

RECENT DEVELOPMENT

POST-9/11 VETERANS EDUCATIONAL ASSISTANCE ACT OF 2008

I. INTRODUCTION

After receiving his undergraduate degree from Princeton University, William Bardenwerper enlisted in the Army and went on to serve in Iraq. Neither his Ivy League education nor his experience as a soldier, however, adequately prepared him for one monumental challenge: receiving educational assistance for graduate school after serving his country in wartime. Unable to collect his educational benefits after six months of wading through paperwork, Bardenwerper commented: “Not to sound elitist . . . but if a 31-year-old Princeton grad has a hard time deciphering what he is entitled to, then I have no idea how a 21-year-old armed only with a GED could navigate this system.”¹ His remark unfortunately hints at the difficulties that too many of today’s veterans face in attempting to further their education after they leave the military.

The wars in Iraq and Afghanistan have made this problem more pressing. Many veterans fortunate enough to return home are suffering from high rates of substance-abuse and unemployment, finding it difficult to reintegrate into civilian life.² Worse, there is a shortage of programs to assist these veterans, as Congress cut back many programs during the 1990s.³ Recently, however, Congress has been looking for solutions to this problem. In some cases, veterans’ advocates have partnered with members of Congress to introduce new legislation.⁴

One of these programs expands educational assistance to veterans, which the government has offered since the end of World War II, through the Servicemen’s Readjustment Act of 1944 (“GI Bill”).⁵ Currently, veterans receive educational assistance primarily through the Montgomery GI Bill. Passed in 1984 and named for its lead sponsor, Gillespie V. “Sonny” Montgomery, the Montgomery GI Bill was made permanent in 1987 and intended as a small recruitment incentive during peacetime.⁶

¹ Charles M. Sennott, *GI Bill Falling Short of College Tuition Costs*, B. GLOBE, Feb. 10, 2008, at A1, A6.

² Lizette Alvarez, *Home from the War, Many Veterans Battle Substance Abuse*, INT’L HERALD TRIB., July 8, 2008, at 5; Katherine Hutt Scott, *Young Veterans Join Unemployment Lines*, USA TODAY, July 14, 2006, available at http://www.usatoday.com/news/nation/2006-07-14-veterans-jobs_x.htm (available on the internet only).

³ Alvarez, *supra* note 2, at 5.

⁴ See, e.g., 154 CONG. REC. S3343 (2008) (statement of Sen. Webb).

⁵ Pub. L. No. 78-346, 58 Stat. 284 (codified at 38 U.S.C. § 3011 (June 22, 1944)).

⁶ Veterans’ Educational Assistance Act of 1984, Pub. L. 98-525, § 701, 98 Stat. 2492, 2553 (1984), amended by Pub. L. 100-48, §§ 2–5, 101 Stat. 331 (1987) (renaming Act “New

Service members decide whether to opt into the Montgomery GI Bill at in-processing, *i.e.* the initiation of service, but the process of actually receiving Montgomery GI Bill benefits does not end there.⁷ In order to receive this benefit, service members must pay the Department of Veterans Affairs (“VA”) \$1200, in \$100 increments deducted from their pay check each month during their first year of service.⁸ Simply choosing to receive benefits under the Montgomery GI Bill thus does not guarantee a soldier educational assistance.

The main criticism of the Montgomery GI Bill by veterans’ advocates focuses not on the \$1200 payment requirement, however, but rather on the fact that its payments are no longer adequate given the substantial increase in the cost of education since it was passed.⁹ Eric A. Hilleman of the Veterans of Foreign Wars of the United States expressed this concern, noting that “[t]he inflationary rate of higher education is much greater than [that of] the Consumer Price Index (CPI), to which the current Montgomery GI Bill is pegged.”¹⁰ As the relative value of the GI Bill payments diminishes, it increasingly fails to meet the financial need of veterans hoping to receive post-secondary education.

In response, Congress drafted several bills that would increase educational assistance to veterans. Examples include bills to defer veterans’ student loans,¹¹ ease eligibility requirements,¹² repeal time-bars on the use of benefits,¹³ extend Montgomery GI Bill to the National Guard and Reserves,¹⁴ and make educational assistance transferable to dependents.¹⁵ While these bills stalled, one bill did gain a large amount of support: S. 22. Although opposition from President George W. Bush and the Department of Defense ensured that S. 22 was never voted on, both houses eventually adopted H.R. 2642, the provisions of which were based on S. 22.¹⁶ S. 22 thus created the foundation of what would eventually become law.¹⁷

GI Bill Continuation Act”) (codified at 38 U.S.C. § 101 note (2000)) [hereinafter Montgomery GI Bill]; Statement on Signing the New GI Bill Continuation Act, 1 PUB. PAPERS 590 (June 1, 1987); Dan Ephron, *A Learning Disability*, NEWSWEEK, Nov. 26, 2007, at 40.

⁷ Terry J. Allen, *GI Bill Fails Vets*, IN THESE TIMES, May 2007, at 25.

⁸ 154 CONG. REC. S4714 (2008) (statement of Sen. Tester (D-Mont.)).

⁹ See *Veterans Benefits: Hearing Before the S. Comm. on Veterans’ Affairs*, 110th Cong. (2008) [hereinafter *Hilleman Statement*] (statement of Eric A. Hilleman, Deputy Dir., Nat’l Legislative Serv., Veterans of Foreign Wars of The United States) 2008 WL 1962316 (F.D.C.H.) (Westlaw).

¹⁰ *Id.*

¹¹ Veterans Education Tuition Support Act of 2007, H.R. 2910, 110th Cong. (2007).

¹² See Resuming Education After Defense Service Act of 2007, H.R. 1211, 110th Cong. (2007).

¹³ Montgomery GI Bill for Life Act of 2007, H.R. 2247, 110th Cong. (2007).

¹⁴ National Guard and Reserve Educational Benefits Fairness Act of 2007, S. 2139, 110th Cong. (2007).

¹⁵ Enhancement of Recruitment, Retention, and Readjustment through Education Act of 2008, S. 2938, 110th Cong. (2007) [hereinafter *Enhancement of Recruitment Act*].

¹⁶ See *infra* text accompanying notes 124–27.

¹⁷ 154 CONG. REC. S4294 (2008) (statement of Sen. Daniel Akaka (D-Haw.) (observing that H.R. 2642’s “provisions are drawn from S. 22”).

This Article first discusses the major components of H.R. 2642, with a focus on those provisions most significant for veterans who seek to decipher what they are entitled to receive. These provisions cover: (1) eligibility requirements;¹⁸ (2) the amount of educational assistance an individual can receive;¹⁹ (3) other payments;²⁰ (4) the Yellow Ribbon G.I. Education Enhancement Program;²¹ and (5) transferability of educational assistance to dependents.²² Then, in Part III, the Article summarizes the floor debates that arose over these components. Part IV assesses the policy effects that H.R. 2642's proponents believed these components would promote.

