



**TESTIMONY OF WILLIAM HUBBARD,
VICE PRESIDENT FOR VETERANS & MILITARY POLICY
SUBMITTED TO THE
U.S. HOUSE VETERANS' AFFAIRS COMMITTEE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
ON THE TOPIC OF
"LESS IS MORE: THE IMPACT OF BUREAUCRATIC
RED TAPE ON VETERANS EDUCATION BENEFITS"**

September 20, 2023

Chairman Van Orden, Ranking Member Levin, and Members of the Subcommittee:

We thank you for the opportunity to provide testimony before the Subcommittee on the pressing topic of, "Less is More: The Impact of Bureaucratic Red Tape on Veterans Education Benefits."

Veterans Education Success is a nonprofit organization with the mission of advancing higher education success for veterans, service members, and military families, and protecting the integrity and promise of the GI Bill and other federal education programs. Drawing from our team's experience and direct interactions with student veterans, their families, and stakeholders, we offer our observations for the Subcommittee's consideration.

We would like to note our general gratitude to the leadership and staff of the Veterans Benefits Administration's (VBA) team in the Office of Education Service under the U.S. Department of Veterans Affairs (VA). Their collaboration on many issues, and commitment to serving veterans, are worth highlighting specifically. We rely on this important relationship based on candor and trust to develop solutions based on the collective expertise of our team. We recognize the importance of this relationship with VA, especially moving forward in light of the specific recommendations we offer below.

In this testimony, we will highlight four specific issue areas that provide an illustration of times when VA's processes or decisions represent – in our view – unnecessary and unsupported interpretations of the law. These have made protecting veterans and their hard-earned benefits more difficult, and presents significant red tape for veterans to overcome:

- First, risk-based surveys have multiple issues which we believe require additional attention from Congress, including: implementation by VA so that schools warranting a risk-based survey are selected for review and a thorough review is completed in a timely manner; creating the statutorily-mandated database to aid SAAs in completing the surveys; and aligning VA's standard operating procedures with statutory requirements.

- Second, VA’s insistence that students must enroll in a new school to get their Certificate of Eligibility has created an unnecessary and complicated two-tiered process. VA also continues to misinform students in the required application that they must apply for restoration before September 30 in order to get their GI Bill restored, when in actuality this is false under the statute. VA continues sharing this guidance, despite legislation that passed thanks to Representative Vern Buchanan, the VETS Credit Act, which streamlines the process and protects veterans and their rights.
- Third, VA arbitrarily restricts consumer information on the GI Bill Comparison Tool, including factual information about SAA decisions and student complaints about a school.
- Fourth, VA refuses to exempt veterans already enrolled in school under the Marine Corps’ “Excess Leave Program” from a newly adopted interpretation. These students relied on the prior interpretation allowing them to receive the monthly housing allowance (MHA) provided with their GI Bill benefits while attending law school. Without an exemption, they receive no housing allowance at all while attending school. VA has the latitude – and we would argue the *legal obligation* – to apply the new interpretation only to new enrollees and exempt current students from the new policy. This would allow veterans already enrolled to continue to receive their MHA while they apply their earned GI Bill benefits.

Before exploring each of these issues in greater depth, we would like to provide a brief historical context for the rules and regulations governing veterans' education benefits under this Subcommittee's oversight. We have been fortunate to work closely with the professional staff and personal offices under the current leadership. And, as an organization, we have heard from thousands of veterans since our founding in 2013, many of whom have detailed harrowing accounts of persistent scams to defraud veterans of their hard-earned benefits. Indeed, since the very first GI Bill – the Servicemen’s Readjustment Act of 1944 – there have been examples of scammers looking to take advantage of VA benefits.^{1, 2}

In 1952, a House Select Committee, led by Congressman Olin Teague of Texas, who served several decades as Chairman of the House Veterans Affairs Committee, exposed the trend of predatory schools targeting veterans and the GI Bill, “an unfortunate pattern that has continued to this day.”³ In response, Congress passed several bipartisan landmark laws to address the need for stamping out fraud schemes of bad actor schools and programs to rightfully protect valuable veterans benefits and taxpayer dollars.

¹ U.S. National Archives, “Servicemen's Readjustment Act (1944),” Archives.gov, accessed September 14, 2023, <https://www.archives.gov/milestone-documents/servicemens-readjustment-act>.

² The Century Foundation, “The Cycle of Scandal at For-Profit Colleges,” accessed September 14, 2023, <https://tcf.org/topics/education/the-cycle-of-scandal-at-for-profit-colleges/>.

³ House Select Committee to Investigate Educational, Training, and Loan Guaranty Programs Under GI Bill. “House Report No. 1375: Report of the House Select Committee to Investigate Educational, Training, and Loan Guaranty Programs Under GI Bill,” 82nd Cong., 2nd sess., 1952. <https://vetsedsuccess.org/wp-content/uploads/2018/10/1952-house-committee-report-gi-bill-fraud.pdf>.

More recently, the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*⁴ (Isakson-Roe) established the statutory requirement for the VA to conduct risk-based surveys of schools. This approach is intended to be more efficient and effective in prioritizing quality assurance reviews for the riskiest schools and programs.

Also contained in Isakson-Roe, the *Protect the GI Bill Act*⁵ enhances oversight of programs, prohibits deceptive recruiting, restores education benefits for military-connected students at closed schools, ensures fair treatment regarding overpayments, safeguards students from failing schools, and additional key protections. In the years prior, we also successfully advocated for the unanimous passage of the *Career Ready Student Veterans Act*, ensuring that education programs funded by the GI Bill meet accreditation and state licensure requirements, preventing veterans from wasting their benefits on degrees that do not lead to jobs. These bills, and many others, provide necessary and common sense safeguards.

At the outset, we would urge the Subcommittee to consider that poor implementation of laws by VA and refusal by schools to devote adequate resources are often the real reason behind school complaints and opposition to perfectly reasonable laws. Institutions, in particular, tend to see any compliance requirements – intended to protect student veterans and taxpayers – as imposing unnecessary costs. Often, the real problem isn't the rules themselves, but how they are put into practice by VA and how unwilling some institutions are to invest resources in providing the appropriate staff support.

Take, for example, the fact that VA suggests that schools should have one school certifying official (SCO) for every 125 students, but most schools don't meet this standard. Many SCOs are overwhelmed with work, but SCOs' feeling overwhelmed is not a function of legitimate laws but instead of schools' failure to hire enough staff to perform the work. This is especially unfair in light of the generous GI Bill benefits that schools receive; too many institutions don't invest enough in providing the necessary services, like processing veterans' benefits. Moreover, protecting student veterans is a core responsibility of this Subcommittee, which should not be swayed by school complaints about common-sense laws to protect veterans and the GI Bill funds.

