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National Guard and Reserve Eligibility for the Post-9/11 GI Bill

The Post-9/11 GI Bill is a popular educational assistance program designed for servicemembers and veterans and their family members. In FY2021, almost 725,000 individuals are anticipated to receive average benefits of \$16,230 each. Since enactment of the Post-9/11 GI Bill in 2008, the eligibility of National Guard and Reserve (G&R) members has been the subject of ongoing debate that has produced several amendments that expand their eligibility.

This In Focus provides background on G&R eligibility for the Post-9/11 GI Bill and describes questions for Congress to consider as G&R eligibility continues to be at issue.

Background

Background on the Post-9/11 GI Bill

Per Section 5001 of the Supplemental Appropriations Act, 2008 (P.L. 110-252), the Post-9/11 GI Bill was enacted in response to findings that “service on active duty in the Armed Forces [had] been especially arduous . . . since September 11, 2001,” and to recognize the value of military service.

Among the eligibility requirements for the Post-9/11 GI Bill are minimum qualifying active duty service requirements that must be met on or after September 11, 2001. For most qualifying servicemembers, their benefit level increases incrementally as their aggregate time in qualifying active duty service increases. For eligibility, most servicemembers require a minimum of 90 days in qualifying active duty service. For maximum benefit levels, most servicemembers require 36 months in qualifying active duty service. Qualifying servicemembers may use their Post-9/11 GI Bill benefits while serving or as a veteran, or if eligible, they may transfer their benefits to one or more family members.

Background on the National Guard and Reserve

There are seven individual reserve components of the Armed Forces, and they are collectively referred to as the *reserve component* (RC). Five of the reserve components are exclusively federal organizations: the Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve. The other two—the Army National Guard and Air National Guard—have both state and federal roles. There are National Guard organizations in each state, Puerto Rico, Guam, the U.S. Virgin Islands, and the District of Columbia. While the District of Columbia National Guard is an exclusively federal organization and operates under federal control at all times, the other 53 National Guards operate as state or territorial organizations unless ordered into federal service.

National Guard and Reserve Activations

There are a variety of statutory authorities under which G&R personnel may be ordered to perform full-time duty. The President can order G&R personnel to perform *federal active duty* in certain circumstances under Title 10 of the U.S. Code. A governor can order National Guard personnel to perform *state active duty* (SAD) under state law. Additionally, in certain circumstances a governor can order National Guard personnel to perform *Full Time National Guard Duty* (FTNGD) under Title 32 of the U.S. Code.

Original Post-9/11 GI Bill Eligibility

As originally enacted, the Post-9/11 GI Bill allowed G&R personnel to accrue credit toward benefits by performing qualifying duty under six provisions of Title 10 of the U.S. Code. At that time, three of these authorities were the primary authorities being used to support operations in Iraq and Afghanistan (10 U.S.C. §§688, 12301(d), and 12302) while a fourth was related to the possibility of being captured in combat (§12301(g)). The other two authorities—10 U.S.C. §§12301(a) and 12304—were intended to be used for war or national emergencies.

Expansions in Post-9/11 GI Bill Eligibility for G&R

Since 2010, the definition of qualifying duty for purposes of the Post-9/11 GI Bill has expanded to provide broader eligibility for G&R personnel. Changes to qualifying duty, and the year the change was made, are listed below, along with some rationale.

- **2011.** FTNGD, when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by federal funds, was added as qualifying duty.
- **2011.** FTNGD for the purpose of organizing, administering, recruiting, instructing, or training the National Guard was added as qualifying duty in recognition that such duty was substantially similar to duty under 10 U.S.C. Section 12301(d) for the reserves that are exclusively federal organizations.
- **2013.** An activation authority specifically for Coast Guard Reserves to augment the active component (14 U.S.C. §3713) was added as qualifying duty.
- **2017.** Two new activation authorities enacted in 2011 (10 U.S.C. §§12304a and 12304b) were added as qualifying duty.

See **Table 1** for a complete list of the authorities under which an individual can qualify for the Post-9/11 GI Bill.

