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Protecting Those Who Protect Us: Ensuring the Success of our Student Veterans

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Chairwoman Davis, Chairman Levin, Chairman Takano and Representative Lee thank you for inviting me to offer testimony at this important joint hearing on ensuring the success of student veterans, and in particular, issues surrounding the abrupt closure of schools and the VA's oversight of GI Bill funds.

In the 75 years since the Servicemen's Readjustment Act of 1944, now commonly referred to as the GI Bill¹, was signed into law by President Franklin Delano Roosevelt, millions of men and women have used their hard-earned veterans benefits to pursue higher education. The GI Bill has been credited with helping to develop the American middle class, fostering widespread homeownership and easing the transition back to civilian life for millions of Americans. The original GI Bill and the subsequent iterations that have come since, including the Montgomery GI Bill and the Post 9/11 G Bill are counted as some of the most important and successful pieces of legislation in the history of our great Nation.

The education benefits afforded by the GI Bill to veterans who have served honorably are a critical tool to facilitate a successful transition to civilian life. The GI Bill offers veterans an opportunity to augment their skills and acquire new ones that will set a veteran on a path towards a stable and beneficial post-service career. The educational benefits provided by the Post 9/11 GI Bill are generous. They afford a veteran tuition to cover a four-year bachelor program, a housing allowance that is often greater than the one the veteran enjoyed while serving on active duty, a book stipend, funds to cover professional licensing exams and more.

¹ The GI Bill is a registered trademark of the Department of Veterans Affairs.

The Troubled For-Profit School Sector

Unfortunately, the generous benefits provided by the GI Bill have also attracted unscrupulous actors seeking to make a quick buck off the backs of veterans at the expense of the American taxpayer. While not all for-profit education companies are bad, misconduct by for-profit schools is widespread and well documented.² For-profit schools have been accused of all manner of misrepresentations during the student recruitment process and of failing to provide students with a quality education after they enroll. Veterans have been a particular target for abuse by for-profit schools dating back to the original GI Bill.³ Post 9/11 GI Bill era veterans have not been spared these harms.⁴

The University of San Diego's Veterans Legal Clinic

In 2012, I founded the Veterans Legal Clinic at the University of San Diego School of Law to provide pro bono legal representation to veterans harmed by for-profit schools while utilizing their veterans' education benefits. Clinic attorneys and law student interns have assisted hundreds of veterans through individual representation, counseling and advice, contract review, and outreach presentations designed to advise veterans of their legal rights and how to make a wise investment of their GI Bill benefits.

Clinic clients have almost uniformly reported to me that they have been subjected to high-pressure sales tactics employed by for-profit school recruiters. They have been lied to about job

² The thorough investigation and subsequent report produced by the Senate Committee on Health, Education, Labor, and Pensions documented widespread abuse and systemic failures in the for-profit education sector. *See*, https://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf

³ *See*, Whitman, David. "Truman, Eisenhower, and the First GI Bill Scandal." The Century Foundation, January 24, 2017: <https://tcf.org/content/report/truman-eisenhower-first-gi-bill-scandal/?agreed=1>

⁴ *See*, Smith, Martin. "Educating Sergeant Pantzke: For-profit colleges promise veterans a high quality degree – but do they deliver?" PBS Frontline, June 28, 2011: <https://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/>; Glantz, Aaron. "University of Phoenix sidesteps Obama order on recruiting veterans," *Reveal*, June 30, 2015: <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

placement rates, expected salaries upon graduation and whether a school was accredited. Veterans have been misled as to the quality of the instruction provided and the credentials of the professors at their for-profit schools. Recruiters have misrepresented the length of the program and the total expense involved. Student veterans have told us that, unbeknownst to them, loans were taken out in their name by their for-profit school. We have even had veterans report that their school's recruiters lied to them about whether the school could accommodate their serious, service-connected disabilities. While attorneys from our Veterans Legal Clinic have been successful many times in forcing a school to return some or all of a veteran's tuition dollars, we cannot give them back the time and effort they have wasted in pursuit of a worthless degree. In the case of for-profit schools that have abruptly closed, a veteran's options to recover their precious education benefits are severely limited.

Abrupt For-Profit School Closures

Abrupt school closures in the for-profit sector are a common phenomenon and will likely continue. More than 50 for-profit colleges, representing hundreds of campuses, have closed just since 2016. Large national brands such as Corinthian Colleges, ITT Tech, Education Corp. of America and others have closed as have smaller local for-profit schools. The closure of a particularly predatory school may have a generally salutary effect as the school is no longer in business targeting unsuspecting students. However, for students enrolled at the time the school closes the effects of the closure can be devastating.