II. THE BILL

H.R. 2642, officially the Military Construction and Veterans and Related Agencies Appropriations Act, was signed into law on June 30, 2008. This Appropriations Act included an expansion of educational assistance to veterans in one of its provisions, the Post-9/11 Veterans Educational Assistance Act of 2008 ("the Act").²³ The changes prescribed in the Act will not take effect until August 1, 2009.²⁴ Until then, individuals will receive their educational benefits via the Montgomery GI Bill but will receive an increased monthly amount.²⁵

To make comprehension of the Act easier, Part II does not follow the Act's organization, but rather discusses five significant thematic components of the Act.

A. Eligibility

Section 3311 of the Act creates fairly broad categories of eligibility for educational assistance, although it gives some important exceptions to these categories. In general, the Act will apply to veterans who have served or will have served on active duty for at least thirty continuous days or ninety days total since 9/11, and who have not or do not receive a dishonorable discharge.²⁶ At the same time, the Act will not grant benefits to: (1) those whose service was terminated because of a defective enlistment agreement;²⁷ and (2) full-time officers serving after graduating from the service acade-

¹⁸ See *infra* Part II.A.

¹⁹ See *infra* Part II.B.

²⁰ See *infra* Part II.C.

²¹ See *infra* Part II.D.

²² See *infra* Part II.E.

²³ Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, § 5001-5007, 122 Stat. 2357 (West 2008) (codified at 38 U.S.C.A. §§ 101, 3301, 3311-19, 3321-24) [hereinafter Educational Assistance Act].

²⁴ *Id.* § 3301(c)(1)(A)(i).

²⁵ *Id.* § 5004(a)(1)(A).

²⁶ *Id.* § 3311(b)-(c).

²⁷ *Id.* § 3311(d)(3). This could be based on the individual being a minor, *id.* § 3311(d)(3)(A), or an erroneous enlistment or induction, *id.* § 3311(d)(3)(B).

mies, or as part of their agreement for receiving ROTC scholarships to other colleges.²⁸

More significantly, the Act changes the preexisting eligibility requirements by offering full educational assistance to individuals serving in the Reserves or National Guard.²⁹ Under the Montgomery GI Bill, those individuals received fewer educational benefits than did active duty individuals.³⁰ According to Senator John Tester (D-Mont.), this discrepancy was no longer justifiable given the prominent role Reservists and National Guardsmen have played in Iraq.³¹

To collect the educational assistance, an individual must enroll in an “approved program of education” offered by an accredited college or university.³² This excludes programs for a high school diploma or its equivalent.³³ On the other hand, part-time programs also constitute an “approved program of education.”³⁴ This provision will likely enable veterans to finance a part-time postsecondary education if they need to keep a job at the same time.

Section 3321 of the Act increases the time individuals have to claim their benefits from ten to fifteen years.³⁵ This change represents significant progress towards improving educational assistance to veterans, as “many returning veterans may not be emotionally ready right away to start school.”³⁶ Indeed, because of the Montgomery GI Bill’s ten-year limitation, and because many of today’s veterans have families and are older on average than veterans in the past, twenty-nine percent of veterans never claim benefits and only nine percent redeem the full amount of their benefits.³⁷ As a result, hundreds of millions of dollars have been effectively relinquished to the United States Treasury over the past decade.³⁸ Seventy-one percent of veterans do use some portion of their educational benefits, although the VA does not know what percentage of these veterans complete their degree.³⁹

²⁸ *Id.* § 3311(d)(1)–(2).

²⁹ 154 CONG. REC. S4714 (2008).

³⁰ 154 CONG. REC. S4714 (2008) (statement of Sen. Tester).

³¹ 154 CONG. REC. S4714 (2008); see also *Hilleman Statement*, *supra* note 9.

³² Educational Assistance Act § 3313(b).

³³ 38 U.S.C.A. § 3453(f) (West 2008).

³⁴ Educational Assistance Act § 3313(f). The same amount of tuition is offered regardless of whether the program of education is pursued on a full or part-time basis. *Id.* § 3313(f)(2)(A).

³⁵ *Id.* § 3321(a); *Veterans Legislative Presentations: Hearing Before the S. Comm. on Veterans’ Affairs and the H. Comm. on Veterans’ Affairs*, 110th Cong. (2008) (statement of Renee A. Campos, Deputy Dir., Gov’t Relations, Military Officers Ass’n of Am.).

³⁶ *Veterans Benefits Legislation: Hearing Before the S. Comm. on Veterans’ Affairs*, 110th Cong. (2008) ([hereinafter *Blake Statement*] (statement of Carl Blake, National Legislative Director, Paralyzed Veterans of America), 2008 WL 1962322 (Westlaw)).

³⁷ Michelle Diamant, *Battling for a Diploma*, WASH. POST, Aug. 5, 2007 (Magazine), at 18, 33.

³⁸ Allen, *supra* note 7, at 25.

³⁹ Diamant, *supra* note 37, at 33.

Furthermore, the Act removes the Montgomery GI Bill's requirement that individuals contribute \$1200 to be eligible for educational assistance.⁴⁰ As Senator Tester pointed out, this amount "may not seem much to some folks in Washington, but . . . to an airman just out of basic and on his or her first tour at a base . . . [t]hat \$1200 is a big deal."⁴¹ The Act thus abolishes this potentially daunting financial obstacle for individuals still in the services but hoping to continue their education in future years.

B. Tuition

Under section 3313, an individual can receive educational assistance in an amount up to "the maximum amount of established charges" that full-time, in-state students pay for an approved program of education.⁴² Compared to the Montgomery GI Bill, the Act automatically adjusts payments to meet the rising cost of education, which, in the case of college tuition, has risen by six percent over the last decade.⁴³ According to the Act's proponents, the rising cost of education served as a major impetus for their decision to update the Montgomery GI Bill.⁴⁴

A veteran can receive the maximum amount of educational assistance if he either serves on active duty for at least thirty-six months, or serves on active duty for at least thirty consecutive days and is discharged or released because of a service-related disability.⁴⁵ In contrast, veterans who serve less than thirty-six months may receive ninety percent of the maximum if they serve between thirty and thirty-six months, eighty percent of the maximum if they serve between twenty-four and thirty months, and so on.⁴⁶ An individual must receive at least forty percent of the maximum for serving between ninety days and six months, however, and may receive no more than the reduced ten percent for every six months that that individual serves below thirty-six months.⁴⁷

The Act also makes attending college cheaper by changing how cost-of-living-adjustments are calculated. Under the Act, cost-of-living-adjustments would be pegged to the actual cost of education, based on figures from the National Center for Education Statistics ("NCES").⁴⁸ By contrast, under the

⁴⁰ Compare Educational Assistance Act, Pub. L. No. 110-252 § 5003(c)(2), 122 Stat. 2323, 2376 (2008) (removing veterans' obligation to pay \$1200) with 38 U.S.C.A. §§ 3011(b), 3012(c) (West 2008) (containing old language requiring the \$1200 payment).

⁴¹ 154 CONG. REC. S4714 (2008) (statement of Sen. Tester).

⁴² Educational Assistance Act § 3313(c)(1)(A).

⁴³ 154 CONG. REC. S4714 (2008) (statement of Sen. Tester).

⁴⁴ *Id.*; 154 CONG. REC. S4733 (2008) (statement of Sen. Specter (R-Pa.)).