Also, VA has changed their operations, such that SCOs seeking support and information from VA have very few channels for direct feedback and guidance. It is important to balance the need to maintain rigorous protections on these earned benefits, while having schools spend these precious resources wisely on their intended recipients. Unfortunately, low-quality and sham schools continue to be approved for GI Bill benefits, indicating the need for more robust approval processes and oversight by VA. Further, VA's failures to interpret laws as Congressional staff and advocates believe they should be interpreted have prevented these laws from being effectively implemented.

⁴ Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, H.R. 7105, 116th Cong., 2nd sess., 2020, <https://www.congress.gov/bill/116th-congress/house-bill/7105>.

⁵ Protect the GI Bill Act of 2019, H.R. 4625, 116th Cong., 1st sess., 2019, <https://www.congress.gov/bill/116th-congress/house-bill/4625>.

We believe VA can, and should, implement the proposed solutions bulleted throughout our testimony below. However, we have also provided potential Legislative Branch Solutions for consideration under the potential scenario that VA does not execute an Executive Branch Solution to these issues. Finally, we thank the Subcommittee for hosting this hearing to examine ways to streamline existing processes, and to make the system work better for VA's primary group of customers: *veterans*.

Fixing Risk-Based Surveys

Risk-based surveys aim to engage with educational institutions more meaningfully than the historical tool (compliance surveys) to address deficiencies and potential problems that would negatively affect student veterans. However, discrepancies persist in VA's execution of the statute, creating unfair doubts about the efficacy of the new risk-based approach. Specifically, three areas of risk-based surveys should be looked at closely: implementation, the database, and standard operating procedures. Addressing these issues and ensuring compliance with the law is crucial to maintaining the integrity of the risk-based survey system and providing adequate protection for veterans pursuing their education and training goals.

1. Implementation: The implementation of risk-based surveys by VA has been a subject of concern due to its failure to align with the statutory requirements. Despite the clear mandates set forth in 38 U.S.C. §3673A⁶, it has become evident that VA's execution of risk-based surveys has fallen short of the required standards. Risk-based surveys are not intended to be simply a revamped version of compliance surveys. We have contacted VA multiple times about our concerns that the surveys are not being implemented consistent with the law. We appreciate that VA has been responsive to some of our concerns, including its recognition that the nature or volume of student veteran complaints can lead to the need for a risk-based survey. However, there continue to be instances where VA's procedures do not accurately reflect the law, particularly in terms of the timeline for conducting surveys and the triggering events that should prompt immediate action.

For instance, until recently VA and the SAAs did not understand that certain events affecting a school, such as risk of loss of accreditation, automatically triggers a risk-based survey to be completed within sixty days of becoming aware of the event. Time is of the essence for completing a risk-based survey when one of the automatic triggers in the statute occurs. Those kinds of events indicate serious compliance and financial risk and often occur just before a sudden school closure. Addressing these shortcomings and ensuring compliance with the law is essential to maintain the integrity of the risk-based survey system, and to provide adequate protection for veterans pursuing education and training.

- **Executive Branch Solution:** Working with the National Association of State Approving Agencies, VA should implement the statutorily codified risk-based survey methodology, consistent with Congress' intent and the six-state pilot.⁷

⁶ 38 U.S.C. §3673A, "Risk-based surveys", [https://uscode.house.gov/view.xhtml?req=\(title:38%20section:3673a%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title38-section3673a\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:38%20section:3673a%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3673a)&f=treesort&edition=prelim&num=0&jumpTo=true)

⁷ In 2019, our colleagues at The American Legion, EducationCounsel, and the National Association of State Approving Agencies carried out an overwhelmingly successful six-state pilot

- **Legislative Branch Solution:** Provide additional oversight of VA’s implementation of 38 U.S.C. §3673A and risk-based surveys to ensure the effective implementation of policies and regulations aligned with the original Congressional intent of the statute.

2. *Searchable Database.* The statute requires VA to establish a comprehensive searchable database for risk-based surveys, yet they have fallen short of fulfilling these statutory obligations. In June, we provided a statement for the record annotating our concerns with the lack of progress of VA in implementing the statute governing this requirement.⁸ The phrase in the statute “in partnership with” not only signifies a cooperative relationship between Education Service and the SAAs, but also underscores the imperative for collaboration in accessing the database. This straightforward phrase conveys the importance of joint efforts rather than unilateral control ensuring that the SAAs have essential access to the database.

We also believe there is an opportunity to simplify current procedures by making schools report specific events to the relevant SAAs and VA. These events, as outlined in 38 U.S.C. 3673(e)(3), include punitive actions taken by a state and the loss or risk of losing accreditation. This is information schools will readily have available. The most efficient method for assuring that SAAs and VA receive timely notice when these events occur is to require the schools to provide notice.

- **Executive Branch Solution:** Establish a searchable database accessible by the SAAs, and import current data which is presently only accessible by VA officials.
- **Legislative Branch Solution:** Pass H.R. 3981, which will require VA to finally establish the database within 180 days of passage, so that risk-based reviews by SAAs can be conducted as Congress intended.⁹ This legislation would also require schools to self-report any adverse actions, which we believe to be an administratively simpler approach than asking VA to independently track every single action themselves. We thank Representative Morgan McGarvey for offering this important and timely legislation mandating an explicit timeline in complement with the statutory requirements as codified in Isakson-Roe.

3. *Standard Operating Procedures:* In response to concerns raised about the procedures for risk-based surveys under 38 U.S.C. §3673A¹⁰, VA shared their new Standard Operating Procedure (SOP) to address these issues. While the SOP is

of this new approach; American Legion, “Risk-Based Review Report Final,” January 28, 2022, accessed September 14, 2023, <https://www.legion.org/sites/legion.org/files/legion/publications/RiskBasedReviewReportFinal012822.pdf>

⁸ Veterans Education Success, “Statement for the Record on the June 14, 2023, Legislative Hearing of the House Veterans Affairs Subcommittee on Economic Opportunity,” accessed September 14, 2023, <https://vetsedsuccess.org/our-statement-for-the-record-on-the-june-14-2023-legislative-hearing-of-the-house-veterans-affairs-subcommittee-on-economic-opportunity/>.

