



Post-9/11 Veterans Educational Assistance Act of 2008

As you know, the federal government gives a complex range of education benefits to veterans, members of the armed services, and sometimes their spouses and dependents. A new law expands those benefits in various ways. It does not, however, simplify them. Institutions will want to pay close attention to the rules in this area, to assist eligible students and prospective students. This Q&A, although by no means exhaustive, aims to help. It is based on the statute and, at this time, generally does not reflect interpretive detail supplied in proposed or final rules to implement the statute.

1. What is the Post-9/11 Veterans Educational Assistance Act of 2008?

The Act has three general components that enhance education benefits for service members and veterans:

- It creates a new veterans education benefits program, known as the Post-9/11 GI Bill, for persons on active duty on or after September 11, 2001, and it authorizes the Defense Department to develop a program to allow active duty service members to transfer those benefits to family members. Compared to pre-existing veterans education benefits programs, which remain in effect, the Post-9/11 GI Bill generally provides a better benefits package in terms of eligibility criteria, eligibility period, and financial value. However, the best veterans education benefits program for a person who is eligible for multiple programs, including the Post-9/11 GI Bill, will depend on the person's circumstances.
- It increases veterans education benefits under the pre-existing Montgomery GI Bill-Active Duty ("MGIB").
- It authorizes the Defense Department to expand active duty service members' ability to transfer to family members MGIB and other veterans education benefits.

This memo was prepared by the Washington, D.C., law firm Hogan & Hartson LLP.

2. Are Post-9/11 GI Bill, MGIB, and other veterans education benefits entitlements, or do the benefits depend on future funding by Congress?

Unlike Pell Grants and other Higher Education Act student aid programs, the veterans education benefits programs, including the Post-9/11 GI Bill, are entitlement programs. As such, they do not depend on further funding legislation by Congress.

3. When do the new benefits go into effect?

The Post-9/11 GI Bill is effective August 1, 2009. MGIB benefit increases went into effect August 1, 2008. The programs for transferring benefits to family members depend on future Defense Department action.

4. May Post-9/11 GI Bill benefits be used at all institutions?

No. Eligible persons may use the benefits to pursue only an approved education program. To be an approved education program for the Post-9/11 GI Bill, the program must be approved for purposes of MGIB, which includes state agency approval, and must be offered at an institution authorized to grant an associate or higher degree. Unlike MGIB, Post-9/11 GI Bill benefits can be used only at degree-granting institutions.

5. What are the Post-9/11 GI Bill's maximum benefits?

The Post-9/11 GI Bill grants up to 36 months of education aid, including tuition and other benefits. As described below, the maximum benefit varies depending on the beneficiary's enrollment and service status. As described in the response to Question 12, the amount of the maximum benefit to which an eligible veteran is entitled depends on length of service. The secretary of each of the armed forces may increase the education aid amount available to persons who have critical skills or specialties.

Veterans enrolled more than half-time

Veterans enrolled more than half-time in approved education programs are entitled to tuition benefits, monthly housing stipends, and yearly books-and-supplies stipends. The tuition benefit equals the charges for the program, up to the cost of in-state tuition and fees for full-time undergraduates at the most expensive public institution in the state where the veteran is enrolled. The monthly housing stipend is based on military housing benefit rates and is unavailable to veterans enrolled in distance education programs. The yearly books-and-supplies stipend is up to \$1000.

Veterans enrolled half-time or less

Veterans enrolled half-time or less in an approved education program are entitled to tuition benefits and reduced books-and-supplies stipends, but not monthly housing stipends. The tuition benefit equals the lesser of (a) the actual program cost for similarly situated nonveterans and (b) the amount of the benefit for veterans enrolled more than half-time, described above.

Active duty service members

Active duty service members enrolled in an approved education program are entitled to tuition benefits only. The tuition benefit equals the lesser of (a) the actual program cost for similarly situated nonveterans and (b) the part of the cost not covered by military tuition assistance available to the service member through his or her service branch.

6. Does the Post-9/11 GI Bill cover distance education?

Yes. Veterans and service members may use Post-9/11 GI Bill benefits for distance education programs, provided the program is approved (see Question 4). As noted above, the housing stipend is unavailable to veterans enrolled in distance education programs. The Department of Veterans Affairs (“VA”) has stated that the housing stipend will be available to persons enrolled in a program consisting of a combination of distance and site-base learning, provided such enrollment is full-time, but the matter may be addressed further in rulemaking.

7. How does the Act seek to foster enrollment at the more expensive institutions?

The Act creates the Yellow Ribbon Program to address enrollment at institutions that cost more than the Post-9/11 GI Bill’s tuition benefit cap. As described in the response to Question 5, the cap is the cost of in-state tuition and fees at the most expensive public institution in the state where the veteran is enrolled. The program allows institutions to enter voluntary agreements with VA to share the cost of tuition and fees that exceeds the tuition benefit cap. VA will match dollar for dollar any contribution that participating institutions make to cover those costs.

8. Are Post-9/11 GI Bill education benefits different from MGIB education benefits?

Yes. MGIB provides a single monthly amount intended to cover an eligible person's subsistence, tuition, fees, supplies, books, equipment and other education costs. The Post-9/11 GI Bill provides separate payments for tuition and fees, housing and books and supplies. Veterans have 15 years to use Post-9/11 GI Bill benefits, as compared to 10 years to use MGIB benefits. Depending on a person's circumstances, MGIB may provide better benefits than the new Post-9/11 GI Bill program.