⁴⁵ Educational Assistance Act § 3311(b); see also *id.* § 3311(c)(1).

⁴⁶ *Id.* § 3313(c)(2)-(3).

⁴⁷ *Id.* § 3313(c)(4)-(7).

⁴⁸ Compare Educational Assistance Act, Pub. L. No. 110-252 § 5004(c), 122 Stat. 2323, 2379 (2008), (basing cost-of-living adjustments on NCES statistics), with 38 U.S.C.A. § 3015(h)(1)(A)-(B) (West 2008) (containing old language basing cost-of-living adjustments on the Consumer Price Index).

Montgomery GI Bill, cost-of-living-adjustments are pegged to the Consumer Price Index, which has historically been lower than the actual increase in the cost of education, unlike the NCES figures.⁴⁹

The Act's effectiveness may ultimately rest not on how much assistance the military gives to its soldiers, but rather, on how timely the military is in rendering that assistance. Veterans have often cited late payments or non-payments as a major problem in the administration of the Montgomery GI Bill.⁵⁰ Currently, over 118,000 veterans are waiting for their educational benefit claims to be processed.⁵¹ As a result, some of these veterans have chosen not to collect their educational assistance altogether, deciding that the process was too cumbersome.⁵² The Act does not specify when tuition payments will be made, but it does provide that the VA can authorize advance payments to the educational institution.⁵³ Whether and how often the VA authorizes this may go far in achieving effective implementation of the Act.

Despite the increased payments, individuals eligible under the Act may nonetheless elect to receive Montgomery GI Bill benefits, because the former does not cover programs not offered by institutes of higher learning ("IHLs").⁵⁴ Before the Committee on Senate Veteran Affairs, Keith R. Pedigo of the Department of Veterans Affairs said,

An individual entering active duty after enactment of this bill would be required to elect MGIB-AD . . . if he or she wanted to pursue training offered by institutions or establishments that are not IHLs This requires that individuals decide what type of program they wish to pursue prior to making an election for which program to credit their active-duty service.⁵⁵

Individuals who initially elect the Montgomery GI Bill, however, may later transfer to the Act and receive a full refund (including the \$1200 pay reduction) if they have not used their benefits, or receive a prorated refund.⁵⁶

⁴⁹ See *Hilleman Statement*, *supra* note 9.

⁵⁰ Sennott, *supra* note 1, at A6.

⁵¹ IRAQ AND AFGHANISTAN VETERANS OF AMERICA, A NEW GI BILL: REWARDING OUR TROOPS, REBUILDING OUR MILITARY 3 (2008), <http://www.iava.org/documents/ANewGIBill.pdf> [hereinafter "IAVA"].

⁵² See *id.* at 3.

⁵³ Educational Assistance Act § 3313(d)(3) ("The Secretary shall prescribe in regulations methods for determining the number of months . . . of entitlement of an individual to educational assistance . . . that are chargeable . . . for an advance payment").

⁵⁴ *Veterans' Benefits: Hearing Before the S. Comm. On Veterans' Affairs*, 110th Cong. (2008), 2008 WL 1962323 (Westlaw) [hereinafter *Pedigo Statement*] (statement of Keith R. Pedigo, Assoc. Deputy Under Secretary, Policy and Program Mgmt. Dep't of Veterans Affairs).

⁵⁵ *Id.*

⁵⁶ *Id.*

C. Other Payments

In addition to tuition assistance, the Act makes other payments, some of which are mandatory, others discretionary.

Mandatory payments include those made for housing, books and supplies, and travel expenses. All individuals receive a monthly housing stipend, unless they attend “a program of education offered through distance learning.”⁵⁷ This addresses the concern that students will be unjustly enriched by, for instance, enrolling in online learning programs at schools with the highest housing stipend rate.⁵⁸ Regarding books and supplies, the Act mandates giving veterans a lump sum of up to \$1000 in the first month of every term.⁵⁹

The Act also provides for a \$500 travel stipend as a one-time payment to any veteran who resides in a county with less than seven persons per square mile and has to relocate at least 500 miles by air to pursue a program of education.⁶⁰ “[H]as to relocate . . . by air” means that “the individual cannot travel to such institution by automobile or other established form of transportation due to an absence of road or other infrastructure.”⁶¹ From this language, it is not clear how difficult it will be to receive the travel stipend, but that issue will likely depend on how strictly the term “cannot” is interpreted.

Certain discretionary payments are available in addition to, but not in place of, tuition assistance.⁶² First, a veteran may receive up to \$1200 for tutorial assistance, although the person teaching the course must certify that the tutorial assistance is “essential to correct a deficiency of the individual in such course” and that the course is a “prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.”⁶³ Second, \$2000 is available to individuals for any licensure or certification tests that accompany their degree.⁶⁴ Third, the Secretary may provide supplemental educational assistance to individuals with certain skills or specialties.⁶⁵ As to how the Secretary should determine which skills or specialties will warrant this additional assistance, the Act recommends looking for either “a critical shortage of personnel” or areas “for which it is difficult to recruit or . . . retain personnel.”⁶⁶ This supplemental educational assistance may not exceed the amount designated in section 3015(d)(1).⁶⁷

⁵⁷ *Id.* § 3313(c)(1)(B)(i), (d)(2).

⁵⁸ *See Pedigo Statement, supra* note 54.

⁵⁹ Educational Assistance Act § 3313(c)(1)(B)(ii).

⁶⁰ *Id.* § 3318(a)–(b), (d).

⁶¹ *Id.* § 3318(b)(2)(B).

⁶² *See, e.g.,* Educational Assistance Act, §§ 3314(c)(1)(2), § 3315(c), 3316(a)(1).

⁶³ *Id.* § 3314(c)(1)–(2).

⁶⁴ *Id.* § 3315.

⁶⁵ *Id.* § 3316(a)(1).

⁶⁶ *Id.* § 3316(a)(1).

⁶⁷ *Id.* § 3316(a)(2).

D. *Yellow Ribbon G.I. Education Enhancement Program*
(“Yellow Ribbon Program”)

Under the Yellow Ribbon Program, if the Act’s educational assistance does not fully cover tuition, the institution of higher learning may enter into an agreement with the VA to cover a portion of that difference.⁶⁸ In return, the VA will match that contribution for up to fifty percent of the remaining costs for tuition and mandatory fees.⁶⁹ The agreement must specify how the institution of higher learning’s contributions are made (*e.g.* by direct grant, scholarship, or otherwise), the maximum amount the institution may contribute, the maximum number of individuals for whom the institution may make a contribution, and any other terms the institution and VA believe are appropriate.⁷⁰

Eligibility for the Yellow Ribbon Program is stricter than it is for tuition assistance.⁷¹ An individual must serve at least thirty-six months or serve thirty continuous days on active duty and be discharged for a service-connected disability.⁷²

To encourage institutions of higher learning to enter into these agreements, the Act requires that the VA list all participating colleges on the Department of Defense’s website.⁷³ The website will specify “appropriate information on the agreement between the [VA] and such college.”⁷⁴ At this time, though, it is not clear to what extent, if at all, this publicity incentive will motivate institutions to participate in the program.

