



EANGUS Testimony

Senate and House of Representatives Committees on Veterans' Affairs

Hearing on Legislative Presentation of Multiple Veterans Service Organizations

March 18, 2021

Enlisted Association of the National Guard of the United States

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Washington, D.C. 20001**

The Enlisted Association of the National Guard of the United States (EANGUS) was formally organized in 1972 to increase the voice of enlisted persons in the National Guard. As such, EANGUS is a non-profit organization dedicated to the principles of providing an adequate national defense and promoting the status, welfare, and professionalism of the men and women of the Army and Air National Guard by supporting legislation that provides adequate staffing, pay, benefits, entitlements, equipment, and installations for the National Guard. Beginning with twenty-three states, EANGUS now represents all 50 states, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. It has a chapter comprised of those who serve the National Guard on Title 10 tours. EANGUS has a constituency base of over 450,000 Soldiers and Airmen, their families, and tens of thousands of retired members.

EANGUS is a non-profit under 26 CFR §1.501 (c) (19)-1- War veterans organizations. The Legislative Goals of EANGUS are published annually. The goals and objectives were established through the resolution process, with resolutions that are voted on and approved by elected association delegates at the annual conference. These approved resolutions are the basis for specific items and issues that EANGUS will pursue in Congress and in the Department of Defense. Resolutions stay in force for two years.

President:

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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Enlisted Association of the National Guard of the United States (EANGUS) is a member-supported organization. EANGUS has not received 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.

STATEMENT

EANGUS appreciates the opportunity to discuss our legislative priorities that affect National Guard enlisted servicemembers. While we will not address every proposed Act, this testimony does not indicate EANGUS' support for or opposition to other bills. EANGUS' focus today aligns with our By-laws and Articles of Incorporation.

Early TRICARE for Eligible National Guard Members

Align the eligibility for Tricare Standard, Extra, and Prime with the age at which National Guard personnel begin receiving their retired pay.

The age at which National Guard members begin drawing retired pay is determined differently from their active-duty counterparts. In most cases, their retirement is based on achieving at least 20 good years of service. (A "good year" is defined by 10 U.S. Code 12732 and requires that a Reserve Component servicemember must earn at least 50 points per year to qualify as a "good year" of service for Non-Regular Retirement). Since the 1940s, National Guard and Reserve servicemembers have had to wait until age 60 to receive their retired military pay. However, there is one exception to that rule.

The National Defense Authorization Act (NDAA) for Fiscal Year 2008 enacted the Reduced Retirement Age for Reserve Component (R.C.) Members based on Active Duty (A.D.) Performance. This legislation reduced the retirement age for R.C. servicemembers from age 60 to a lesser period, but not below the age of 50, for those R.C. members who served on A.D. in an eligible status on or after January 29, 2008. However, this change in legislation only changed the timeline of when an R.C. servicemember could receive Retired Pay but did not address any other typical retired benefits such as health care.

Currently, reduction of the minimum age for eligibility for retired pay for non-regular service does not reduce the age for eligibility for health care under 10 USC 1074 (b). The eligibility for health care continues to be 60 years of age.

Qualified Retired Reserve members under the age of 60 looking for TRICARE medical coverage may purchase TRICARE Retired Reserve (T.R.R.), which is costly. As a comparison, for FY19, the premium cost for TRICARE Retired Reserve is \$451.51 per month for an individual plan (\$5,418.12 per year). The annual enrollment cost of TRICARE Prime for servicemembers who began service before January 1, 2018, is \$297.00 per month for an individual. For those same servicemembers, TRICARE Select has an enrollment fee of \$12.50 per month or \$150 annually for an individual plan and \$25 per month or \$300 annually for a family plan. Once the retired reservist reaches age 60, the servicemember and their qualifying family members become eligible for Tricare Standard, Extra, and Prime (where available).

Public Law 110-181 was meant to recognize the National Guard and Reserve's increased importance and participation in the Global War on Terrorism. This law helps R.C. servicemembers transition into retirement, but it does not consider the rising cost of health

care. To meet the law's intent, EANGUS urges Congress to reduce the age of TRICARE eligibility to match the Early Retirement Act's goals and align with the date eligible for retired pay.

Moving DoD and VA education funding to the "90 percent" of the 90/10 ratio

Unemployment and under employment continue to pose an issue within the National Guard. Moving DoD and VA educational funding into the 90/10 ratio will limit our servicemembers access to education critical to employment. We need to ensure DoD and VA funds are not included into the 90/10 ratio.

National Guard and Reserve Component members as well as military Veterans do not need excessive government paternalism. These individuals are superbly trained adults, entrusted with the nation's defense and the preservation of their comrades to the right and left. These individuals need information and options and have earned the right to use their GI Bill benefits as they choose within law and regulation.

