

U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED SEVENTEENTH CONGRESS

B-234 LONGWORTH HOUSE OFFICE BUILDING

WASHINGTON, DC 20515

<http://veterans.house.gov>

February 2, 2021

The Honorable Lloyd J. Austin III
Secretary
Department of Defense
1500 Defense Pentagon
Washington, D.C. 20301

Dear Mr. Secretary,

Congratulations on your historic appointment as Secretary of Defense. As the Ranking Member of the House Committee on Veterans' Affairs, I look forward to working with you to improve the transition process for separating servicemembers and ensure that members of the National Guard and Reserve have full access to their earned benefits. Accordingly, I commend the Department's quick response to my staff's recent request to clarify that members of the National Guard are gaining Post-9/11 GI Bill eligibility for their service in the U.S. Capitol and within Washington, D.C. I am writing now to express my concern that members of the National Guard serving along our southern border may not be receiving that same credit due to President Biden's January 20th proclamation terminating the national emergency there.

Section 3301(1)(C)(ii) of Title 38, United States Code (U.S.C.) provides that service by members of the National Guard, "under section 502(f) of title 32 U.S.C. 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" is creditable "active duty" towards Post-9/11 GI Bill entitlement.

On February 15, 2019, former President Trump issued Presidential Proclamation 9844, which declared a national emergency on our southern border. On December 12, 2019, following a committee inquiry, former Defense Secretary Mark Esper, issued a memorandum reversing an Obama Administration decision that certain service under 502(f) orders is not creditable towards eligibility for the Post-9/11 GI Bill. As a result of his memorandum, thousands of members of the National Guard have earned eligibility towards VA's education program.

I believe that President Biden's recent decision to terminate President Trump's emergency declaration puts our national security at risk. It also risks the education of the thousands of men and women who are still serving at the southern border. I am sure you agree that their service is no less critical than those currently serving in D.C.

I respectfully ask that, no later than close of business on Friday, February 12, 2021, you provide the following information:

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- The status of members of the National Guard currently serving at the southern border, including end strengthen and the statutory authority for their service
- Clarification on whether the rescission of Presidential Proclamation 9844 eliminates the ability for members of the National Guard currently serving on the southern border to continue to receive credit towards Post-9/11 GI Bill benefits and, if so, how that is being communicated to them;
- Whether DOD has the legal authority to credit the service of members of the National Guard serving on the southern boarder absent a Presidential proclamation like Presidential Proclamation 9844.

Thank you for your attention to this matter. I look forward to your timely response. If you have any questions concerning this request, please contact Jon Clark, Republican Staff Director of the Subcommittee on Economic Opportunity, at jon.clark@mail.house.gov.

Sincerely,



Mike Bost
Ranking Member

Cc: The Honorable Mark Takano, Chairman