⁹ H.R. 3981, Veterans Education Oversight Expansion Act, Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, U.S. House of Representatives, July 26, 2023, accessed September 14, 2023, <https://docs.house.gov/meetings/VR/VR00/20230726/116265/BILLS-1183981ih.pdf>.

¹⁰38 U.S.C. §3673A, *ibid*.

very good, and beneficial for SAAs, we have expressed some notable concerns that it is not fully consistent with the statute.¹¹ Firstly, it suggests that SAAs should take action only upon receiving a formal notice, rather than when they become aware of an event – but the statute explicitly calls for SAA action upon “becoming aware” of an event. Secondly, the SOP starts the 60 days for completing the survey from the date the SAAs notify VA and allows SAAs to wait for up to 10 business days before notifying VA, which extends the 60-day timeline – and this is, again, at odds with the explicit language of the statute.

Lastly, when VA receives notice or becomes aware of an event, it is statutorily mandated to notify the SAAs within 30 days. VA’s current SOP, however, implies that notice will be provided within 30 days of the Oversight and Accountability Office completing review. VA should clarify with staff and in the SOP that the notification to the relevant SAA must be provided no later than 30 days after the date VA receives notice or becomes aware of the event. We are grateful to VA for developing the SOP’s and have offered further discussion or a marked-up version if needed.

- **Executive Branch Solution:** Align the standard operating procedures with statutory requirements, specifically addressing concerns raised about SAAs’ response to formal notices, potential delays in notification, and the need for clarity in VA’s timeline for notifying SAAs.
- **Legislative Branch Solution:** Provide additional oversight of 38 U.S.C. §3673A and VA’s standard operating procedures to ensure they are aligned with the original Congressional intent of the statute and are effectively implemented.

Reducing Administrative Burden

When a school closes or a program is disapproved, student veterans are left wondering what comes next. This is a difficult question for anybody in that situation to answer; however, it is further complicated when VA establishes unnecessary hurdles for student veterans who desire to take the next step in their education goals. We encouraged VA to remove their unwarranted barrier that had prevented students from applying for GI Bill restoration at any time.

Although Congress’ statutory language was clear in our view and that of Committee staff, under VA’s interpretation, student veterans were compelled to enroll in a new school before being eligible to obtain certificates of eligibility for benefits restoration. This policy raised valid concerns about students being rushed into decisions and the risk of enrolling in predatory institutions. What exacerbates the situation is the undeniable fact that VA inappropriately interpreted the statute to mean that a veteran would not find out if they could get their GI Bill restored until after they had actually transferred to a new school, but of course a student would not transfer to a new school if they didn’t know if they were going to get any GI Bill back.

Faced with VA’s reluctance, we collaborated with Rep. Vern Buchanan to pass H.R. 6604, known as the *Veterans Eligible to Transfer Schools (VETS) Credit Act*. This act ensures that veterans have the chance to learn about their GI Bill benefits before

¹¹ See Appendix for complete exchange between Veterans Education Success and VBA Education Service.

transferring. We find it unfortunate that such a legislative intervention was necessary due to VA's entrenched and narrow interpretation of existing statutes; VA could have chosen to address the issue administratively. Nevertheless, the VETS Credit Act strives to streamline and clarify the restoration process.

Today, however, we face a new hurdle, presenting yet another example of VA's failure to implement the law.¹² VA currently limits the new process for obtaining the Certificate of Eligibility before transferring to a new school solely to students enrolled in schools that close after December 27, 2022, when the VETS Credit Act became law. This directly contradicts the express provisions in the statute making the VETS Credit Act applicable to schools closing before September 30, 2023.^{13, 14} The VETS Credit Act amended 38 U.S.C. §3699(c) and as incorporated by statute, the provisions of the VETS Credit Act apply to courses and programs closed before September 30, 2023. Section 3699(c)(2)(C) expressly provides: "This paragraph shall apply with respect to a course or program of education closed or discontinued before September 30, 2023." The VETS Credit Act left this existing provision untouched. There is no justification for VA's decision to limit the provisions of the VETS Credit Act to students attending schools that close or lose approval after December 27, 2022.

The remaining discrepancies, along with inaccuracies in the VA's restoration application form, might discourage student veterans from fully accessing their earned benefits. Correcting these items is paramount to ensuring that veterans have an easier, more accessible avenue for restoring their education benefits in the aftermath of school closures. More importantly, we urge the Subcommittee's quick action because all of the statutory authorities for GI Bill restoration in case of school closure will expire September 30, 2023, unless Congress takes action. We strongly advocate that the law should be extended to afford student veterans the chance to get their GI Bill benefits reinstated when these situations outside of their control occur.

- **Executive Branch Solution:** Fully implement the VETS Credit Act, and apply to all veterans who apply for GI Bill restoration regardless of timeline, as Congress intended.
- **Legislative Branch Solutions:** Amend 38 U.S.C. 3699(c)(2)(A) to explicitly instruct VA to consider a student veteran's application for restoration under the provisions of the VETS Credit Act regardless of when their program was affected or when they apply as long as they meet other eligibility standards. Also, it is imperative for Congress to extend the current September 30, 2023, expiration date associated with GI Bill restoration in closure and disapproval scenarios.

¹² Veterans Education Success, "Letter from Rep. Buchanan Urging VA to Update Its Guidance on GI Bill Restoration After Closed Schools," accessed September 14, 2023, <https://vetsedsuccess.org/letter-from-rep-buchanan-urging-va-to-update-its-guidance-on-gi-bill-restoration-after-closed-schools/>.

¹³ Veterans Education Success, "Letter to VA Regarding the VETS Credit Act," June 14, 2023, accessed September 14, 2023, <https://vetsedsuccess.org/wp-content/uploads/2023/06/VA-VETS-Credit-Act-letter.pdf>.

¹⁴ U.S. Department of Veterans Affairs, "Restoration of Benefits After School Closure or if a School is Disapproved for GI Bill Benefits," accessed September 14, 2023, <https://www.benefits.va.gov/GIBILL/Restoration.asp>.

Streamlining Consumer Information

The GI Bill Comparison Tool provides important information to student veterans. We have commented often to this Subcommittee about the various ways in which the Comparison Tool should be implemented to provide better information to veterans. We are glad VA has implemented some of the changes we have recommended for the Feedback Tool and the Comparison Tool.¹⁵

However, we continue to find that information important to veterans and that could be easily available on the Comparison Tool is not provided. For instance, one particular issue we have continued to raise is the importance of retaining historical information on the Comparison Tool. Currently, when a school closes or a program loses approval, it simply disappears from the Comparison Tool and WEAMS (Web Enabled Approval Management System) without any explanation. The lack of transparency and information, including the relevant dates for when the school closed or lost approval, creates unnecessary hurdles for student veterans as well as for researchers and Congress.

