

**LAW REVIEW 17019<sup>1</sup>**

**March 2017**

**(updated March 1, 2019)**

**Presidential Executive Order 13607 Establishes Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, April 27, 2012: Expanded Coverage of 34 CFR 668.18 To Include Mobilizations of 30 Days or Fewer**

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**1.1.2.4--Students**

The Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to a person who leaves a *position of employment* with an employer (federal, state, local, or private sector) for voluntary or involuntary service in the uniformed services (active duty, active duty for training, inactive duty training, initial active duty training, funeral honors duty, or time required to be away from one's civilian employment for the purpose of an examination to determine fitness to perform any such duty). USERRA does not apply to the relationship between a student and an educational institution because the institution is not the student's *employer*.

In 2008, Congress enacted a law that provides USERRA-like protections to post-secondary students whose educational programs are interrupted by voluntary or involuntary service in the uniformed services.<sup>3</sup> The 2008 federal law provides reasonably good protection for the student whose educational program is interrupted by voluntary or involuntary military service. The student is entitled to a refund of tuition and fees paid for the interrupted semester and gets grade protection—the professor is forbidden to assign a failing grade for the interrupted course. Upon release from the period of service, the student is entitled to reinstatement, without having to go through the admissions process again, and for the first year back in school the student pays the tuition rate that was in effect before the military-related interruption. The student is entitled to pick up at the point where he or she left off before the interrupted semester.

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<sup>1</sup> Please see [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 1600 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics.

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<sup>3</sup> Please see title 20 of the United States Code, section 1088(d), 20 U.S.C. 1088(d), and title 34 of the Code of Federal Regulations, section 668.18, 34 C.F.R. 668.18. This federal law is discussed in detail in Law Reviews 15039 (May 2015), 15038 (May 2015), 13071 (May 2013), 13070 (May 2013), and 1052 (August 2010).

The federal law does not help the college student who is trying to complete the current semester despite short interruptions for inactive duty training or annual training in the National Guard or Reserve. Most or at least many professors are willing to make accommodations for these circumstances, but no federal law requires them to do so. The student will never complete his or her educational program if each semester is interrupted by these military training obligations. *But there has been recent progress on this issue.*

A major limitation under [34 CFR § 668.18](#) was that any mobilization had to be over 30 days in order to obtain benefits under. Thanks to [Wendy Macias, Office of Postsecondary Education, U.S. Department of Education](#), I have learned that Executive Order 13607 (available at <http://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>), calls for post-secondary institutions to take appropriate action to ensure that federal military and veterans educational benefits programs are providing service members, veterans, spouses, and other family members with the information, support, and protections they deserve. The 2012 Executive Order establishes the Principles of Excellence for this purpose.

Among other things, the Principles of Excellence require a school that is covered by the Principles to readmit a servicemember to his or her program upon return from an **absence of 30 days or less for service**, and to take additional steps to accommodate the absence, if the service member is making satisfactory academic progress prior to leaving for training. More specifically, educational institutions are required to apply the regulations at [34 CFR § 668.18](#) that apply to longer absences. More information on these requirements is found at <http://www2.ed.gov/policy/highered/guid/readmission.html>. The Department of Education, Department of Defense, and Department of Veterans Affairs have worked together to implement the Executive Order. See <http://www.ifap.ed.gov/dpcletters/GEN1210.html>. The guidance under the heading "Readmission/Refund (e)(f)" addresses short-term absences for military training or service.

Colleges and universities commit to complying with the principles through arrangements with the Departments of Defense and Veterans Affairs. You can search for a Department of Veterans Affairs participating institution at <http://department-of-veterans-affairs.github.io/gi-bill-comparison-tool/>. DoD participating institutions are listed at <http://www.dodmou.com/Home/InstitutionList>.

You should use the following e-mail for the Department of Veterans Affairs for further questions in reference to schools participating in the Principles of Excellence: [Principles.Excellence@va.gov](mailto:Principles.Excellence@va.gov). If you wish to submit a complaint about your institution, you may do so through the Department of Veterans Affairs' VA GI Feedback System at <http://benefits.va.gov/GIBILL/Feedback.asp>.

Please remember the subject Presidential Executive Order gives oversight of the Principles of Excellence to the Department of Veterans Affairs. If one has an issue that only falls under [34](#)

**CFR 668.18** the point of contact for that remains Wendy Macias, Office of Postsecondary Education, U.S. Department of Education, 202-203-9155, [Wendy.Macias@ed.gov](mailto:Wendy.Macias@ed.gov) .

In addition to the federal remedies, do not forget to see what state protections you might have depending on the state your school is in by visiting **Policy Letters, Federal Law, State Laws, and Governing Policies**.

### **UPDATE March 2019**

Please see Law Review 19027 (March 2019) for new information on this topic.