

**Statement for  
the Record**

**Reserve Officers Association of the United States  
And  
Reserve Enlisted Association**

**for the**

**Senate Veterans' Affairs Committee**

**April 13, 2011**



*“Serving Citizen Warriors through Advocacy and Education since 1922.”™*



---

**Reserve Officers Association  
1 Constitution Avenue, N.E.  
Washington, DC 20002-5618  
(202) 646-7719**

**Reserve Enlisted Association  
1501 Lee Highway, Suite 200  
Arlington, VA 22209  
(202) 646-7715**

---

The Reserve Officers Association of the United States (ROA) is a professional association of commissioned and warrant officers of our nation's seven uniformed services, and their spouses. ROA was founded in 1922 during the drawdown years following the end of World War I. It was formed as a permanent institution dedicated to National Defense, with a goal to teach America about the dangers of unpreparedness. When chartered by Congress in 1950, the act established the objective of ROA to: "...support and promote the development and execution of a military policy for the United States that will provide adequate National Security." The mission of ROA is to advocate strong Reserve Components and national security, and to support Reserve officers in their military and civilian lives.

The Association's 60,000 members include Reserve and Guard Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen who frequently serve on Active Duty to meet critical needs of the uniformed services and their families. ROA's membership also includes officers from the U.S. Public Health Service and the National Oceanic and Atmospheric Administration who often are first responders during national disasters and help prepare for homeland security. ROA is represented in each state with 55 departments plus departments in Latin America, the District of Columbia, Europe, the Far East, and Puerto Rico. Each department has several chapters throughout the state. ROA has more than 450 chapters worldwide.

ROA is a member of The Military Coalition where it co-chairs the Tax and Social Security Committee. ROA is also a member of the National Military/Veterans Alliance. Overall, ROA works with 75 military, veterans and family support organizations.

President:

Colonel Walker M. Williams III, USAF (Ret.) 202-646-7706

Staff Contacts:

Executive Director:

Major General David R. Bockel, USA (Ret.) 202-646-7705

Legislative Director, Health Care:

CAPT Marshall Hanson, USNR (Ret.) 202-646-7713

Air Force Director,

Vacant 202-646-7719

Army and Strategic Defense Education Director:

Mr. "Bob" Feidler 202-646-7717

USNR, USMCR, USCGR, Retirement:

CAPT Marshall Hanson, USNR (Ret.) 202-646-7713

The Reserve Enlisted Association is an advocate for the enlisted men and women of the United States Military Reserve Components in support of National Security and Homeland Defense, with emphasis on the readiness, training, and quality of life issues affecting their welfare and that of their families and survivors. REA is the only Joint Reserve association representing enlisted reservists – all ranks from all five branches of the military.

Executive Director

CMSgt Lani Burnett, USAF (Ret) 202-646-7715

#### DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Reserve Officers and Reserve Enlisted Associations are member-supported organizations. Neither ROA nor REA have received grants, sub-grants, contracts, or subcontracts from the federal government in the past three years. All other activities and services of the associations are accomplished free of any direct federal funding.

## INTRODUCTION

On behalf of our members, the Reserve Officers and the Reserve Enlisted Associations thank the committee for the opportunity to submit testimony on veteran and National Guard and Reserve employment issues. ROA and REA applaud the ongoing efforts by Congress to address employment problems faced by so many veterans and service members.

As contingency operations continue with increased mobilizations and deployments, many of these outstanding citizen soldiers, sailors, airmen, Marines, and Coast Guardsmen have put their civilian careers on hold while they serve their country in harm's way. As we have learned, they share the same risks and their counterparts in the Active Components. In just this past month we passed the 800,000 mark for the number of Reserve and Guard service members who have been activated since post-9/11. More than 275,000 have been mobilized two or more times. The United States is creating a new generation of combat veterans that come from its Reserve Components (RC). It is important, therefore, that we don't squander this valuable resource of experience, nor ignore the benefits that they are entitled to because of their selfless service to their country.

ROA would like to thank the committee and staff for making improvements to the Post 9/11 GI Bill, enhancing benefits for caregivers, and much more.