We were recently contacted by a veteran who had attended an unaccredited school approved to receive GI Bill benefits. The student reported that they thought the school lost its VA approval. The Comparison Tool and WEAMS did not offer details about the student's school or program, including the timing and reasons for its approval loss, crucial information for GI Bill restoration. We attempted to help the student by reaching out to the appropriate agencies to obtain the information, but it's an unnecessary and inefficient way for students to learn about a school that lost its approval. A much more efficient and direct way to assist veterans is to provide information in the Comparison Tool.

Similarly, we continue to urge VA to retain information in the Comparison Tool about all student complaints received, and especially beyond the most recent two years. A school's history of complaints is information a prospective student veteran is entitled to know, and is information that may impact their school selection. Currently, VA publishes information about complaints closed in just the most recent two years, which denies prospective students important information about the history and volume of student complaints to VA about a school.

- **Executive Branch Solution:** Implement 38 U.S.C. §3698 so that the Comparison Tool provides information that is relevant to student veterans. The Comparison Tool is a centralized mechanism for delivering important information to student veterans and by statute should publish complaints and information from students and the State approving agencies.¹⁶ VA has incorrectly concluded that information about a history of complaints about a school or decisions by the SAA affecting a program – including program disapproval – is not relevant information for student veterans.

¹⁵ Veterans Education Success, "Our Letter to VA Regarding January 12, 2023 Meeting and Feedback Tool," February 15, 2023, accessed September 14, 2023, <https://vetsedsuccess.org/our-letter-to-va-regarding-january-12-2023-meeting-and-feedback-tool/>.

¹⁶ 38 U.S.C. § 3698(b): "In developing the policy required by subsection (a), the Secretary shall include each of the following elements: (1) A centralized mechanism for tracking and publishing feedback from students and State approving agencies regarding the quality of instruction, recruiting practices, and post-graduation employment placement of institutions of higher learning..."

- **Legislative Branch Solution:** Propose a companion bill to S. 1309 to increase student veterans' access to relevant consumer information.¹⁷

Delaying VA Policy

VA created an issue stemming from their abrupt policy shift concerning service members enrolled in the Marine Corps Excess Leave Program (ELP). This policy change, initiated by VA's Office of General Counsel, reclassifies ELP participants as being on "active duty," thereby stripping them of their MHA under their GI Bill benefits. Effective August 1, 2023, this new policy from VA imposes severe financial hardships on seven service members who embarked on law school studies with the assurance of MHA support. Under the new interpretation, service members attending school as ELP participants are not entitled to the MHA with their GI Bill benefits, while also not receiving housing benefits from DOD. VA has refused to exempt currently enrolled students from this new interpretation.

There are currently seven students who enrolled in law school based on the longstanding policy that ELP participants are entitled to the MHA. Despite starting their program under one set of rules, these student veterans now face substantial housing expenses and the likely need to take out loans with limited options to withdraw from school due to career repercussions and extended service obligations.

The situation underscores the need for immediate action to exempt current ELP participants from the new interpretation and explore legislative remedies in collaboration with the VA Committees. We have called on VA to make the commonsense and fair decision to not implement this new policy for these seven service members to prevent harm to these individuals, and to afford them to use their full GI Bill benefits they rightfully earned.¹⁸

- **Executive Branch Solution:** VA has both the discretion and, in our view, a *legal obligation* to apply the new interpretation exclusively to new students and exempt current students from the new policy. Additionally, VA should make it explicitly understood to all new program participants what the new policy is, and how it may affect students financially.
- **Legislative Branch Solution:** Amend 38 U.S.C. § 3313(e) to explicitly authorize a monthly housing allowance for Excess Leave Program participants notwithstanding their active-duty service status.

Conclusion

We would like to extend our gratitude to the Education Service staff and leadership for their diligent efforts in supporting student veterans and their families, as we continue to work through these issues. We acknowledge their hard work, though it's

¹⁷ Veterans Education Oversight Expansion Act of 2023, S. 1309, 118th Cong., 1st sess., 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1309>.

¹⁸ Veterans Education Success, "Our Letter to the Department of Veterans Affairs on the Marine Corps Excess Leave Program," June 21, 2023, accessed September 14, 2023, <https://vetsedsuccess.org/our-letter-to-the-department-of-veterans-affairs-on-the-marine-corps-excess-leave-program/>.

evident that we must prioritize the welfare of our veterans and address pressing issues that have occasionally led to unintended consequences. The four notable challenges we've highlighted continue to stand out: risk-based surveys, VA's interpretation of Congressional intent on GI Bill restoration, Comparison Tool Data, and the Excess Leave Program.

Unfortunately, we continue to see alarming examples of fraud that make it necessary to maintain a strong regulatory and oversight framework. Just last year, a school called House of Prayer Bible College had five campuses raided by the FBI after a multi-year investigation proved they were a sham operation.¹⁹ Two years prior, we alerted VA to student veteran concerns and whistleblower complaints about House of Prayer, but this unfortunate instance demonstrated the fact that current program standards are inconsistent with VA's implied "stamp of approval" for too many programs.²⁰

We sincerely appreciate the opportunity to express our views before this Subcommittee. As the higher education industry continues to evolve in these very dynamic times, we emphasize the importance of maintaining high standards of quality. Student veterans, taxpayers, and Congress must expect the best outcomes from the use of hard-earned GI Bill benefits. We look forward to the consideration and discussion of these issues, and we are grateful for the continued opportunities to collaborate with this esteemed body.

¹⁹ Beynon, Steve. "House of Prayer Church Accused of Squeezing Veterans' Benefits, Stripped of GI Bill Eligibility." Military.com, October 4, 2022. Accessed September 14, 2023.

<https://www.military.com/daily-news/2022/10/04/house-of-prayer-church-accused-of-squeezing-veterans-benefits-stripped-of-gi-bill-eligibility.html>.

²⁰ Veterans Education Success, "Our Letter to VA and Georgia SAA Regarding House of Prayer Christian Church," August 2020, <https://vetsedsuccess.org/letter-to-va-and-georgia-saa-regarding-house-of-prayer-christian-church>.