Two concerns were raised about the Yellow Ribbon Program: first, that it presents a significant administrative burden, and second, that it fails to ensure that institutions treat all eligible individuals equally.⁷⁵ After an institution begins its participation in the Yellow Ribbon Program, however, the VA will, for the most part, only need to monitor to whom payments are made. Furthermore, if an institution does not treat all eligible individuals equally, then the VA has broad discretion under section 3317 to remedy such a situation.

⁶⁸ Educational Assistance Act § 3317(a). The “Yellow Ribbon Program” is the name given by the Act. *Id.* § 3317(b).

⁶⁹ Educational Assistance Act § 3317 (a), (d)(1).

⁷⁰ *Id.* at § 3317(c)(1)–(4).

⁷¹ Only individuals covered by sections 3313(b)(1) and 3313(b)(2) are eligible for the Yellow Ribbon Program. Educational Assistance Act § 3317(a).

⁷² Educational Assistance Act § 3311(b)(1)–(2).

⁷³ *Id.* § 3317(e).

⁷⁴ *Id.* § 3317(e).

⁷⁵ *Pedigo Statement, supra* note 54.

E. Transferability

Any soldier who has served for six years, and then agrees to serve for at least four more years, may transfer educational benefits to a dependent.⁷⁶ A dependent may be either a spouse or a child, but if it is the latter, the child may not use the educational benefits until the parent has completed ten years of service in the armed forces.⁷⁷ Furthermore, the child must be at least eighteen years old, or have received a secondary school diploma or its equivalent, in order to receive the benefits.⁷⁸ The child also cannot receive the benefit if twenty-six years or older.⁷⁹ None of these restrictions apply to a spouse receiving the educational benefits.⁸⁰ Regardless of whether the dependent is a child or spouse, however, he will receive the same amount as the individual serving in the armed forces.⁸¹ Moreover, the dependent, unlike the individual serving in the armed forces, may use the educational assistance to pursue a secondary school degree.⁸²

When entering into the agreement, the individual must specify the amount of educational assistance to be transferred and to whom.⁸³ The veteran may not transfer more than thirty-six months of educational assistance, but the Secretary of Defense may require that he transfer at least eighteen months of educational assistance as part of the agreement.⁸⁴ Once the agreement is made, the individual may modify or revoke the transfer of the unused portion of the entitlement to educational assistance by giving written notice to the Secretaries of Defense and Veterans Affairs.⁸⁵

If the individual transferring the entitlement breaches the contract (*e.g.* by not serving four additional years in the armed forces), then any transferred entitlement is treated as an overpayment.⁸⁶ In such a case, both the individual making the transfer and the dependent are “jointly and severally liable to the United States for the amount of the overpayment.”⁸⁷ This provision is not in S. 22. Rather, it was added to H.R. 2642 to quell opposition.⁸⁸ Senator Jim Webb (D-Va.) opposed making educational benefits transferable

⁷⁶ Educational Assistance Act § 3319(b).

⁷⁷ *Id.* § 3319(c), (g)(2)(A)(i).

⁷⁸ *Id.* § 3319(g)(2)(B).

⁷⁹ *Id.* § 3319(h)(5).

⁸⁰ *See id.* § 3319(g)(1)(A).

⁸¹ *Id.* § 3319(h)(2).

⁸² Educational Assistance Act § 3319(h)(6). This includes an equivalency certificate.

⁸³ *Id.* § 3319(e).

⁸⁴ *Id.* § 3319(d). There are other limits on the transfer of benefits. For example, the entitlement transferred “may not be treated as marital property . . . subject to division in a divorce or other civil proceeding.” *Id.* § 3319(f)(3). Any other regulations will be specified by the Secretary of Defense in coordination with the Secretary of Veterans Affairs. *Id.* § 3319(j).

⁸⁵ *Id.* § 3319(f)(2).

⁸⁶ *Id.* § 3319(i)(2)(A). An exception is made if the transferor dies. *Id.* § 3319(i)(2)(B)(i); *see also id.* § 3319(h)(4).

⁸⁷ *Id.* § 3319(i)(1).

⁸⁸ The Pentagon made transferability a priority. Rick Maze, *GI Bill Transfer Rights ‘Essential,’ Gates Says*, NAVY TIMES, May 12, 2008, at 40–41.

because he did not believe that individuals would make use of the provision.⁸⁹ Nonetheless, Senator Webb did not fight the provision, expressing hope that “with this gesture we can get full support for this legislation and get it into law.”⁹⁰ Media sources reported that allowing educational benefits to be made transferable was necessary to get President Bush’s support for the rest of the Act.⁹¹

III. FLOOR DEBATE

Part III provides a background on H.R. 2642, including its predecessor, S. 22, and then addresses the three important issues that were raised against both bills in the floor debate: their (1) cost; (2) administration; and (3) effects on recruitment and retention.

Senator Webb introduced S. 22 on January 4, 2007, as his first legislative act in the Senate.⁹² Fifty-eight Republican and Democratic Senators cosponsored S. 22, and the bill received the support of numerous veterans’ advocates.⁹³ Senator Webb hoped to give returning veterans the same benefits and opportunities provided to veterans of World War II and subsequent wars—including Senator Webb, himself a Vietnam War veteran whose Georgetown Law School degree had been paid for in full.⁹⁴ In his statements introducing S. 22, Senator Webb remarked that “it is now time to implement a more robust educational assistance program for our heroic veterans who have sacrificed so much for our great Nation.”⁹⁵

Opponents to S. 22 made three arguments against the bill.⁹⁶ First, opponents said the bill would cost too much, specifically, “\$171.7 million during FY 2008, \$17.6 billion for 5 years, and \$64.90 billion over 10 years.”⁹⁷ Senator Webb responded to this by putting the figures in perspective. He pointed out that \$18.2 billion in educational grants is given to individuals

⁸⁹ See 154 CONG. REC. S4764 (2008) (statement of Sen. Webb). Senator Akaka presented evidence that “[l]ess than 2 percent of the 17,000 soldiers who were given an option to transfer benefits to a spouse accepted it.” 154 CONG. REC. S4294 (2008) (statement of Sen. Akaka).

⁹⁰ See 154 CONG. REC. S4764-5 (2008) (statement of Sen. Webb).

⁹¹ See David Lerman, *President Bush Signs New GI Bill Into Law*, DAILY PRESS, June 30, 2008, http://www.dailypress.com/news/dp-local_gisigning_0701jul01,0,4737052.story (available on internet only).

⁹² S. REP. NO. 110-433, at 2 (2008); Editorial, *Benefits of New GI Bill are Well Worth the Cost*, CHARLOTTE OBSERVER, July 2, 2008, at 10A [hereinafter *Benefits of New GI Bill*].

⁹³ Veterans’ advocates group supporting the bill included Paralyzed Veterans of America, AMVETS, Disabled American Veterans, and Veterans of Foreign Wars. See *Blake Statement*, *supra* note 36.

⁹⁴ *Regarding Pending Veterans’ Benefits Legislation: Hearing Before the S. Comm. on Veterans’ Affairs*, 110th Cong. (2007) (statement of Sen. Webb), http://veterans.senate.gov/public/index.cfm?pageid=16&release_id=11110&sub_release_id=11125&view=all (available on internet only); 154 CONG. REC. S428-9 (2008) (statement of Sen. Webb).