Table I. Post-9/11 GI Bill Qualifying Duty for National Guard and Reserve (G&R) Personnel

Statutory Authority	Description
10 U.S.C. §688	Retiree Recall. Allows retired military personnel, including retired G&R personnel, to be ordered to active duty.
10 U.S.C. §12301(a)	Full Mobilization. Allows involuntary activation of G&R personnel upon congressional declaration of war. It is similar to authority used to activate G&R personnel during World War II; it has not yet been used.
10 U.S.C. §12301(d)	Voluntary Activation. Allows G&R personnel to volunteer for duty. Used for a wide variety of missions, including combat operations, federal COVID-19 response, and training. Used for the federal reserve components' Active Guard and Reserve (AGR) program, which involves full-time duty organizing, administering, recruiting, instructing, and training. Used for National Guard AGRs serving at the federal level as well.
10 U.S.C. §12301(g)	Captivity. Allows military personnel in a missing status due to hostile action to be ordered to, or retained on, active duty.
10 U.S.C. §12301(h)	Medical. Allows G&R personnel to be ordered to, or retained on, active duty for medical care or disability evaluation.
10 U.S.C. §12302	Partial Mobilization. Allows involuntary activation of G&R personnel upon presidential declaration of a national emergency. This has been the main authority used to order G&R personnel to duty for operations in Afghanistan and Iraq. Also being used for federal COVID-19 response.
10 U.S.C. §12304	Presidential Reserve Call Up. Allows involuntary activation of G&R personnel at the direction of the President. Formerly used at the start of the 1990-1991 Persian Gulf War and for the Bosnia and Kosovo missions.
10 U.S.C. §12304a	Major Disaster or Emergency. Allows involuntary activation of Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to respond to a major disaster or emergency. Used briefly for federal COVID-19 response efforts in 2020, then superseded by Partial Mobilization authority.
10 U.S.C. §12304b	Pre-Planned Missions. Allows involuntary activation of G&R personnel for pre-planned missions in support of a Combatant Command. Used for various missions such as air defense, security cooperation, and aviation support.
14 U.S.C. §3713	Disaster Response. Allows involuntary activation of Coast Guard Reserve during, or to aid in prevention of, a disaster, accident, catastrophe, act of terrorism, or transportation security incident. Used for the Deepwater Horizon oil spill.
32 U.S.C. §502(f)	Full-Time National Guard Duty. Used for National Guard personnel performing full-time duty in the state-level National Guard AGR program. Also used for National Guard personnel performing full-time duty in support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense, such as state COVID-19 response and security operations in the District of Columbia.

Considerations for Congress

What is the appropriate minimum period of qualifying service?

Individuals who serve an aggregate minimum of 90 days of qualifying active duty may be eligible to receive 50% of the maximum Post-9/11 GI Bill benefit payments. In March 2020, National Guard members were initially deployed for 89 days of qualifying active duty to support operations related to the national COVID-19 emergency. Partially in response to congressional concerns, the activations were extended to ensure individuals had sufficient time to qualify for the Post-9/11 GI Bill without additional duty periods.

Which activation authorities should qualify?

There are several activation authorities, and new authorities may be established. In addition to 32 U.S.C. Section 502(f), full time National Guard duty may be performed under several other sections of Title 32 of the U.S. Code and entitle the member to pay from the United States.

What is the appropriate level of secretarial discretion?

To be Post-9/11 GI Bill-qualifying, 32 U.S.C. Section 502(f) orders must be authorized by the President or the

Secretary of Defense in response to a national emergency declared by the President and supported by federal funds. This limitation could prevent some activations from qualifying. For example, activations in response to the President declaring a "major disaster" or "emergency" under the Robert T. Stafford Disaster Relief and Emergency Assistance Act would appear not to qualify.

In 2019, National Guard activations under 32 U.S.C. Section 502(f) at the request of the Secretary of Defense to secure the southern border did not originally qualify toward the Post-9/11 GI Bill. The Secretary later deemed such activations to be a federally funded response to a national emergency declared by the President on February 15, 2019 (Proclamation 9844, 84 *Federal Register* 4949). As a result, the activations became qualifying duty for the purposes of the Post-9/11 GI Bill.

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