## EXECUTIVE SUMMARY

Employment issues supported by the Reserve Officers and Reserve Enlisted Associations are as follows:

### *Education:*

- Include Title 14 duty in eligibility for the Post 9/11 GI Bill.
- Exempt earned benefit from GI Bill from being considered income in need based aid calculations
- Develop a standard nation-wide payment system for private schools
- Re-examine qualification basis for yellow ribbon program, rather than first come first serve.
- Increase MGIB-Selected Reserve (MGIB-SR) to 47 percent of MGIB-Active.
- Include 4-year reenlistment contracts to qualify for MGIB-SR.
- Enact Uniformed Services Employment and Reemployment Rights Act (USERRA) and Service members Civil Relief Act (SCRA) protections for mobilized Guard-Reserve students to adjust interest rates on federal student loans of mobilized Reservists when the market rate drops below 6 percent.

### *Employer Support:*

- Continue to enact tax credits for health care and differential pay expenses for deployed Reserve Component employees.
- Provide tax credits to offset costs for temporary replacements of deployed Reserve Component employees.
- Support tax credits to employers who hire service members who supported contingency operations.

### *Employee Support:*

- Permit delays or exemptions while mobilized of regularly scheduled mandatory continuing education and licensing /certification/promotion exams.
- Continue to support a law center dedicated to USERRA/SCRA problems of deployed Active and Reserve service members.

*Uniformed Services Employment and Reemployment Rights Act (USERRA) / Servicemembers' Civil Relief Act (SCRA):*

- Improve SCRA to protect deployed members from creditors that willfully violate SCRA.
- Fix USERRA/SCRA to protect health care coverage of returning service members and family for pre-existing conditions, and continuation of prior group or individual insurance.
- Enact USERRA protections for employees who require regularly scheduled mandatory continuing education and licensing/certification and make necessary changes to USERRA to strengthen employment and reemployment protections.
- Exempt Reserve Component members from federal law enforcement retirement application age restrictions when deployment interferes in completing the application to buy back retirement eligibility.
- Amend SCRA to prohibit courts from modifying previous judgments that change the custody arrangements for a child of a deployed service member.
- Encourage Federal agencies to abide by USERRA/SCRA standards.
- Ensure USERRA isn't superseded by binding arbitrations agreements between employers and Reserve Component members.
- Make the states employers waive 11<sup>th</sup> Amendment immunity with respect to USERRA claims, as a condition of receipt of federal assistance.
- Make the award of attorney fees mandatory rather than discretionary.

*Veterans Affairs:*

- Extend veterans preference to those Reserve Component members who have completed 20 years in good standing, or
- Permit any member who has served under honorable conditions and has received a DD-214 to qualify for veteran status.



Only issues needing additional explanation are included below. ROA and REA can provide further information if requested.

<b>EDUCATION</b>
------------------

**Post 9/11 GI Bill**

**ROA and REA are grateful for passage of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010.**

Although there is still room for more improvement which can in the long run make the program more effective and increase utilization. For example, while Title 32 AGR was included for eligibility while Title 14 Coast Guard Reserve was left out.

Other issues that student veterans have raised to ROA in which we recommend include the following:

- Require timely application and submission of documentation by the institution to the Department of Veterans' Affairs (VA) and vice versa.
- Establish dedicated and well-trained officers for student veterans to speak with via the call center.
- Better define the Yellow Ribbon Program to determine what 'first come, first serve' means in context of institutions (such as registration time, enrollment, and official enrollment).

- Allow institutions to give more funds to students with stronger merit and need-base under the Yellow Ribbon Program.
- Align the VA's work-study program for students to work as guidance officers at their institutions to aid other student veterans, to be matched up with institution's academic calendar.
- Safeguard and implement a long term plan for sustaining the Post 9/11 GI Bill.
  - Ensure transferability benefits are protected.
  - Guarantee that any future changes to the program that could have negative effects on benefits will grandfather in current beneficiaries.
- Pass legislation to disallow institutions including benefits in need-based aid formulations.
  - Remove the requirement to have a parental signature.
  - Establish parity between FAFSA disclosure exclusion over veterans' educational and non-educational benefits to CSS and all institutions of higher learning.