⁹⁵ 153 CONG. REC. S56 (2007).

⁹⁶ 154 CONG. REC. S3344 (2008) (statement of Sen. Webb).

⁹⁷ *Pedigo Statement*, *supra* note 54.

based on their economic status alone.⁹⁸ More significantly, he said that these costs are negligible when compared to the cost of fighting in Iraq and Afghanistan, an average of fifteen billion dollars a month.⁹⁹ Therefore, S. 22 costs one week of fighting in Iraq and Afghanistan.¹⁰⁰ Senator Webb argued that this was the best way of assessing the bill's costs, since "a GI bill is a cost of war."¹⁰¹

Second, opponents feared that despite the Act's potential benefits, it could not be administered effectively. The VA raised this concern to the Senate, stating that not only was there an insufficient number of trained personnel to administer the program, there was no automated payment system in place and it would take about two years to deploy one.¹⁰² In the meantime, the fear was that the VA "would be forced to manually process such payments."¹⁰³ Senator Webb responded that he had worked closely with prospective officials to make payments easy to administer.¹⁰⁴ Furthermore, Senator Webb noted that the VA had managed to administer the original G.I. Bill "in a day where we didn't have computers, and they were able to do it for 8 million people."¹⁰⁵

Third, opponents expressed concern that S. 22 would hurt retention.¹⁰⁶ In response to this argument, Senator Lindsey Graham (R-S.C.) introduced S. 2938 as a direct alternative to S. 22 on April 29, 2008.¹⁰⁷ S. 2938 would have allowed individuals who spent at least six years in the military to transfer educational benefits to dependents, among other provisions.¹⁰⁸ This bill, however, received much less support than S. 22.¹⁰⁹ Proponents tried to attach the bill to unrelated legislation, but it was tabled by a vote of fifty-six to forty-two.¹¹⁰

In the end, S. 22 likewise failed to pass, despite the apparently broad support it had garnered. In expressing their support for the bill, various senators expressed a desire to repay service members and their families for their

⁹⁸ 154 CONG. REC. S429 (2008).

⁹⁹ *Id.*

¹⁰⁰ *Id.* (statement of Sen. Webb).

¹⁰¹ *Id.* This is generally how proponents responded to criticisms of the Act's cost. *See, e.g.*, 154 CONG. REC. S4292-93 (2008) (statement of Sen. Salazar (D-Colo.)); 154 CONG. REC. S4294 (2008) (statement of Sen. Akaka).

¹⁰² *Pedigo Statement, supra* note 54.

¹⁰³ *Id.*

¹⁰⁴ 154 CONG. REC. S3344 (2008).

¹⁰⁵ 154 CONG. REC. S4464 (2008) (statement of Sen. Webb).

¹⁰⁶ This issue is discussed at *infra* Part IV.C.

¹⁰⁷ Enhancement of Recruitment Act of 2008, S. 2938, 110th Cong. (2008); 154 CONG. REC. S3344 (2008) (statement of Sen. Webb). The media also portrayed S. 22 and S. 2938 as being in direct opposition. *See, e.g.*, *Benefits of New G.I. Bill, supra* note 92.

¹⁰⁸ Enhancement of Recruitment Act, § 8(2)(b)(1).

¹⁰⁹ Most veterans' advocates preferred S. 22 to S. 2938. Jay Newton-Small, *Does McCain Have a Vets Problem?*, TIME, May 20, 2008, <http://www.time.com/time/nation/article/0,8599,1808161,00.html> (available on the internet only).

¹¹⁰ *Id.*

sacrifices to the nation.¹¹¹ Despite the support voiced by these senators, it was never put to a vote because of opposition from President George W. Bush and the Department of Defense.¹¹² With only fifty-eight supporters in the Senate, the bill was two votes short of the sixty votes needed to overcome a filibuster.¹¹³

H.R. 2642, the bill that later encompassed provisions based on S. 22 that ultimately became law, was introduced by Rep. Thomas “Chet” Edwards (D-Tex.) in the House on June 11, 2007, without any cosponsors.¹¹⁴ It passed the House with some amendments on June 15, 2007, by a vote of 409 to 2.¹¹⁵ Although the Senate voted to adopt it by a vote of ninety-two to one on September 6, 2007, debate over the bill did not resume until May 2008.¹¹⁶ At that time, additional spending for Iraq became urgent.¹¹⁷ Senators took advantage of the situation by adding many domestic priorities, including increasing unemployment compensation and funding local law enforcement, to H.R. 2642.¹¹⁸ A few senators remarked that they opposed tying the war in Iraq to extraneous domestic issues.¹¹⁹ Only Senator Orrin Hatch (R-Utah), however, voted against adding S. 22 to H.R. 2642 for this reason, lamenting Congress’s failure to debate S. 22 against competing proposals.¹²⁰

A more fundamental disagreement between the House and Senate lay in how to fund the educational assistance. The bill that originally passed in the House increased the tax rate on individuals making over \$500,000 or couples making over \$1 million by .47% to pay for its costs.¹²¹ The Senate

¹¹¹ 154 CONG. REC. S4719 (2008) (statement of Sen. Clinton (D-N.Y.)) (“This is our moment to provide each and every new veteran the opportunity to realize their version of the American dream—the dream they have spent their lives trying to defend.”); 154 CONG. REC. S4720 (2008) (statement of Sen. Durbin (D-Ill.)) (“Do not tell me how much you honor our military if you will not honor them and their families by giving them a chance at a quality education.”); 154 CONG. REC. S4740–41 (2008) (statement of Sen. Obama (D-Ill.)) (“We have asked so much of our brave young men and women . . . They have risked their lives and left their families and served this country brilliantly. It is our moral duty as Americans to serve them as well as they have served us. This GI bill is an important way to do that.”).

¹¹² Anna Quindlen, *Because It’s Right*, NEWSWEEK, March 31, 2008, at 68; Alex Koppelman, *Senate Passes Expanded GI Bill Despite Bush, McCain Opposition*, SALON.COM, May 22, 2008, http://www.salon.com/politics/war_room/2008/05/22/gi_bill/.

¹¹³ Newton-Small, *supra* note 109.

¹¹⁴ 154 CONG. REC. S4294 (2008) (statement of Sen. Akaka (D-Haw.)) (stating that H.R. 2642’s “provisions are drawn from S. 22.”); 153 CONG. REC. H6234 (2007).

¹¹⁵ 153 CONG. REC. H6565–66 (2007).

¹¹⁶ 153 CONG. REC. S11144 (2007); *see Veterans’ Benefits: Hearing Before the S. Comm. on Veterans’ Affairs*, 110th Cong. (2008) (statement of Sen. Akaka, Chairman) 2008 WL 1962326 (F.D.C.H.) (Westlaw).

¹¹⁷ *See* 154 CONG. REC. S4737 (2008) (statement of Sen. McCain (R-Ariz.)).

