 Stat. 2373.

²²⁹ 74 Fed. Reg. 14691 (to be codified at 38 C.F.R. § 21.9690(b)). The other programs that a veteran could be eligible for include the Montgomery G.I. Bill (both active duty and select reserve), the Reserve Educational Assistance Program, the Educational Assistance Test Program, the Vocational Rehabilitation and Employment Program, the Post-Vietnam Era Veterans' Education Assistance, Survivors' and Dependents' Educational Assistance, and the Hostage Relief Act of 1980. *Id.* (to be codified at 38 C.F.R. § 21.9690(a)).

For the individual who made contributions under the MGIB and has not yet utilized all of their benefits under that bill, may make an irrevocable election to relinquish those remaining benefits and instead receive benefits under the Post-9/11 G.I. Bill.²³⁰ After doing so, they can receive a refund of their basic contribution to the MGIB program.²³¹ This refund will be paid to the Veteran once his or her educational entitlement is exhausted.²³² In the case of veterans who qualify for the entire benefit, this means once they have used 36 months of educational benefits.²³³

CONCLUSION

The recent implementation of the Post 9/11 G.I. Bill as well as the changes to the MGIB have significantly increased the educational benefits available to the nation's veterans.²³⁴ Perhaps most significantly, the Post-9/11 G.I. Bill provides veterans with the means to earn a college degree at the institution of their choice, thereby facilitating their transition back to civilian life.²³⁵ Despite the mammoth scope and potential cost of the Post 9/11 G.I. Bill, the new bill is not nearly as lavish as the original GI Bill of 1944. However, the increased available benefits including the generous Yellow Ribbon Program, will once again allow veterans the freedom to pursue individual educational goals. Most importantly, the Post-9/11 G.I. Bill is a way to adequately express the thanks of a grateful nation.

²³⁰ *Id.* at 14675 (to be codified at 38 C.F.R. § 21.9550(b)(1)).

²³¹ *Id.* at 14686-87 (to be codified at 38 C.F.R. § 21.9645(a)).

²³² *Id.* (to be codified at 38 C.F.R. § 21.9645(c)).

²³³ *Id.* (to be codified at 38 C.F.R. § 21.9550(b), (c)).

²³⁴ *See* Notes 145 through 186 and accompanying text (describing the provisions of the Post-9/11 GI Bill).

²³⁵ Allen, *supra* note 44.