Institutions of higher learning across the nation that provide need-based aid often require students to file a Free Application for Federal Student Aid (FAFSA) form and a College Scholarship Service/Financial Aid Profile (CSS) form administered by the College Board.

If an institution abides by the federal methodology of determining aid levels it uses the FAFSA form and guidelines, but an institution may use an institution methodology (IM) formulated by CSS. By law under the Higher Education Opportunity Act of 1965 (HEA), FAFSA's current need analysis formula, while including some sources of untaxed income, excludes veteran's educational benefits and welfare benefits.

On the other hand, CSS require military service members to disclose their earned educational benefits for the formulation of their need-based aid levels. That disclosure of veterans' educational benefits on the CSS is then often weighed by those institutions that use an IM in the same manner of other traditional untaxed income items such as child support or a contribution from a relative, in the formulation of their aid package.

Disclosing these earned-benefits on the CSS profile serves to bring down service members' financial need level, thus increasing the cost out of pocket, by improperly treating earned benefits as equivalent in nature and function as untaxed income items. Since CSS is not restricted from asking for disclosure of the benefits, institutions use the CSS to add these earned benefits into the aid formulation, shirking FAFSA's and the HEA's intentions.

**ROA and REA urge Congress to bar institutions of higher learning from considering veterans' educational benefits in need-based aid calculations and apply the Higher Education Opportunity Act to all financial aid practices of institutions of higher learning.**

**ROA and REA recommend enacting the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Servicemembers Civil Relief Act (SCRA) protections for mobilized Guard and Reserve students granting academic leave of absences, protecting academic standing and refund guarantees.**

**Also ROA and REA encourages the Senate Veterans Affairs Committee to cosponsor Sen. Chuck Schumer's bill S.745 that would grandfather in current students who applied for benefits of the Post 9/11 GI Bill under a different set of rules.** While many may gain advantages under the changes in law, others are actually negatively affected. For example ROA has received concerning calls and emails from members that feel forsaken as such members signed commitments based on the benefits which they now feel are reduced.

Furthermore ROA and REA are troubled by a recent change to the Department of Veterans Affairs' GI Bill website. According to the eligibility for the Yellow Ribbon Program on the VA website ([www.gibill.va.gov/benefits/post\\_911\\_gibill/yellow\\_ribbon\\_program.html](http://www.gibill.va.gov/benefits/post_911_gibill/yellow_ribbon_program.html)) as of now "Active duty servicemembers and their spouses are not eligible for this program (child transferees of active duty servicemembers may be eligible if the servicemember is qualified at the 100% rate)." Yet prior to changes in law in December the website used the term 'individuals' and 'based on service requirements'. What's more according to U.S. Code, Title 38, section 3317 "The program shall only apply to covered individuals described in paragraphs (1) and (2) of section 3311 (b)." Furthermore Section 3311 (b) speaks to covered individuals that are after completion of service required in subparagraph (A) to include "*(i) continues on active duty.*"

**ROA and REA urge Congress to ascertain from the VA as to why this eligibility was changed and to correct the error.**

One of the most significant problems that link all issues pertaining to the Post 9/11 GI Bill is the lack of effectively trained customer service representatives. One of the many examples came from two of our members that are married, both serving in a Reserve Component. They wanted to transfer their benefits to their children, but were told that only one parent can register the children in the DEERS system and therefore only one of the parents could transfer the benefits. After going through a couple back channels ROA found out that the couple needed to go to a DEERS office and request an 'administrative' account for the purposes of transferring benefits.

There are many stories similar to this one which causes unnecessary stress on the families, some of whom give into the system and give up the benefit because either they are given incorrect and/or incomplete information or the hassles involved are not deemed worthwhile.

It is absolutely necessary that our service members, veterans and families have the ability to access accurate and timely information. **ROA and REA urge Congress to enforce the VA to properly and effectively train their personnel.**

**Montgomery GI Bill**

To assist in recruiting efforts for the Marine Corps Reserve and the other uniformed services, ROA and REA urge Congress to reduce the obligation period to qualify for Montgomery "GI" Bill-Selected Reserve (MGIB-SR) (Section 1606) from six years in the Selected Reserve to four years in the Selected Reserve plus four years in the Individual Ready Reserve, thereby remaining a mobilization asset for eight years.