¹¹⁸ 154 CONG. REC. S4717 (2008) (statement of Sen. Harkin (D-Iowa)); *see generally* 154 CONG. REC. S4717 (2008) (statement of Sen. Cornyn (R-Tex.)) (The Act “has now been larded up with a bunch of pet projects and other spending which have nothing to do with supporting our troops in harm’s way.”).

¹¹⁹ *See, e.g.*, 154 CONG. REC. S4462 (2008) (statement of Sen. Cochran (R-Miss.)) (“[T]he Senate amendments contain a number of legislative provisions and appropriations that were not included in the President’s request.”).

¹²⁰ 154 CONG. REC. S4726 (2008) (statement of Sen. Hatch).

¹²¹ 154 CONG. REC. S4727 (2008) (statement of Sen. Carper (D-Del.)).

opposed this.¹²² As a result, under the final agreement, the bill simply states that funds to pay educational assistance will be “appropriated to, or otherwise made available.”¹²³

On May 20, 2008, Senator Harry Reid (D-Nev.) offered an amendment to H.R. 2642, S. Amendment 4803, which included provisions derived from S. 22.¹²⁴ In fact, much of the Act’s final language is taken directly from S. 22.¹²⁵ The amendment received widespread support in the Senate, passing seventy-five to twenty-two with three no votes.¹²⁶ In the House, the amendment passed 256 to 166.¹²⁷

Meanwhile, reports surfaced in the media stating that President Bush could not afford to veto the emergency spending measure despite his opposition to the Act.¹²⁸ At the time, Pentagon officials warned that unless additional funding was received by midyear 2008, many operations in Iraq would be shut down.¹²⁹ When President Bush signed the bill into law, he nonetheless characterized its passage as a victory, despite his previous opposition to it. Declaring that he was “pleased” that the bill he was signing would expand the G.I. Bill, he added that “[t]he bill is a result of close collaboration between my administration and members of both parties on Capitol Hill.”¹³⁰

IV. POLICY EFFECTS

Proponents of the Act laid out three justifications for expanding educational assistance: to (1) increase educational opportunities for veterans; (2) stimulate the economy; and (3) strengthen the Armed Forces by improving recruiting.¹³¹

¹²² See 154 CONG. REC. S4714 (2008) (statement of Sen. Tester).

¹²³ Educational Assistance Act § 3324(b).

¹²⁴ 154 CONG. REC. S4475 (2008); S. REP. NO. 110-433, at 8 (2008).

¹²⁵ See 154 CONG. REC. S4294 (2008) (statement of Sen. Akaka).

¹²⁶ S. REP. NO. 110-433, at 2 (2008).

¹²⁷ *Id.* at 2 (2008).

¹²⁸ According to *The Charlotte Observer*, President Bush signed the new GI Bill into law—despite previously expressing vehement opposition and threatening to veto it—because he had to ensure war funding. *Benefits of New GI Bill*, *supra* note 92. Acquiescence to the GI Bill may have also been a concession to Democrats for dropping efforts to impose a timeline for troop withdrawals from Iraq. Richard Simon, *Bush Signs Emergency War Spending Measure*, L.A. TIMES, July 1, 2008, at A3.

¹²⁹ Simon, *supra* note 128. Deputy Defense Secretary Gordon R. England was so worried that he sent a memo to all Pentagon agencies asking that plans for a shutdown be sent to him by the end of June. 154 CONG. REC. S4737 (2008) (statement of Sen. McCain).

¹³⁰ President George W. Bush, Remarks on Signing H.R. 2642 (June 30, 2008), <http://www.whitehouse.gov/news/releases/2008/06/20080630.html>. Senator John McCain did the same, despite not voting on H.R. 2642. Byron Wolf, *McCain Now Supports GI Bill, War Funding Bill*, ABC News, <http://blogs.abcnews.com/politicalradar/2008/06/mccain-now-supp.html>.

¹³¹ See Educational Assistance Act § 3301 note.

A. *Increasing Educational Opportunities for Veterans*

Proponents of the Act argued that the Montgomery GI Bill was outdated because the cost of education has risen dramatically since it passed.¹³² One such proponent, Senator Tester, cited evidence that Montgomery GI Bill payments covered “only about 70 percent of the actual cost of attending a [public] university It is only a drop in the bucket for a private school.”¹³³ According to the College Board, attending a public four-year university costs an average of \$46, 817.¹³⁴ This is too expensive for most veterans receiving benefits under the Montgomery GI Bill.¹³⁵ Veterans of World War II, in contrast with today’s veterans, attended the most expensive universities of their time, public and private, because the GI Bill paid for all of their expenses.¹³⁶ Senator Webb’s introductory statements about S. 22 indicate that he wrote it out of a desire to give today’s veterans the wide array of educational options that veterans of World War II enjoyed.¹³⁷

Opponents like Curtis L. Gilroy of the Department of Defense agree that the Montgomery GI Bill covers seventy percent of the cost of attending a public university, but disagree that it has become less effective since it passed.¹³⁸ Gilroy testified before the House that the Montgomery GI Bill covers a greater percentage of college costs than when it passed.¹³⁹ First, Montgomery GI Bill benefits have been adjusted for inflation every year since 1993.¹⁴⁰ Second, the Montgomery GI Bill offers kickers—additional benefits if certain requirements are met—of up to \$950 per month.¹⁴¹ With a \$950 kicker, “the maximum benefit of the Service College Funds covered 140 percent of the average total expenses at a public four-year university.”¹⁴² 12,000 individuals have received a kicker.¹⁴³

¹³² Quindlen, *supra* note 112; Paul Starr, *Mobilizing Millennials*, AM. PROSPECT, March 2008, at A6; Elizabeth Redden, *Gauging the New GI Bill*, INSIDE HIGHER EDUC., June 20, 2008, <http://www.insidehighered.com/news/2008/06/20/gibill>.

¹³³ 154 CONG. REC. S4714 (2008) (statement of Sen. Tester).

¹³⁴ Diamant, *supra* note 37. This amount does not take into account books or living expenses such as health care.

¹³⁵ *Id.*

¹³⁶ Many current Senators have taken advantage of a GI Bill. For example, Senator Frank Lautenberg (D-N.J.) attended Columbia University for free. Senator John Warner (R-Va.) took advantage of two GI Bills, receiving degrees from Washington and Lee University and the University of Virginia Law School. 154 CONG. REC. S429 (2008) (statement of Sen. Webb).

¹³⁷ *Id.* at 164.

¹³⁸ *G.I. Bill Overhaul: Hearing Before the H. Subcomm. on Economic Opportunity*, 110th Cong. at 24 (2008) [hereinafter *Gilroy Statement*] (joint statement of Thomas L. Bush, Acting Deputy Ass’t Sec’y of Defense for Reserve Affairs, U.S. Dep’t of Defense, and Curtis L. Gilroy, Dir., Accession Policy, Office of the Undersecretary of Defense for Personnel and Readiness, U.S. Dep’t of Defense).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* This is only available to individuals in the Army, Navy, and Marine Corps. *Id.*

¹⁴² *Id.*

¹⁴³ *Gilroy Statement*, *supra* note 138.