In recent years more than 22,000 veterans have found themselves left in the lurch when the for-profit school they were attending closed.⁵ In addition to the immediate shock a student veteran

⁵ According to the Chronicle of Higher Education, "more than 22,000 GI Bill recipients were enrolled at for-profits when the college shut down between 2014 and 2018." *See*, Vasquez, Michael and Bauman, Dan. "How America's

faces when they try to attend class only to find the doors locked and a sign in the window stating the school was closed, a veteran is likely to have other immediate academic and non-academic concerns. Academically, students attending for-profit schools that abruptly close often have great difficulty transferring to a quality institution. Depending on when in the traditional academic year a for-profit school closed, it may be many months before a reputable public or private non-profit institution could enroll the student. Furthermore, a student veteran is often unable to acquire their academic transcripts following a school's closure and, even if they are able, are often bitterly disappointed to discover that no quality institution will accept transfer credits from their for-profit school.

Veterans are uniquely harmed in non-academic ways as well when their for-profit school abruptly closes. Most student veterans rely upon the housing allowance they receive in conjunction with their GI Bill tuition benefits. When a school closes many veterans immediately face not only the loss of their school but the potential loss of their home unless they are able to quickly make up the lost housing allowance benefit.⁶ This perversely incentivizes veterans to enroll in any school that will immediately admit them in order to keep housing allowance benefits consistent and a roof over their family's head. Unfortunately, often only other for-profit schools will admit a student with no real application process in the middle of a traditional academic semester.⁷

College-Closure Crises Leaves Families Devastated: when colleges shut down, people get hurt.” The Chronicle of Higher Education, April 4, 2019: <https://www.chronicle.com/interactives/20190404-ForProfit>

⁶ In some limited circumstances, veterans are able to continue receiving their housing allowance for the remainder of their expected term, or 120 days, whichever is shorter. However, the vast majority of veterans who have attended schools that closed do not qualify for this assistance.

⁷ It is not uncommon to see recruiters from other for-profit schools appear on the campuses of a school that closes abruptly to try and immediately enroll students who showed up thinking they were going to be attending class that day at the closed school. *See*, Armario, Christine. “Corinthian students face hard choices.” Military Times, April 29, 2015: <https://rebootcamp.militarytimes.com/2015/04/29/corinthian-students-face-hard-choices/>

Students of closed schools have limited options to seek redress if they feel they were defrauded by their former school. When the student veteran's school closes they must then navigate a complicated maze of choices seeking least-bad options, each of which requires compliance with complicated and confusing regulations. A misstep along the way can foreclose the hope of any chance to be made whole again. Most student veterans who face this dilemma are forced to do so without legal assistance.

A first possible option for students to recover funds would involve filing suit against the school. However, litigation against a closed school is almost always unproductive. As soon as the school declares bankruptcy, courts will enforce a stay against pending litigation seeking to recover damages. Even if a student were able to subsequently pursue litigation, the school will likely already be stripped of its assets by insiders and the student, as an unsecured creditor, will not receive any funds from the bankrupt entity.

A second possible option for students harmed by a for-profit school closure would entail pursuing a Borrower Defense to Repayment application. This type of application theoretically allows students to have federal loans forgiven if the school they attended misled them or engaged in other misconduct in violation of the law. As many student veterans at for-profit schools also incur significant amounts of student loans on top of expending GI Bill benefits, this form of loan relief can be very important to veterans. Unfortunately, the Department of Education ("ED") has failed to process such applications in a timely manner despite being under court order to do so.

However, for student veterans who used exclusively GI Bill benefits to attend a closed school, their options to recover the cost of their tuition are limited. In 2017, the Harry W. Colmery Veterans Educational Assistance Act of 2017, was signed into law. The Colmery Act, *inter alia*, provided a limited number of veterans at closed schools an opportunity to have a portion of their

GI Bill benefits restored. While this is welcome relief, many veterans are still left behind. In order to qualify for a restoration of benefits, the veteran must have attended an Institution of Higher Learning (“IHL”) between January 1, 2015, and August 16, 2017, while utilizing GI Bill benefits. Additionally, the student veteran generally must not have transferred credits earned at the closed school to another IHL. Certain GI Bill beneficiaries that meet this threshold will qualify to have all of the benefits expended at a closed school restored.⁸ However, most veterans who attended closed schools will only be eligible for restoration of benefits for the actual term they were enrolled at the time the school closed.⁹

Most students who attend a closed for-profit school will be unable to successfully transfer all of the credits they earned at the closed school to a quality institution. This means that a veteran who dutifully attended a school for three years only to watch the school close during his/her final year will likely be unable to fully transfer his/her credits to another institution. As the VA will not restore all of the benefits spent at the closed school back to the veteran except in the very limited circumstances described above, the veteran will have to pay out of pocket to complete any coursework that does not transfer to another IHL.