Because of funding constraints, no Reserve Component member will be guaranteed a full career without some period in a non-pay status. BRAC realignments are also restructuring the RC force and reducing available paid billets. Whether attached to a volunteer unit or as an individual mobilization augmentee, this status represents periods of drilling without pay. MGIB-SR eligibility should extend for 10 years beyond separation or transfer from a paid billet.

## EMPLOYMENT

### Employment Protections

Veterans and service members are provided protections through the National Committee for Employer Support of the Guard and Reserve (ESGR), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and the Servicemembers' Civil Relief Act (SCRA).

Notwithstanding the protections afforded veterans and service members, and antidiscrimination laws it is not unusual for members to lose their jobs due to time spent away while deployed. Sometimes this is by employers who go out of business, but more because it costs employers money, time, and effort to reintroduce the employee to the company.

The most recent national example is in the case of *Straub vs. Proctor Hospital* in which Army Reservist Vincent Straub was fired by Proctor Hospital of Peoria due to his service requirements. The Supreme Court upheld Straub's rights under USERRA.

Furthermore while the national unemployment rate may actually be reducing incrementally, the unemployment rate of veterans, Guardsmen and Reservists is actually increasing with an average of 15.2 percent. In some units it has been reported to range from 25 to 45 percent unemployment.

### Employer Incentives

Partnerships: The Army Reserve under Lieutenant General Jack Stultz initiated the Employer Partnership Program with civilian employers that is an initiative designed to formalize the relationship between the Reserve and the private sector, sharing common goals of strengthening the community, supporting RC service members and families, and maintaining a strong economy. Over 1,000 companies are currently in various preliminary stages of implementing partnership programs. This sets a model for businesses to hire veterans. The program has its own website <http://www.employerpartnership.org/> and provides job search, a resume builder, professional staff support, a list of employer partners and career resources.

Periodic and Predictable: Employers need increased notification time in order to better support their personnel. The military services and components should provide greater notice of deployments to employees, so that they, as well as RC members and their families, can better prepare. Collaboration between industry and the military needs to occur as the military considers deployment cycle models so that the nation's defense needs are met but its industrial base is not compromised.

Employer care plans should be developed that will assist with mitigation strategies for dealing with the civilian workload during the absence of the service member employee and lay out how the employer and employee would remain in contact throughout the deployment.

CNGR: The Commission on the National Guard and Reserve suggested key recommendations included expansion of the Employer Support of the Guard and Reserve committee to be able to work new employment as well as reemployment opportunities, the creation of an employer advisory council, and regular surveys to determine employer interests and concerns over reemployment of Guard and Reserve members.

TRICARE as an employee/employer benefit: An employer incentive is when an employee brings importable health care such as TRICARE, reducing the costs for the employer. Guard and Reserve members as well as military retirees should be permitted to tout the availability of TRICARE as an employee asset, and permit employers to provide alternative benefits in lieu of health care.

Another option is to fully or partially offsetting employer costs for health care payments for Guard and Reserve members who are employed, especially when companies continue civilian health insurance for service members and or their families during a deployment. Provide employers – especially small businesses – with incentives such as cash stipends to help pay for health care for Reservists up to the amount DoD is contributing. When a member is deployed, the payments could increase to the value of active military health care to allow the RC employee and family to remain on the employers insurance, with the understanding of reemployment guarantees upon the serving members return.

Other incentives: Incentives of various types would serve to mitigate burdens and encourage business to both hire and retain Reservists and veterans. A variety of tax credits could be enacted providing such credit at the beginning of a period of mobilization or perhaps even a direct subsidy for costs related to a mobilization such as the hiring and training of new employees. Employers felt strongly that, especially for small businesses, incentives that arrive at the end of the tax year do not mitigate the costs incurred during the deployment period. Also cross-licensing/credentialing would ease the burden of having to acquire new licenses/credentials in the private sector after having gained them during their military service, and vice versa.

**While not under these committee jurisdictions we hope that the Veterans Committees can support specific tax incentives to hire returning veterans and Guard and Reserve members.**

ROA and REA support S.491 *Veterans Employment Transition Act of 2011* introduced by Sen. Max Baucus which would extend the work opportunity credit to certain recently discharged veterans. Though ROA and REA we would like the bill to be amended to add all Reserve Component services that have served 180 consecutive days pursuant to the bill's requirement.