Closing the "loophole" would shift DoD and VA education funding to "90 percent" of the 90/10 ratio and would add stricter standards on only the for-profit "proprietary" education sector. These are the same schools that can help veterans and servicemembers gain employment in areas such as aviation, HVAC, commercial truck driving, and the culinary arts, to name a few.

The argument that it is the government's responsibility to ensure "its" money is being used correctly by a GI Bill beneficiary is tricky business. EANGUS believes that once this benefit is earned, it's no longer the governments but the beneficiaries. Just as a federal government employee or a military retiree's compensation is not the government's; it's the beneficiaries to use freely within the law. With this stated, it then seems reasonable to assert that any school that has earned state approving agency approval has achieved "legal" status.

Applying arbitrary "ratios" that appear devised to punish an entire sector for the transgressions of a few and "protect" beneficiaries whose interests would be better served by providing quality information and consistent standards will have one predictable effect: the limitation of choice for those who have earned it.

EANGUS represents currently serving and separated enlisted members of the National Guard. Many are using or will use their GI Bill money or transfer their benefits to family members to gain employment or gain better employment opportunities. EANGUS recognizes that institutions of higher learning have not always behaved well. However, these mistakes from the past are no reason to hobble an entire sector and create government-chosen "winners" in the education market. The military education consumer needs and deserves information, uniform standards and the ability to choose their education institution themselves.

Veteran Status: Change Federal Hiring Preference for Reserve Component Members

Confer veteran status for federal hiring veterans' preference on Reserve Component members after 180 "cumulative" days on active duty versus 180 "consecutive" days on active duty.

Reserve and Guard members meet operational requirements by performing duty frequently but often for short periods. Because DoD limits many mobilizations to 179 days or less, many reservists complete an entire career without serving the 180 consecutive days needed for veteran status per Title 5 U.S.C. 2108 -- even though they may have several years of combined active service.

This occurs in part, because duty over 180-days triggers eligibility for a Permanent Change of Station (P.C.S.) move. The services want to avoid the associated cost with a P.C.S. This cost avoidance technique, in turn, prevents Guard and Reserve members from being put on the 180-day or more orders needed to achieve "veteran" status for purposes of veterans federal hiring preference -- an unintended second-order effect.

EANGUS proposes that Congress establishes equity between the Reserve and Active Components in fulfilling a 180-day requirement for veteran status. This proposal does it in a manner that reflects how the services use the Guard and Reserve for shorter periods to meet peacetime operations and surge requirements.

This "180-day consecutive" provision was added to Title 5 in 2006 and needs to be updated to reflect the current "cumulative" manner that DoD employs their reserve component.

Major Richard Star Act

The Major Richard Star Act would fix the unfair offset that prevents thousands of veterans wounded in war, from accessing both their disability benefits and retired pay.

Under current law, Servicemembers who are medically retired due to combat-related injuries before reaching 20 years of service are prevented from collecting both their service earned retirement pay and VA disability compensation. These two benefits, established by Congress for entirely different reasons, are nonetheless subject to a statutory offset. In recognition of this injustice, medically retired personnel may apply for Combat Related Special Compensation that partially makes up for this injustice. The *Major Richard Star Act* will authorize concurrent receipt of DoD retired pay for years of service, and VA disability compensation for injuries incurred in service, without offset. This legislation is another small step in correcting a larger concurrent receipt problem.

In 2004, Congress acknowledged the injustice of the offset by granting concurrent receipt for retirees with at least 20 years of service who are rated 50 percent disabled or greater. However, those who are 40 percent disabled and below, and those who were unable to complete 20 years of service due to service-connected injuries or illnesses are still subject to the offset. Military retired pay is an earned benefit for vested years of service. Service-

connected disability compensation is for injury. To deny or reduce a servicemember's retired pay because of a disability is an injustice.

As such, we request you ensure the *Major Richard Star Act* is incorporated into the FY22 National Defense Authorization Act and that the concurrent receipt offset is eliminated completely to provide our veterans with the compensation they have rightfully earned.

Early Retirement Benefits Tracking

Initiate mandatory audits by the Military Services of current retirees and ensure there is an adequate system to capture qualifying service for early retirement.

Members of the National Guard who have met the 20-year service requirement are generally eligible to receive retirement benefits at age 60. However, the 2008 National Defense Authorization Act (NDAA) authorized early retirement benefits for Reserve Component members who meet specific criteria. Under the 2008 NDAA, members of the Reserve Component who deployed in support of overseas operations such as Operation Iraqi Freedom or Operation Enduring Freedom for at least 90 days during a fiscal year were authorized to retire three months early for each 90-day period they served in any given fiscal year. This only applies to members of the National Guard or Reserves who participated in a qualifying active-duty mobilization after January 28, 2008, the date the Act was signed into law. Service on or before this date does not count toward early Retirement.