Information Required by Rule XI2(g)(5) of the House of Representatives

Pursuant to XI2(g)(5) of the House of Representatives, we hereby confirm that neither William Hubbard nor Veterans Education Success has received any federal grants during Fiscal Year 2023, and there have been no federal grants awarded in the two preceding Fiscal Years. There is no existing fiduciary involvement with any organization or entity that holds a direct or indirect interest in the subject matter of this hearing. This disclosure statement is provided in adherence to the aforementioned rule and is presented as an accurate representation of the financial and fiduciary affiliations relevant to this testimony.



**William Hubbard,
Vice President for Veterans & Military Policy**



William Hubbard serves as the Vice President for Veterans & Military Policy at Veterans Education Success, focused on advancing higher education success for service members, veterans, and their families, and protecting the promise of federal education programs. Previously, he served as the Vice President of Government Affairs and Chief of Staff for Student Veterans of America. He has been frequently called to testify to Congress on a variety of topics related to higher education and veterans, and spearheaded the coalition that led to the unanimous passage of the Forever GI Bill.

Prior to his roles in higher education advocacy, Will worked as Federal Strategy and Operations Consultant at Deloitte, and spent several years serving government agencies to include the Department of the Navy, Department of State, and the State of Indiana Department of Revenue in his role. Also, as a National Executive Committee Member of Deloitte's Armed Forces Business Resource Group.

Will joined the Marine Corps Reserves in 2006 and continues his service, presently serving as a Consulting & Strategy Manager with the Marine Innovation Unit. His last overseas deployment was to Kabul City, Afghanistan, where he served in the Special Operations Joint Task Force as a member of a small cell of intelligence professionals. He also worked with Southern Command (SOUTHCOM) to conduct activities in Honduras, Guatemala, and El Salvador, and humanitarian assistance/disaster relief in Haiti.

He serves as an Advocacy Ambassador Advisor for the National Marrow Donor Program, and was previously a member of the U.S. Small Business Administration's Interagency Task Force on Veterans Small Business Development and the American University President's Council on Diversity and Inclusion. He is a recipient of the American University Alumni Association's Rising Star Award for 2019.

He graduated with a bachelor's degree in international studies from American University and has a certificate in Diversity, Equity and Inclusion in the Workplace from the University of South Florida. Will and his wife, Noelle, presently reside in Arlington, VA with their daughters, Lucy and Ruby.

APPENDIX



March 7, 2023

Joseph L. Garcia, Executive Director
Education Service
Veteran Benefits Administration
Via email

Re: Risk-Based Surveys

Dear Director Garcia:

We thank you and your team at the Education Service for making progress towards implementing risk-based surveys as required by the Protect the GI Bill Act, enacted as part of the larger *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*.

We recognize the considerable time and effort your team has put into the VBA Education Service's Standard Operating Procedure for Risk Based Surveys¹ and Standard Operating Procedures for Targeted Risk Based Reviews² (SOPs).

While the Education Service is to be commended for preparing thorough and thoughtful SOPs, we wish to bring to your attention a very important gap: Specifically, both SOPs fail to reflect Section 1014 of the Isakson-Roe law, codified at 38 U.S.C. § 3673(e) ("Notice of Government Action"). This is actually the key section of the law as it outlines when a risk-based survey should take place. Specifically, section 3673(e) of the law requires a risk-based survey by the State Approving Agency (SAA) within 60 days of VA's or the SAA's receiving notice or becoming aware of one or more "events" that are set forth in § 3673(e)(3):

- The placement of an institution on Heightened Cash Monitoring Level 2. See 38 USC § 3673(e)(3)(A);

¹ VBA Education Service, Oversight and Accountability Division, *Standard Operating Procedure, Risk Based Surveys* (Jul. 22, 2022), <https://vetsedsuccess.org/vbas-standard-operating-procedures-for-risk-based-surveys-july-22-2022/>.

² VBA Education Service, Oversight and Accountability Division, *Standard Operating Procedure, Targeted Risk Based Review (TRBR)* (Oct. 1, 2022), <https://vetsedsuccess.org/vbas-standard-operating-procedures-for-targeted-risk-based-reviews-oct-1-2022/>.

- Punitive action against an institution by a federal agency or department for misconduct or misleading marketing practices that would violate the standards defined by the Secretary of Veterans Affairs. See 38 USC § 3673(e)(3)(B);
- Punitive action against an institution by a State for any reason. See 38 USC § 3673(e)(3)(C);
- The loss, or risk of loss, by an institution of accreditation, including notice of probation, suspension, an order to show cause relating to the educational institution's academic policies and practices or to its financial stability, or revocation of accreditation. See 38 USC § 3673(e)(3)(D); and
- The placement of an educational institution on provisional certification status by the Secretary of Education. See 38 USC § 3673(e)(3)(E).

There are several problems that arise from the SOPs' failure to reflect the requirements of 3673(e).

First, the SOPs appear to confuse the "scope" of a risk-based survey, codified at 38 U.S.C. § 3673A(b)(2), with the triggering events, listed above and codified at 38 U.S.C. § 3673(e)(3). This apparent confusion results in the SOPs' instructing SAAs to conduct a risk-based survey when an institution's veteran enrollment increases from, for example, two students to four students. (Enrollment increase is a factor in the statute's "scope" of a review in 38 U.S.C. § 3673A(b)(2) but is not a triggering event for a review under 38 U.S.C. § 3673(e)(3).)

This apparent confusion also has resulted in the SOPs' explanation that the loss or risk of loss of accreditation is merely an additional factor worth considering, but not a statutory trigger, in determining whether a risk-based survey is needed. This is clearly at odds with the explicit language of 38 U.S.C. § 3673(e)(3)(D), which specifically names the loss or risk of loss of accreditation as a trigger for a risk-based review. Similarly, the SOPs incorrectly limit state government actions to those that reach a court verdict or settlement, which is clearly at odds with the explicit language of 38 U.S.C. § 3673(e)(3)(C).

This is not to say that the SOPs are not thoughtful. We do appreciate that the topics outlined in 38 USC § 3673A(b)(2) ("scope" of a review), such as veteran complaints, may actually indicate risk before one of the triggering events in § 3673(e)(3) occurs. Similarly, the "Targeted" SOP provides well-thought out appendices providing numerous "risk indicators" worth reviewing during a targeted risk-based review (see pp. 11-12 and 18-20 of "Targeted" SOP). Therefore, we commend VBA's efforts to identify risky schools early. To do this, however, VBA should ensure that the automatic triggers for a risk-based survey in § 3673(e)(3) are incorporated into the SOPs and should develop an algorithm for using the items listed in § 3673A(b)(2) as early indicators of risk.