On the other hand, if the Act provides additional funding, then veterans will enjoy a greater variety of colleges among which to choose where they will pursue their education, without being restricted to those offering cheaper tuitions.¹⁴⁴ Currently, forty percent of Montgomery GI Bill recipients pursue two-year degrees, such as from the University of Phoenix.¹⁴⁵ With greater benefits, more veterans are expected to attend four-year programs at expensive schools.¹⁴⁶ Moreover, by eliminating the \$1200 buy-in, which deterred many recruits from opting into the Montgomery GI Bill, the Act will increase the pool of veterans likely to take advantage of the educational assistance it offers.¹⁴⁷ Many cannot afford to spend \$1200, or, because of their young age, do not have the foresight to plan for the future.¹⁴⁸ By increasing educational assistance and eliminating the buy-in, the Act is expected to increase veteran usage of educational benefits by twenty to thirty-five percent.¹⁴⁹ That will mean at least 100,000 more veterans taking advantage of some portion of these benefits to pursue their higher education.¹⁵⁰

Furthermore, the recruits who do opt into the Montgomery GI Bill, hoping it will help them further their education once they are out of the service, are misled regarding the extent of the future educational opportunities the Montgomery GI Bill currently offers. For instance, a machine gunner reported that recruiters misled him by telling him: "Don't worry. College is taken care of."¹⁵¹ Even if this soldier is exaggerating or misheard that recruiter, the fine print would have done little to correct his impression, as advertising brochures say that THE Montgomery GI Bill can provide veterans with a \$72,900 college benefit.¹⁵² This is technically true, but very few recruits, as a practical matter, actually receive \$72,900.¹⁵³ \$72,900 assumes bonuses reserved for enlistees with special skills or who commit to jobs that are difficult to fill.¹⁵⁴ By contrast, the Act offers enlistees higher monthly payments based on time of service than does the Montgomery GI Bill, regardless of whether the enlistee has special skills or commits to jobs that are difficult to fill. Therefore, under the Act, a veteran is much more likely to

¹⁴⁴ Blake Statement, *supra* note 36 (testimony of Carl Blake).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* Keith Wilson, Director of the Education Service at the Department of Veterans Affairs, believes that convenience is veterans' main concern. Therefore, they are still likely to attend the same local and on-line schools, an example of the latter being the University of Phoenix. Redden, *supra* note 132.

¹⁴⁷ See Allen, *supra* note 7.

¹⁴⁸ *Id.*

¹⁴⁹ David Rogers, *New GI Bill Shows Changed Priorities*, POLITICO, July 9, 2008, <http://dyn.politico.com/printstory.cfm?uuid=052899E5-3048-5C12-00AAF2A3FF9D7664>.

¹⁵⁰ *Id.* at 3.

¹⁵¹ Sennott, *supra* note 1. Even if it is debatable whether recruiting officials lie, a Department of Defense official admits that recruiters are "always going to play up the best case." *Id.*

¹⁵² Diament, *supra* note 37.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

afford a college education, based solely on time of service, without the hassle of trying to qualify for additional bonuses.

B. *Stimulating the Economy*

Without a college degree, many veterans will not be able to find employment. According to the Bureau of Labor Statistics, veterans of Iraq and Afghanistan are unemployed at a rate three times the national average.¹⁵⁵ Enabling more veterans to receive college degrees would almost certainly remedy this problem by increasing their employment opportunities.¹⁵⁶ This development would help not only veterans, but ultimately the economy itself.

Senator Webb has predicted that educating veterans would “spark economic growth and expansion for a whole generation of Americans,” just like the original GI Bill.¹⁵⁷ Of the 5 million veterans who took advantage of the GI Bill after World War II, many became an integral part of the economy, creating the middle class.¹⁵⁸ Economists, including Nobel Prize-winning economist Joseph Stiglitz, and the government agreed that every dollar spent on the GI Bill returned between five and thirteen dollars.¹⁵⁹

The original GI Bill also created intangible benefits. Many veterans became important public figures: three became president and fourteen went on to win the Nobel Prize.¹⁶⁰ Though the GI Bill may not have directly caused such results, it nonetheless provided these veterans with significant financial, and in turn educational, resources that bolstered their ability to achieve these goals.¹⁶¹

C. *Strengthening the Armed Forces*

One issue dominated the Senate debate on S. 22: whether its recruiting benefit outweighed its negative impact on retention.¹⁶² This spurred Senator Webb and others to commission a Congressional Budget Office (“CBO”) study on this issue.¹⁶³

Regarding recruiting, the CBO found that S. 22 would save the armed forces \$5.6 billion in enlistment bonuses and other recruitment costs.¹⁶⁴ Past

¹⁵⁵ Quindlen, *supra* note 112.

¹⁵⁶ See Diament, *supra* note 37.

¹⁵⁷ 154 CONG. REC. S42-01 (2007) (statement of Sen. Webb).

¹⁵⁸ Quindlen, *supra* note 112.

¹⁵⁹ Ephron, *supra* note 6 at 40; Bob Herbert, Op-Ed., *Doing the Troops Wrong*, N.Y. TIMES, May 6, 2008, at A27; Sennott, *supra* note 1; Diament, *supra* note 37; Wesley K. Clark & Jon Soltz, Op-Ed., *McCain Must Lead the Charge*, L.A. TIMES, Apr. 10, 2008, at A23.

¹⁶⁰ See Ephron, *supra* note 6, at 40.

¹⁶¹ See *id.* at 40.

¹⁶² See 154 CONG. REC. S4714 (2008).

¹⁶³ See *id.*; JUDD GREGG, CONGRESSIONAL BUDGET OFFICE REPORT 1 (May 8, 2008) [hereinafter CBO REPORT].

¹⁶⁴ CBO REPORT, *supra* note 163, at 2.

data showed that a ten percent increase in educational benefits resulted in a one percent increase in high-quality recruits.¹⁶⁵ According to a 2004 survey commissioned by the Army and a Department of Defense-sponsored poll, educational benefits are the most common reason cited by recruits for considering enlistment.¹⁶⁶ The Department of Defense has even called educational benefits “vital” to recruiting efforts.¹⁶⁷

On the other hand, higher benefits may decrease retention rates. Regarding retention, more individuals leave as opportunities post-service become more enticing.¹⁶⁸ This is particularly true given the difficult conditions soldiers face in Iraq: multiple deployments, poor wages, and inadequate medical care.¹⁶⁹ According to the Department of Defense, large benefits were appropriate after World War II, when the United States wanted to achieve rapid demobilization, but are not appropriate while it is still in the midst of a war and needs to retain soldiers.¹⁷⁰ As a Pentagon recruiting-policy director argued: “[i]f the benefit is too large, many troops will leave the military after their first term.”¹⁷¹

The study concluded that there is a delicate balance between recruitment and retention.¹⁷² When benefits exceed \$1500 per month—the average cost of pursuing a degree as an in-state student at a public university—the CBO found that the negative effect on retention became greater than the positive effect on recruitment.¹⁷³ Therefore, to maintain current enlistment levels, the CBO estimated that the Department of Defense would have to spend an additional \$1.1 billion from 2009 to 2013.¹⁷⁴ This is the expected cost of increasing bonus payments for reenlistment, minus savings for enlistment bonuses and other recruitment costs.¹⁷⁵

Those senators who opposed S. 22 mainly cited the CBO study in support of their position.¹⁷⁶ Some even argued that the CBO overestimated the positive recruitment impact. Gilroy advanced this argument before the

¹⁶⁵ *Id.* at 2.

