



ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES

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States Are Changing the Requirements for the Post-9/11 G.I. Bill

Issue: Some states are considering legislation that would restrict the ability of Student Veterans to use federal funds, prohibiting them from utilizing their earned federal benefits.

Background: Some states have proposed bills that would restrict the ability of Student Veterans to use federal funds for accredited schools in their states that fully comply with federal requirements to participate in Veterans educational benefits.

If passed, these State laws would prohibit Student Veterans from using federal educational benefits on courses that have been accredited and approved by nationally recognized accrediting bodies at institutions that meet all federal requirements. The Enlisted Association of the National Guard (EANGUS) is deeply concerned about the limits these laws would place on members of the National Guard to attend the institutions of their choosing and believes additional restrictions on federal benefits earned by members of the military undermines the commitment made by Servicemembers.

Furthermore, EANGUS is concerned that such legislation conflicts with federal law and undermines the purpose and objectives of Congress in offering educational benefits to Veterans. Indeed, some provisions in the pending State legislation may raise issues under the Supremacy Clause.¹ The Supremacy Clause is a statute established by the Supreme Court, in which federal law "preempts" state law.² If enacted, such provisions could invite court challenges contending that the provisions are preempted by federal law because they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, in particular, the distribution of federal benefits.³ The Supreme Court has indicated that in preemption analysis courts must consider whether a challenged state law "would interfere with the careful balance struck by Congress" in a statute.⁴

Additionally, under the federal statutes governing the Veterans' educational benefits program, educational benefits may be used for a course of study offered by an educational institution if the course, "ha[s] been accredited and approved by a nationally recognized accrediting agency or association" that the Secretary of Education has found to be a, "reliable authority as to the quality of training offered by an educational institution."⁵ The institution and its accredited course must meet numerous other federal criteria as well. And the course must be approved by a "State approving agency" created for the purpose of assisting the Secretary of Veterans Affairs in the administration of the Veterans educational benefits program.⁶ The federal program delegates responsibility to State approving agencies to apply the federal approval criteria and determine whether a course should be

¹ U.S. Const. art. VI, cl. 2

² *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citing *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Gibbons v. Ogden*, 9 Wheat. 1, 210-11 (1824))

³ *Arizona*, 567 U.S. at 406

⁴ *Id*

⁵ 38 U.S.C. § 3675(a)(1)(A), (2)(A)

⁶ *See id.* §§ 3671–3673

approved. These State's proposed regulation relies on a federal regulation that permits a State approving agency to apply "additional reasonable criteria established by the State approving agency." But, under the regulation, *any additional criteria must be "established by the State approving agency," not a State legislature.*

Recommendation:

We are very concerned that the proposed legislation from New York, Maryland, Washington and California will negatively impact Student Veterans, and believe there will likely be drawn-out legal contentions concerning these legislative initiatives, during which Student Veterans will not be helped, but instead lose the ability to use their rightfully-earned benefits, and become unable to continue their postsecondary educations.

The Enlisted Association of the National Guard works hard to ensure federal education benefits are made available to members of the National Guard, and believes that further restricting access to higher education will significantly impact members of the National Guard unable to afford it.