Second, the SOPs also fail to reflect the statute's strict time limits for VA and the SAAs to act, codified at 38 U.S.C. § 3673(e)(1), including that VA must alert an SAA within 30 days of becoming aware of a triggering event, see § 3673(e)(1)(A), while the SAA must immediately notify the Secretary upon becoming aware of a triggering event. See 38 USC § 3673(e)(1)(B). Most important, the SAA must complete the risk-based survey and provide the Secretary with a complete report within 60 days. See 38

USC § 3673(e)(1)(C). Nowhere in either SOP is there any mention of the requirement that an SAA complete the risk-based survey and deliver the results to the Secretary within 60 days. This statutory time limit – specifically imposed by Congress to ensure that risky schools receive prompt examination – would surely be worth teaching SAAs about and including in the SOP.

Third, the SOPs also fail to reflect Isakson-Roe’s methodology of assigning risk-based reviews to SAAs to complete, codified at 38 U.S.C. § 3673(e)(1). In contrast, the Education Services’s Targeted SOP states that Education Service staff (“Chief Education Liaison Office” staff) will conduct “targeted” risk-based surveys (see p. 7 of the “Targeted” SOP). This is at odds with the statute.

Again, we thank you for your thoughtful work on the SOPs. We hope it will not be difficult for your staff to incorporate 38 U.S.C. § 3673(e) into your SOPs.

Finally, a question, please: Has the Education Service made progress on the creation of a database for SAAs to utilize in conducting risk-based surveys, as required by 38 U.S.C. § 3637A(c)? If not, how can we be of assistance on that?

Thank you for your work to serve student veterans.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Wofford', is positioned above the typed name.

Carrie Wofford
President

Cc:

- Joshua Jacobs, Nominee for UnderSecretary of Veterans Benefits
- House and Senate Veterans Affairs Committee professional staff
- The American Legion
- National Association of State Approving Agencies



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON

March 16, 2023

Carrie Wofford, President
Veterans Education Success
1501 K St., Suite 200
Washington, DC 20005

Dear Ms. Wofford:

Thank you for your letter, dated March 7, 2023, to the Department of Veterans Affairs (VA) regarding the implementation of risk-based surveys, as codified in 38 U.S.C. § 3673(e) ("Notice of Government Action") following the enactment of section 1014 of P.L. 116-315, the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*.

First and foremost, I want to inform you that P.L. 116-315 § 1014 was fully implemented as required by law. The statutory language is clear, precise and unambiguous regarding the scope and timing for the performance of risk-based surveys triggered by notices of government action, and these are understood by both VA Education Service and State Approving Agency (SAA) staff. VA Education Service only develops Standard Operating Procedures (SOP) for processes that are either not elsewhere defined, are unclear, or where VA is given statutory discretion for defining the scope and timing of such activities. Consequently, since no further elucidation was required for implementation, VA Education Service did not develop an SOP for this provision.

Targeted Risk Based Reviews (TRBRs) are ad hoc reviews created by VA that supplement bi-annual compliance surveys (required by 38 U.S.C. § 3693) and the risk-based surveys (described in 38 U.S.C. § 3673A), as part of a comprehensive oversight strategy. The selection, scope and timing of risk-based surveys based on notices of government action are driven by statutory triggers and, therefore, are not included in the strategic planning of oversight activities. They must be performed regardless of any other planned oversight activities. Consequently, the risk-based surveys described in 38 U.S.C. § 3673(e) are not mentioned in the SOP because they are not applicable to the issue at hand.

The SOP for risk-based surveys described in 38 U.S.C. § 3673A was developed because VA, in partnership with the SAAs, is granted latitude in defining the scope and schedule of such surveys. VA Education Service felt it prudent to include past notices of government action as additional risk factors, in the form of a lagging indicator for planning in the subsequent fiscal year, because of its gravity. The risk-based surveys described in 38 U.S.C. § 3673(e) are not explicitly covered in the SOP because they are outside the scope of that document.

Page 2.

Ms. Carrie Wofford

Finally, you asked about the creation of a database for SAAs to utilize in conducting risk-based surveys, as required by 38 U.S.C. § 3637A(c). VA's Salesforce-based system is currently the database used for the performance and planning of oversight activities, and the SAAs have access to that that system. Additional tools, features and functionality for research, planning and performance of risk-based surveys are being planned as the new Approval Manager system is being developed as part of the ongoing Digital GI Bill project focusing on information technology modernization, integration and automation.

If you have additional questions regarding SOPs or the implementation of statutory requirements, you may reach out directly to James Ruhlman, Deputy Director, Program Management, VA Education Service, via email at james.ruhlman@va.gov. Thank you for your concern regarding the effective oversight of educational institutions and the protection of our GI Bill beneficiaries.

Sincerely,

**JOSEPH
GARCIA**
Joseph L. Garcia

Digitally signed by
JOSEPH GARCIA

Date: 2023.03.20 09:32:09
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Executive Director, Education Service
Veterans Benefits Administration



June 1, 2023

Joseph L. Garcia, Executive Director
Education Service
Veterans Benefits Administration
Via email

Re: Risk-Based Surveys

Dear Director Garcia:

Thank you for your response to our previous letter concerning the implementation of risk-based surveys. We apologize for our delay. We appreciate your detailed response, which was informative. While we understand the points you have raised, we believe the Education Service's Standard Operating Procedures (SOPs) for the risk-based surveys still contain some inaccuracies.

We are very grateful that the Education Service has taken seriously the Isakson-Roe law and has dedicated time and effort to complying with the new law. We understand you are confident that P.L. 116-315 § 1014 has been implemented as required by law. However, there are still discrepancies between your interpretation of the statutory language and the concerns we raised in our previous letter. We believe the SOPs developed by Education Service confuse 38 U.S.C. § 3673(e)(3) and 38 U.S.C. § 3673A(b)(2) and fail to incorporate the specific triggers outlined in 38 U.S.C. § 3673(e)(3) that require a risk-based survey by the State Approving Agency (SAA) within 60 days of receiving notice or becoming aware of certain events.