The collapse of just one school, Corinthian Colleges, resulted in the USD Veterans Legal Clinic’s largest investment of time and effort to date. Our Clinic’s intake line was overwhelmed by the number of veterans seeking assistance navigating the destruction left in the wake of the

⁸ In order to have all of their GI Bill benefits expended at a closed school restored, a veteran must meet very specific criteria in addition to that mentioned above. Students meeting these requirements are referred to as qualifying for a Special Application. The veteran must not only have attended the school during the timeframe specified, but the school they attended must also have closed during this time window. The veteran must also have attended the school within 120 days of the school’s closure. The veteran must also not have enrolled in a comparable program prior to August 16, 2017, or if they did enroll in such a program they must not have transferred any credits from the closed school.

⁹ Students who do not meet all of the stringent requirements outlined above for a Special Application are instead routed to a Regular Restoration of Entitlement. These veterans will only be entitled to have their benefits restored for the actual term or semester they were enrolled at the time the school closed.

school's closure. What is particularly galling about the Corinthian closure is how readily apparent it should have been to federal regulators that the school was in trouble and should have no longer been allowed to enroll students. Well prior to closing, Corinthian had already been successfully sued by the California Attorney General and I believe most in the industry knew that it was only a matter of time until the school went under. However, rather than stepping in early to mitigate the damage done to students, ED and VA allowed the problem to fester and more students to be harmed before the school's inevitable demise.

SAAs and the Department of Veterans Affairs' GI Bill Oversight

Due to the difficulty in making student veterans harmed by for-profit schools whole again, it is imperative that the VA, ED, and state agencies work together to prevent abuses before they occur. Unfortunately, effective coordination and oversight is often lacking. The VA attempts to outsource the task of ensuring that schools seeking to receive GI Bill funds comply with applicable laws and provide veterans with a quality educational experience. The VA does this by contracting with a state approving agency ("SAA") created in each state to administer GI Bill benefits.¹⁰ SAAs are primarily responsible for approval of new programs, oversight of existing programs, training applicable school personnel, and conducting outreach efforts. The SAA is often housed in a state's department of veterans' affairs or education. The employees of the SAA are state employees and are paid by the state with some or all of the costs reimbursed by the VA according to its contract with an SAA. Statutory authority for the SAAs contemplates a cooperative working relationship between the VA and SAAs but this is often lacking.

¹⁰ Forty-eight states and Puerto Rico have SAAs. Alaska, Hawaii, Washington D.C., and the U.S. Virgin Islands do not. The VA performs SAA duties for states/territories without an SAA.

SAAAs invest most of their resources reviewing initial applications by programs seeking approval to receive GI Bill funds and in compliance surveys done on schools that have already been approved. Certain programs are “deemed approved” and do not require an SAA to conduct an in-depth review prior to approving the program to receive GI Bill funds. Accredited public and private, non-profit schools are the most common example of programs that are deemed approved. Programs at for-profit schools are subject to an in-depth review by an SAA before they are eligible to receive GI Bill funds. While there is generally a standardized process by which an SAA is supposed to review schools that are not deemed approved, in practice the degree of scrutiny given to a particular program can vary widely depending on the SAA. This creates a potential forum-shopping problem where a school that could arguably be headquartered in more than one state may try and apply to the SAA with the worst reputation for oversight.

Once a school has been approved to receive GI Bill funds, SAAs conduct compliance surveys to ensure the school is operating in accordance with applicable laws and regulations. While a compliance survey could potentially entail a broader audit of the quality of the program, in practice the focus is mainly on reviewing student records to ensure financial accountability for governmental payments.

The VA attempts to exercise oversight of the SAAs through the contracting process and, to a lesser extent, VA Education Liaison Representatives (“ELRs”). However, according to a recent audit conducted by the VA’s Office of the Inspector General (“OIG”), VA oversight of SAAs is woefully inadequate.¹¹ The OIG found that the VA and the SAAs “lacked effective

¹¹ The VA OIG report was highly critical of the VA’s approach to GI Bill oversight. The OIG explained that “Specifically, SAAs lacked effective, sufficient controls to ensure the proper review and evaluation of programs, program modifications, and advertisements after the programs were approved.” Further, the report found that the VA’s “compliance survey process, which should have focused on ensuring schools and programs continued to meet all the

controls to ensure the proper review, approval, and monitoring of programs, [VA] could not provide reasonable assurance that Post-9/11 GI Bill benefits were paid to eligible schools and programs and that students received quality education and training.”¹² The VA’s and SAAs’ combined lax oversight efforts have likely resulted in millions of dollars in wasted taxpayer money going to for-profit programs.