9. How did the Act change MGIB benefits?

The Act raised the maximum monthly amount of MGIB education aid from \$1,101 to \$1,321. Also, the Act changed the annual cost-of-living adjustment, aligning it more closely with college costs. (Previously, the cost-of-living adjustment was keyed to the Consumer Price Index. Under the new law, the cost-of-living adjustment is keyed to average undergraduate tuition in the United States.)

10. Will MGIB and other veterans education benefits programs remain in place after the Post-9/11 GI Bill goes into effect?

Yes. MGIB and other veterans education benefits programs will continue alongside the new Post-9/11 GI Bill program, which goes into effect August 1, 2009. Persons eligible under other programs may then choose to participate instead under the Post-9/11 GI Bill. VA is urging persons eligible for education benefits under the Post-9/11 GI Bill and other programs to consider carefully which program is best for them. Although the Post-9/11 GI Bill generally offers substantial benefits, whether other programs are better depends on the individual's circumstances. For instance, service members who don't qualify for the Post-9/11 GI Bill housing stipend may prefer MGIB.

11. Are eligible persons permitted to alternate between the Post-9/11 GI Bill and other veterans education benefits programs?

No. If an eligible person is participating in MGIB or another program, he or she may switch to the Post-9/11 GI Bill. However, once a person chooses to participate in the Post-9/11 GI Bill, he or she may not later switch to MGIB or another program. If an eligible person would be entitled through other programs to benefits unavailable under the Post-9/11 GI Bill, then the person remains entitled to those benefits, even if the person elects to participate in the Post 9/11 GI Bill.

12. Who is eligible for benefits under the Post-9/11 GI Bill?

These service members and veterans are eligible for Post-9/11 GI Bill benefits:

- Veterans who served in aggregate at least 90 days active duty after September 10, 2001
 - Those who served at least 36 months active duty are entitled to the maximum benefit.
 - Those who served less time are eligible for a percentage of the maximum benefit, based on length of service. The minimum benefit under the Act is 40 percent of the maximum benefit.
- National Guard and Reserves members who served pursuant to a federal call to active duty
- Veterans who served at least 30 continuous days and sustained a service-connected disability
- Veterans discharged in some circumstances
- Active duty service members
- In some circumstances, spouses and children of active duty service members (see Question 16 below)

Service periods already pledged to satisfy a service academy active duty obligation, and service periods pledged for education loan repayment purposes, do not count as active duty service to establish eligibility for Post-9/11 GI Bill education benefits.

13. Are Post-9/11 GI Bill benefits available for tutoring?

Yes, if requirements are met. Otherwise eligible persons who are enrolled at least half-time may receive Post-9/11 GI Bill benefits for tutoring expenses if the professor teaching the course for which the benefits are sought certifies that the student needs tutoring to correct a deficiency in the course and that the course is required for the education program. Monthly benefits of up to \$100 are available, for a maximum of twelve months or until \$1,200 is utilized.

14. Are Post-9/11 GI Bill benefits available for licensure and certification tests?

Yes. Persons eligible for Post-9/11 GI Bill benefits are entitled to payment for one licensure or certification test, up to \$2,000.

15. Are benefit amounts paid to the beneficiary or to the institution?

In contrast to MGIB, under which benefits are paid directly to beneficiaries, Post-9/11 GI Bill tuition benefits are paid to institutions; housing and books-and-supplies stipends are paid directly to beneficiaries.

The changed approach to benefits delivery requires VA to implement new systems and succeed at such administrative challenges as designing rules for refunds when a beneficiary withdraws from an education program. Although VA recently told a House of Representatives subcommittee, which questioned VA's ability to implement timely a new system, that it would outsource development, VA has since decided to build it in-house.

16. May eligible persons transfer Post-9/11 GI Bill benefits to family members?

Yes, if the Defense Department establishes a transfer program. The Post-9/11 GI Bill authorizes the defense and armed forces secretaries to develop a program to enable active duty service members to transfer Post-9/11 GI Bill education benefits to family members. The Act requires six years of service with a commitment for four additional years, but also authorizes the defense secretary to set different eligibility rules. The defense secretary may also set the amount of the benefit, between 18 and 36 months, that is transferable.

A service member's spouse to whom benefits are transferred would receive an education benefit equal to the Post-9/11 GI Bill active duty benefit. A service member's child to whom benefits are transferred would receive the full veterans benefit available under the Post-9/11 GI Bill, as if the service member were not on active duty. The child must use the transferred benefit before age 26. The defense secretary is authorized to develop regulations to implement these provisions, in coordination with the VA secretary.

17. How does the Act foster transfer of MGIB and other veterans education benefits to family members?

Under preexisting law, eligible service members could transfer MGIB benefits, but the new law expands eligibility and extends the time in which dependent children may use benefits, subject to further Defense Department rules. The Act authorizes the defense and armed forces secretaries to develop a program to enable eligible service members to transfer MGIB benefits to their spouses and children in a manner similar to that prescribed for Post-9/11 GI Bill benefits. The defense and armed forces secretaries are also authorized for the first time to establish transfer options for certain other veterans education benefits programs.

18. Which government department is responsible for implementation of the Post-9/11 GI Bill and the Act's other provisions?

VA has primary responsibility to implement and administer the Post-9/11 GI Bill, and is expected to propose regulations soon. In some respects, the Act requires the VA and Defense Department to coordinate. As described above, the Act requires the defense secretary to develop rules on benefit transfers.

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