Specifically, you state that the risk-based surveys described in 38 U.S.C. § 3673(e) are not mentioned in the SOP because they are not applicable to the issue at hand. You regard the Risk-Based Survey (RBS) SOP as pertaining only to *Section 1013* of Isakson-Roe (PL 116-315) and not Section 1014, which lists the triggers for a risk-based survey that must be completed by the SAA within 60 days. However, the SOP specifically presents itself, in the introduction, as broadly implementing Isakson-Roe's risk-based surveys. The RBS SOP states under the *Purpose* section that it "establishes the framework necessary to consistently execute RBSs in accordance with legislative requirements."¹

Given this objective and the presentation of the SOPs to SAAs, we strongly recommend that the "framework" for consistent execution of RBSs needs to include circumstances when an SAA is required to complete a risk-based survey within 60 days of receiving notice or becoming aware of certain triggers, as provided in Section 1014 of Isakson-Roe and codified at 38 U.S.C. § 3673(e). By omitting these triggers, the SOPs may lead to an inconsistent application of risk-based surveys, causing indirect adverse effects on students, and a potential neglect of institutions that truly warrant examination.

¹ VBA Education Service Oversight & Accountability Division, "Standard Operating Procedure: Risk Based Surveys" (Version 1.0), Jul. 22, 2022. Pg. 4.

Furthermore, while we understand your assertion that the SOPs do not need to directly address 38 U.S.C. § 3673(e) because you find the statutory provisions clear and unambiguous, we believe it is crucial to consider the practical implications of omitting certain statutory requirements – especially as SAAs seek to address issues in the field.

Consider the fact that there is a heavy reliance on these SOPs by SAAs; in the guidelines produced by the National Association of State Approving Agencies (NASAA), they even go so far as to indicate this reliance up front, stating, “Please ensure that you are following the latest guidance in the RBS SOP and any written guidance provided by Department of Veterans Affairs.”²

We are very grateful to your team for developing these SOPs. At the same time, we strongly believe the following changes are needed in the SOPs:

- The statutory time limits for VA and SAAs to act when certain triggers are present, as specified in 38 U.S.C. § 3673(e)(1), are one of the most essential components of this law – but are omitted entirely from your SOPs. These time limits were developed in collaboration with the Congressional Veterans Affairs Committees and SAA input to ensure that risk-based surveys are completed with the intended timeliness they necessitate. However, the current SOPs fail to mention the requirement for SAAs to complete the survey and provide a complete report to the Secretary within 60 days. By not including this critical timeframe in the SOPs explicitly, there is a risk of delayed or inadequate actions in response to triggering events, as some SAAs may be less familiar with these statutory requirements. We understand that NASAA has expressed to your staff that they, too, believe the SOPs’ failure to mention the 60-day time limit is a serious omission.
- The Risk-Based Survey SOP lists “legislatively mandated risk factors”³ in three places, but, in each instance, quotes the wrong statutory provision – quoting from 38 U.S.C. § 3673A(b)(2) (which sets forth the “scope” of factors an SAA should cover *during* a risk-based survey) and failing to list the actual statutorily-mandated risk *triggers* located at 38 U.S.C. § 3673(e)(3). The “scope” factors from 3873A(b)(2) were intended to set forth a minimum list of the items an SAA should look at *during* a review. They do not set forth the risk factors that trigger a survey. We do not object to the inclusion of these scope items as possible additional triggers for a risk-based survey given that many items listed in the “scope” – such as student complaints – are indeed likely to suggest risk. But, at the least, the RBS SOP certainly needs to specifically list out the triggers that Congress did provide in 38 U.S.C. § 3673(e) and explain that when the SAA receives notice or becomes aware of any one of the § 3673(e) triggers the SAA is required to complete a risk-based survey and submit a report to the Secretary within 60 days. The SOP also should set forth the legislatively-required standard for an SAA’s report.

² NASAA RBS Guide (FY 2023), Pg. 2

³ Specifically, page 5 lists “legislatively mandated risk factors,” and pages 7 and 16 each have a section titled, “Legislative Risk Factors From Public Law 116-315.”

- The RBS SOP identifies “loss of accreditation” under “Other Risk Factors for Consideration.”⁴ This is at odds with the clear directive of Congress. Loss of accreditation or risk of loss of accreditation is a statutory event that Congress has deemed must trigger a risk-based survey, per 38 U.S.C. § 3673(e)(3)(D). The SOP should be revised to correctly identify loss, or risk of loss, of accreditation as a trigger for an RBS to be completed within 60 days, and not merely as an “other... factor” to be considered.
- The SOPs erroneously limit one of the risk factors to being, “Federal or State government actions *in court*.”⁵ This is at odds with the statute. The language in 38 U.S.C. § 3673(e)(3) does not limit the risk to being “in court.” Instead, the statute states it should apply to, “Punitive action taken by” federal agencies and “Punitive action taken by a State against an educational institution,” which goes beyond the narrower definition of actions solely within the judicial realm.⁶ Indeed, upon notice from the Secretary of any trigger in §3673(e)(3), there must be a careful review of “any other action against the educational institution by any Federal or State government entity or by the educational institution’s accreditor.”⁷ Clearly, it is incorrect to suggest in the SOPs that a risk-based survey is only required for or concerned with actions “in court.”
- The assignment of risk-based surveys to SAAs. The SOPs specify that the Education Service staff may conduct targeted risk-based reviews (TRBR).⁸ Specifically, the TRBR SOP states, “Once the TRBR is approved, the Oversight and Accountability team will create a TRBR schedule in Salesforce and a notification will be sent to the appropriate Chief Education Liaison Officer (CELO) to schedule and assign the compliance activity.”⁹ This is inconsistent with the statute and should be revised to ensure compliance with the law. We understand your assertion that TRBRs are “ad hoc reviews created by VA,” but Congress has promulgated a specific statute and the agency must adhere to it. 38 U.S.C. § 3673(e)(1) clearly assigns the responsibility of completing risk-based surveys triggered by notices of government action to the SAAs. To ensure consistency and maximize the effectiveness of risk-based surveys, it is essential to align the Education Service's practices with the statutory requirements.

⁴ VBA Education Service Oversight & Accountability Division, "Standard Operating Procedure: Risk Based Surveys" (Version 1.0), Jul. 22, 2022. Pg. 26. Pages 7-8 of the SOP provides a long list of various risk factors, and the only mention of accreditation is the bullet, “Other accreditor actions” under “Other Risk Factors for Consideration” on page 8.

⁵ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Targeted Risk Based Review (TRBR)” (Version 3), Oct. 1, 2022. Pg. 6.

⁶ 38 U.S.C. § 3673(e)(3)(B) and (C).