¹⁶⁶ Diament, *supra* note 37; Allen, *supra* note 7.

¹⁶⁷ *Gilroy Statement*, *supra* note 138.

¹⁶⁸ See Victor LaPorte, *US Military Needs the New GI Bill*, HUFFINGTON POST, June 1, 2008, http://www.huffingtonpost.com/victor-laporte/us-military-needs-the-new_b_104590.html.

¹⁶⁹ Quindlen, *supra* note 112, at 68. Sixty-two percent of surveyed youth told the Department of Defense that the war on terrorism made them less likely to enlist. Allen, *supra* note 7.

¹⁷⁰ Quindlen, *supra* note 112, at 68; Sennott, *supra* note 1, at A1.

¹⁷¹ Ephron, *supra* note 6, at 2. Another official said educational incentives may “outweigh the incentive to have them stay.” Sennott, *supra* note 1 at A1.

¹⁷² CBO REPORT, *supra* note 163, at 2.

¹⁷³ *Id.* at 2–3. This was known to Congress even before the CBO study. See *Gilroy Statement*, *supra* note 138 (“We posit that the negative retention impact starts to outweigh the positive impacts on recruiting when the monthly benefit is higher than the total cost of education.”).

¹⁷⁴ CBO REPORT, *supra* note 163, at 2.

¹⁷⁵ *Id.* at 2.

¹⁷⁶ See, e.g., Posting of Carl Bialik to The Wall Street Journal Blog, *Tallying the Effects of the New GI Bill*, Wall St. J., <http://blogs.wsj.com/numbersguy/tallying-the-effects-of-the-new-gi-bill-352> (June 9, 2008).

House, noting that the number of high school students planning to go to college immediately after graduation “is at an all-time high, and young people are finding that financial assistance to attend college is available from many sources.”¹⁷⁷ Though the Montgomery GI Bill may offer more educational assistance than these sources, he pointed out that “neither do these sources require young men and women to delay their education for a term of military service and the possibility of entering into harm’s way.”¹⁷⁸

In rebuttal to the CBO report and Gilroy’s arguments, Senator Webb argued that the CBO failed to distinguish between career and non-career forces.¹⁷⁹ He cited statistics from the Army and Marine Corps showing that seventy to seventy-five percent of enlistees leave before or at the end of their first enlistment, with the remaining twenty-five to thirty percent comprising the career force.¹⁸⁰ Senator Webb targeted the former with S. 22, noting that expanding educational benefits does not hurt retention among individuals in the career force, as they are not as interested in pursuing higher education in the short term.¹⁸¹ He therefore objected to Mr. Gilroy’s argument that the Act would reduce “the number of experienced NCOs and Petty Officers available to staff the force” and place “added pressure on the recruiting market as additional accessions are required to replace the members who leave.”¹⁸² The significance of Senator Webb’s distinction between career and non-career service members, however, will require further studies before reaching an accurate assessment. Thus he could not immediately conclude, as he did, that the Act would have a “negligible impact on retention.”¹⁸³

Other commentators do not find the CBO’s findings trustworthy because they are based on Department of Defense-funded research analyzing the effects of varying educational benefits on recruitment and retention from the early 1990s until the war in Iraq.¹⁸⁴ On the *Wall Street Journal* blog, one contributor said of the CBO study that it is “hard to predict what today’s soldiers from all branches will do using numbers about their predecessors, mostly in peacetime, and only in the Army.”¹⁸⁵ Even Professor John Warner, co-author of the paper the CBO study relied on, said “[t]he retention effect of a doubling of education benefits for all recruits in all services may be quite different.”¹⁸⁶

¹⁷⁷ *Gilroy Statement*, *supra* note 138.

¹⁷⁸ *Id.*

¹⁷⁹ 154 CONG. REC. S3343 (2008) (statement of Sen. Webb); 154 CONG. REC. S4464 (2008) (statement of Sen. Webb).

¹⁸⁰ 154 CONG. REC. S3343 (2008) (statement of Sen. Webb).

¹⁸¹ *Id.*

¹⁸² *Gilroy Statement*, *supra* note 138.

¹⁸³ 154 CONG. REC. S3343 (2008) (statement of Sen. Webb); *see also* Herbert, *supra* note 159.

¹⁸⁴ Bialik, *supra* note 176.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

Observers believe that just looking at the recruitment and retention numbers ignores an equally important issue, improving the quality of recruits.¹⁸⁷ Currently, only seventy-nine percent of new Army recruits have a high school diploma, compared to ninety percent before September 11, 2001.¹⁸⁸ Military analysts believe this downward trend will continue.¹⁸⁹ However, supporters of S. 22 believe that expanding educational benefits will reverse this trend.¹⁹⁰ It may be that a smaller, better educated force is better than a larger, less educated one.¹⁹¹

While opponents are right that offsetting a likely decrease in retention will be costly, they have yet to either prove that cost to be impractical or effectively discredit proposed solutions to the problem.¹⁹² Moreover, if the Armed Forces are unwilling to increase re-enlistment incentives, service members will leave regardless—to work for private contractors, for example.¹⁹³

V. CONCLUSION

Many members of Congress recognize the sacrifices made by service members and veterans. Almost as many in Congress also support expanding educational benefits to service members and veterans, beyond what is offered by the Montgomery GI Bill. But the disagreement regards how far to expand benefits. Expanding benefits too far may hurt retention rates too much, harming the Armed Forces. Yet this expansion helps recruiting at a time when the Armed Forces has troop shortages.

Proponents of the Act hope that it struck the right balance between recruitment and retention. While critics do have some fair concerns about the Act, especially regarding its short-term impact on retention rates, that is not so much a criticism of the Act, but rather a call for more comprehensive reforms that address the reasons enlistees want to leave.

—Ravi Shankar*

¹⁸⁷ Quindlen, *supra* note 112. Without talented recruits, no amount of manpower can win a war. See Bryan Bender & Kevin Baron, *Fewer High-Quality Army Recruits*, B. GLOBE, June 1, 2007, at A1.

¹⁸⁸ LaPorte, *supra* note 168 (noting that 13 percent were granted criminal background waivers); Bender & Baron, *supra* note 187.

¹⁸⁹ Bender & Baron, *supra* note 187, at A1.

¹⁹⁰ 154 CONG. REC. S4714 (2008) (statement of Sen. Levin) (D.-Mich.).

¹⁹¹ See, e.g., Fred Kaplan, *GI Schmo: How low can Army recruiters go?*, SLATE (Jan. 9, 2006), <http://www.slate.com/id/2133908> (arguing that a smaller, better educated force reduces personnel demand).

¹⁹² According to the CBO report, a \$25,000 re-enlistment bonus at the end of a recruit's first enlistment would offset S. 22's negative effects. CBO REPORT, *supra* note 163, at 2; LaPorte, *supra* note 168.

¹⁹³ See LaPorte, *supra* note 168.

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