ROA and REA also support S.367 *Hire a Hero Act of 2011* introduced by Sen. Scott Brown that would allow the work opportunity credit to small businesses which hire individuals who are members of the Ready Reserve or National Guard.

ROA and REA further recommend the following:

**ROA encourages the implementation of certifications or a form that would inform employers of skills potential veteran and service member employees gained through their military service.**

**ROA supports initiatives to provide small business owners with protections for their businesses to be sustained while on deployment, for example a potential program in which a trained substitute is made available to run the business while the member is out country. Further SCRA protection on equipment leases should be included in the law.**

## **SERVICE MEMBERS LAW CENTER**

In the summer of 2009 ROA established the Service Members Law Center (SMLC) as a source of excellence in the areas of employment and consumer law for active, Guard and reserve personnel.

The Law Center's goals include the following:

- Advise Active and Reserve members who have been subject to legal problems that relate to their military service.
- Develop a network of legal scholars, law school clinics and private practitioners interested in legal issues of direct importance to service members.
- Advance world-class continuing legal education on issues relating to the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA).
- Broaden the existing database of USERRA and SCRA research.
- In conjunction with bar associations, develop standards that will help to ensure that lawyers to whom service members are referred for legal services have the requisite expertise to represent them effectively.

Recruiting and retaining members of the armed services, especially those in the National Guard and Reserves, depends in part on assuring current and future Citizen Warriors that laws and regulations are in place to protect them effectively from discriminatory practices.

The Law Center is functioning at a modest but effective level. ROA is pursuing efforts to obtain private funding and to identify public and private entities willing to sustain this effort in order to expand this service to fuller capacity.

As part of the SMLC and under director Captain Sam Wright, JAGC, USNR (Ret.) the Law Center maintains the "Law Review" data base and indices contain over 600 articles on USERRA and SCRA issues. On a monthly basis CAPT Wright receives about 500 calls from concerned service members, families and attorneys. In March 2011 about 80 percent of the calls were about USERRA.

The Law Center's services include:

- **Counseling:** Review cases, and advise individuals and their lawyers as to lawfulness of actions taken against deployed active and reserve component members.
- **Referral:** Provide names of attorneys within a region that have successfully taken up USERRA, SCRA and other military-related issues.
- **Promote:** Publish articles encouraging law firms and lawyers to represent service members in USERRA, SCRA and other military-related cases.
- **Advise:** File amicus curiae, "friend of the court" briefs on service member protection cases.
- **Educate:** Quarterly seminars to educate attorneys a better understanding of USERRA, SCRA and other military-related issues.

The Service Members Law Center is available at [www.roa.org/ServiceMembers\\_Law\\_Center](http://www.roa.org/ServiceMembers_Law_Center).

## **DEFENSE EDUCATION FORUM**

ROA also maintains the Defense Education Forum (DEF). DEF produces and sponsors a wide variety of educational events that number more than 30 per year. Some past programs comprise employment and transition issues. The DEF director is Lieutenant Colonel Bob Feidler, USAR (Ret.).

In fact in 2008 ROA published a report on continuum of service entitled "[A New Employer-Reservist Compact: Initiatives for the Future](#)" which is available upon request.

Others events have included continuing education on USERRA, a joint issue event on mental health care and the Army Reserve Employer Partnership Program, Commission on the National Guard and Reserve and others.

The Defense Education Forum is available at [www.roa.org/Educate](http://www.roa.org/Educate).

## **CONCLUSION**

ROA and REA appreciate the opportunity to submit testimony, and we reiterate our profound gratitude for the progress achieved by these committees such as providing a GI Bill for the 21<sup>st</sup> Century and advanced funding for the VA.

ROA and REA look forward to working with the Senate Veterans' Affairs Committee, where we can present solutions to these and other issues, and offer our support, and hope in the future of an opportunity to discuss these issues in person.

ROA and REA encourage this Committee to utilize the Service Members Law Center and the Defense Education Forum and reports, both valuable assets, and to share it with your constituents and other Congressional members.