In January 2013, Congress expanded the criteria for early retirement by authorizing additional eligibility requirements. The new rules allow members of the National Guard or Reserves to count activations for national emergencies, including natural disasters such as earthquakes, hurricanes, tornadoes, floods, etc. Members of the Reserve Components may also be eligible to retire early if they were in a Warrior Transition Unit and were injured while mobilized for responses as mentioned above.

The 2015 NDAA further expanded benefits. The 2015 NDAA removed the requirement for the 90 days of active-duty service to be performed within the same fiscal year – activations could cross into consecutive years. However, this only applies to activations beginning FY15 and later.

EANGUS, in conversations with the reserve branches of the Military, has discovered that the Services are not adequately tracking servicemembers that have qualifying time for early retirement. For National Guard Members, each year they receive a Retirement Points Account Management (RPAM) statement. This document has a section entitled Retired Pay Eligibility Date (RPED) which should provide service members the date that they are eligible to draw non-regular retirement. This date should take into account any qualifying time earned for reduced retirement. Unfortunately, due to significant IT systems issues, and a lack of understanding by servicemembers of the type of duty that qualifies for early retirement, many of these dates are incorrect.

EANGUS believes this is a contributing factor for some servicemembers in not receiving benefits they are eligible for and have earned. EANGUS believes each Military Service must audit their retirees and ensure that there is an accurate list of qualified servicemembers that identifies the date they should have become eligible for retired pay. This would ensure that early retirees are receiving their earned benefits.

Moving forward, a mandatory orders and service audit must be legislated to ensure future early retirees are not overlooked and that their service is adequately documented.

National Guard Retiree Transition Assistance Program

Initiation of a well formatted and mandated Transition Assistance Program (TAP) is critical for retiring and departing National Guard servicemembers. The services must ensure these servicemembers are briefed on available benefits they would be eligible for including, but not be limited to access to home loans, access to educational programs and funding, eligibility for medical and mental health care, and employment assistance. Our National Guard servicemembers leaving military service need the same level of assistance as their active-duty counterparts.

All active-duty servicemembers are mandated to begin the TAP process no later than 365 days before the date of their anticipated transition from active duty. However, there is no required formal Reserve Component transition program that servicemembers must attend immediately prior to retirement or transition from the military.

There are TAP programs that Reserve Component servicemembers attend but they are ill timed to occur when the servicemember is leaving active duty after performance of more than 180 days of continuous active service but less than 365 days for mobilization. These post-mobilization TAP briefings may occur as much as 10, 15, or 20 years before a Reserve Component servicemember is ready to retire from the National Guard or Reserves. Servicemembers in the AGR program and mobilized National Guard servicemembers are required to participate in the active duty TAP and receive mandatory counseling and complete a Pre-separation Counseling Checklist for Reserve Component Soldiers Released from active duty, before returning to home station. Mobilized National Guard servicemembers are eligible to receive transition assistance for up to 365 days following their active-duty release. TAP services can be initiated by the servicemember and eligible Family members up to 10 years before retirement when retiring.

While AGR servicemembers and those mobilized for at least 180 days of active-duty are required to complete an active-duty TAP, there is no equivalent program for National Guard and Reserve members. We believe that all exiting National Guard servicemembers must have a TAP briefing and active service/orders audit within 180 days of ETS or retirement. This will ease their transition out of military service. It will also ensure servicemembers are receiving the benefits they have earned throughout their career.

CONCLUSION

EANGUS appreciates the opportunity to offer our thoughts and insights regarding these critical legislative issues. As a result of the unique nature of service in the National Guard, our members may simultaneously receive care and benefits from VA, the Departments of Labor and Health & Human Services, as well as DoD.

Military and veterans' law and policy are often developed without proper understanding or appreciation for the essential distinctions between the reserve and active-duty services. The members of the National Guard invariably lose out and so do their families.

This past year has shown America how important the National Guard is to our everyday life. The National Guard deployed over 187,000 servicemembers in 2020 for missions such as pandemic assistance, civil unrest, overseas combat operations and support as well as U.S. Capitol security. These activations and mobilizations were often at a moment's notice, and the National Guard did not hesitate; they accomplished the mission.

Ensuring that our National Guard members are adequately cared for after service is critical to the National Guard recruiting and retention program. As stated above, "the National Guard does not hesitate, they accomplish the mission." We are now asking the same from Congress; please do not hesitate. Ensure our nation's heroes are adequately cared for during and after they have completed the service. Thank you for your time.