

Military and Veteran Student Protections

Members of the Armed Forces enrolled in postsecondary programs of higher education lack adequate protections when activated for military service.

Issue 1: USERRA, cited by commanders in response to their student-servicemembers' concerns with conflicting scheduling and duty requirements, does not protect them "because the educational institution is not the student's employer."

Issue 2: Readmission requirements, codified in 20 U.S.C. 1091c, do not apply to servicemember's absence from class to attend training within 30 days, e.g. Commanders' Training, Equal Opportunity Training, Predator Training, Air Assault, Airborne, and Fiscal Law. The readmission requirements apply to servicemembers who have completely withdrawn from an institution for a period of service of more than 30 consecutive days.

Issue 3: Institutions, regardless of sector, are increasing and boldening their recruiting efforts towards members of the military community—specifically, reserve members of the military community using either Tuition Assistance or G.I. Bill benefits. Many of these student servicemembers have active military obligations that are less than 30 days in length at any one time, i.e., Army Air Assault School.

Military commanders frequently cite the Uniformed Services Employment and Reemployment Rights Act (USERRA) in response to military students' concerns with missing classes, presentations, or exams due to military obligations. However, USERRA does not protect students; it protects employees. While reenrollment protections are provided to military students activated for military service under 20 U.S.C. 1091c and 34 C.F.R. 668.18, student veterans and servicemembers lack federal causes of action, like those provided under USERRA, to protect them while activated for active duty or active status. Further, the 30-day threshold of continuous service required of National Guard and Reserve component servicemembers disbars many student servicemembers from the reenrollment protections provided under 20 U.S.C. 1091c and 34 C.F.R. 668.18.

At a minimum, the absence of federal law potentially affects over 200,000 military students. In 2017, DoD reported 255,727 of its members used tuition assistance (TA) benefits at post-secondary educational institutions—563 non-profit, 186 for-profit, and 1,215 public. Tuition assistance is a reliable indicator of the number of servicemembers simultaneously maintaining military and educational obligations. However, the number of military students is likely much higher because some veterans using G.I. Bill benefits actively serve and may have conflicting military obligations during their semesters. In the same year, 727,018 Veterans used G.I. Bill benefits at post-secondary educational institutions; VA does not report the number of veterans still serving and using educational benefits. In total, between veterans and military, the absence of federal law potentially affects over 900,000 postsecondary students.

There have been further attempts to provide protections to veteran and military students via Executive Order 13607, "Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members," and Department of Defense Instruction 1322.25, which establishes Memorandums of Understanding between institutions of higher education and DoD.

However, both of these efforts fail to provide military and veteran students with a private right of action to bring against their respective institution of higher education.

Lacking a private right of action, the Department of Justice (DOJ) is unable to advocate on behalf of military and veteran students. Rather, DOJ “protects a servicemember's civilian employment rights by enforcing the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), Pub. L. No. 103-353, 108 Stat. 3149; voting rights by enforcing the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 52 U.S.C. §§ 20301-20311; and, financial security through the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§ 3901-4043—all federal law codified in the U.S. Code.

To provide military and veteran students the protections they need, the Veterans Education Project recommends the pursuit of the following legislative endeavors:

- Remove “30 consecutive days” from 20 U.S.C. 1091c. This will protect servicemembers’ required to attend short-term military training.
- If an institution is currently accepting TA and GI Bill benefits of any chapter, mandate disclosures by educational institutions regardless of sector. These disclosures should include but are not limited to: a written commitment to readmission of student servicemembers regardless of length of service; the entirety of 20 U.S.C. 1091c; the link and instructions to submit to the VA Feedback Tool; the link and instructions to submit to the DoD Student Intake Complaint System and relevant agencies charged with the duty of protecting servicemembers and consumers.