In instances when the VA and an SAA disagree over whether a particular school should be approved or maintain continued approval, it is often unclear how this will be resolved. As a way to deflect blame, the VA frequently points to the SAAs when it becomes clear that a troubled school was allowed to continue enrolling student veterans long after it was apparent the school was in trouble. However, the VA also appears to intercede on behalf of certain schools in contradiction of an SAA’s determination that a given school should be disapproved.¹³ This creates a scenario where the VA is able to abdicate responsibility for predatory schools while at the same time undermining SAA attempts to rein in bad actors from harming veterans and wasting taxpayer funds. To resolve this problem the VA must either: 1) assume full responsibility for the initial and continued approval of schools; or 2) empower SAAs to hold predatory schools accountable and prohibit continued approval to receive GI Bill benefits for schools that simply do not provide veterans with a quality educational experience.

conditions of their program approval, did not adequately address ongoing program eligibility.” *See*, <https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf>

¹² *Id.*

¹³ Smith, Ashley A. “California Reverses Decision on Veterans’ Benefits.” *Inside Higher Ed*, September 7, 2018: <https://www.insidehighered.com/news/2018/09/07/california-agency-stands-suspension-colleges-state-based-gi-eligibility>; *See also*, Stratford, Michael. “VA warns California in for-profit college dispute.” *Politico*, January 17, 2019: <https://www.politico.com/newsletters/morning-education/2019/01/17/va-warns-california-in-for-profit-college-dispute-482445> ; and

Fain, Paul. “Corrected Numbers: The U.S. Department of Veterans Affairs backs University of Phoenix in its squabble with a California state agency over veterans’ enrollment numbers.” *Inside Higher Ed*, August 4, 2014: <https://www.insidehighered.com/news/2014/08/04/u-phoenix-wins-push-corrected-numbers-veterans-enrollment-san-diego-campus>.

Real World Impacts

The failure to adequately regulate for-profit schools receiving GI Bill funds all too often results in horrible real world impacts for student veterans. For example, our Veterans Legal Clinic has represented a US Marine Corps veteran who was medically retired after sustaining a devastating traumatic brain injury in an attack while serving in Iraq. The Marine attempted to utilize his GI Bill benefits at a for-profit school in order to gain skills that would allow him to be gainfully employed despite his serious service connected disabilities. The veteran was misled by a school recruiter as to the overall length and cost of the program. He was also told the school was accredited when it was not. After the veteran left the school he discovered that the school continued to collect GI Bill funds from the VA even after he was no longer enrolled.

Long after the veteran no longer attended the institution, the relevant SAA conducted a compliance audit on the veteran's former school. It was determined that, despite the program being approved at the time the veteran attended the school, the SAA was retroactively determining the school should not have been approved. The VA then notified our veteran that because the program was no longer approved for the time he was enrolled, he would be responsible to pay the VA back the cost of his benefits. We have appealed the VA's decision and the matter is still, years later, working its way through the interminable VA appeals process.

In another case, our Clinic represented an US Air Force veteran who attended a large, now defunct, for-profit school. The school deliberately misrepresented to the veteran critical information such as job placement rates for his program, average graduate salaries, and the quality of the instruction provided by the school. The school also promised robust job placement assistance upon graduation. After spending more than \$100,000 on his degree, the veteran learned that he had been misled. Virtually none of his fellow classmates found work in their intended careers and

he discovered that the materials he learned in his IT related program were nearly a decade out of date. Unable to find work in his chosen field, the veteran was forced to return to the same retail position he had held before enrolling in the school.

There are countless other student veteran stories similar to these of individuals who tried to use their GI Bill benefits at for-profit schools to better their career prospects but were ultimately left with nothing more than empty promises. The actions of bad actors in the for-profit school sector are unfair to student veterans and to the American taxpayers who are grateful for our veterans' service and want to see them succeed.

Conclusion

The GI Bill is a critical tool to assist a veteran's transition back to civilian life. Unfortunately, too many schools in the for-profit sector have failed to fulfill their promise to provide veterans with quality educational opportunities. The stakes are high for veterans who enroll in such schools and the VA, ED, and SAAs must do more to protect and defend the rights of those who have answered the call to protect and defend their fellow citizens. Thank you for the opportunity to provide you with testimony on these important issues.