⁷ 38 U.S.C. § 3673(e)(6)

⁸ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Targeted Risk Based Review (TRBR)” (Version 3), Oct. 1, 2022. Pg. 4 (“3. Applicability: This procedure applies to Education Service, Oversight and Accountability Division and State Approving Agencies (SAA), when assigned a TRBR.”).

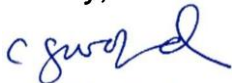
⁹ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Targeted Risk Based Review (TRBR)” (Version 3), Oct. 1, 2022. Pg. 7.

We would be very grateful for your incorporation of these statutory requirements into your SOPs and look forward to their expeditious incorporation.

Finally, we are grateful for your update about the use of the Salesforce-based database and the Approval Manager system. We have been eagerly following the progress on the Digital GI Bill work, and are hopeful that these systems will integrate in a meaningful manner. We would also be interested to know if there is any consideration towards leveraging these tools and data for prospective student veterans. We believe the insights that could be gleaned from these tools would be invaluable to veterans as they select where to apply their hard-earned benefits.

Thank you for your attention to these matters. We are so appreciative of you and your team for your unwavering dedication to our Nation's student veterans. We believe that by addressing these concerns, your SOPs can correctly carry out the letter of the law and strengthen the implementation of risk-based surveys – which will better serve students as they seek to achieve their academic goals.

Sincerely,



Carrie Wofford
President

Cc:

- Joshua Jacobs, Under Secretary for Benefits
- House and Senate Veterans Affairs Committee professional staff
- The American Legion
- National Association of State Approving Agencies



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

June 15, 2023

Carrie Wofford, President
Veterans Education Success 1501 K St., Suite 200 Washington, DC 20005

Dear Ms. Wofford:

Thank you for your letter, dated June 1, 2023, to the Department of Veterans Affairs (VA) expressing additional concerns regarding the implementation of risk-based surveys, as codified in 38 U.S.C. § 3673(e) ("Notice of Government Action") and Education Service's Standard Operating Procedure (SOP) for the risk-based surveys, which implements the provisions of 38 U.S.C. § 3673A.

VA assures you that our office and State Approving Agency (SAA) partners are aware of the triggering events and timing requirements specified in 38 U.S.C. § 3673(e), as amended by the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*, P.L. 116-315 § 1014. The annual VA/SAA Cooperative Agreements require SAAs to adhere to all applicable statutory provisions. The statutory language on this matter is clear, precise and unambiguous regarding the scope and timing for the performance of risk-based surveys triggered by notices of government action. VA is not aware of any lack of clarity on the part of any SAA.

VA developed the Risk-Based Survey (RBS) SOP in partnership with the SAAs to fulfill the requirements of 38 U.S.C. § 3673A (P.L. 116-315 § 1013). VA disagrees with the interpretation that 38 U.S.C. § 3673A(b)(2) sets forth the "scope" of factors an SAA should cover during a risk-based survey. VA's intent is to set forth a minimum list of the items an SAA should look at during a review, which does not set forth the risk factors that trigger a survey. The law granted VA latitude to define the scope of a comprehensive oversight program to conduct such surveys. The SOP also expressly states that all procedures are not necessarily contained within the SOP and acknowledges that periodic reevaluation and revision of the information contained therein may be necessary. To date, VA has not received SAA feedback regarding serious omissions.

Based on your feedback and to ensure clarity between VA and SAA personnel, we have issued an SOP dedicated to the statutorily specified triggers and timeframes. Enclosed is the Notice of Government Action SOP, which references the existing RBS SOP for information on the current framework outlining how to perform an RBS.

Page 2.

Ms. Carrie Wofford

As part of the ongoing collaborative effort with our SAA partners, VA plans to revise the RBS SOP for fiscal year 2024 as we refine the framework based on an analysis of RBS findings. VA will explore the possibility of adding information on Notices of Government Action and incorporating the changes you suggest in your letter into the RBS SOP. We welcome the feedback of the SAAs and other interested parties as we continue refining processes and procedures governing various oversight and compliance activities, including bi-annual compliance surveys, risk-based surveys and targeted risk-based reviews. These oversight and compliance activities are complementary and augment, but do not replace one another, and work together to ensure that education and training providers meet program requirements and deliver on their promises to our Nation's Veterans and their dependents.

Finally, I want to speak to your comments about leveraging data from the Salesforce-based database and the Approval Manager system for prospective GI Bill students. As part of the ongoing Digital GI Bill information technology modernization and integration project, VA will be looking at making enhancements to the GI Bill Comparison Tool, including the display of additional data elements from various sources and the VA systems that you mention, to better assist Veterans and their dependents in making informed choices about where to use their benefits. VA looks forward to your comments and suggestions as we continue the development process.

If you have additional questions regarding SOPs or the implementation of statutory requirements, you may reach out directly to James Ruhlman, Deputy Director, Program Management, VA Education Service, via email at james.ruhlman@va.gov.

Thank you for your continued support of our mission.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Garcia".

Joseph L. Garcia Executive Director
Education Service

Enclosure



July 10, 2023

James Ruhlman, Deputy Director
Program Management
Education Service
Veterans Benefits Administration
Via email

Dear Mr. Ruhlman,

In response to concerns we raised about the standard operating procedures for the risk-based surveys as required by 38 U.S.C. §3673, Director Garcia wrote to inform us that VBA had developed a new SOP and he forwarded a copy of the *Standard Operating Procedure, Notice of Government Action (38 USC §3673(e), June 1, 2023 (hereinafter "SOP")*. Director Garcia suggested that we contact you directly if we had any questions or comments about the new SOP.

We are so grateful for VBA's responsiveness to our concerns and the creation of an SOP to address the requirements of section 3673. Overall, it looks very good and closely aligns with the statute. It should provide very helpful and much-needed guidance to the SAAs. However, there are a few instances where the new SOP does not align with the underlying statute and consequently extends the time for completing the risk-based surveys (RBS) beyond the period allowed in the statute. We request that you correct these few instances so that the SOP correctly implements the law.

Specifically, per 38 U.S.C. §3673(e)(1)(B) and (C), an SAA is required to complete the RBS no later than 60 days after the date it receives notice "or otherwise becomes aware of an action or event described in paragraph (3)."¹ SAAs also must immediately notify

¹ 38 U.S.C. §3673(e)(3) describes the actions or events as follows:

- (3) *An action or event under this paragraph is any of the following:*
 - (A) *The receipt by an educational institution of payments under the heightened cash monitoring level 2 payment method...*
 - (B) *Punitive action taken by the Attorney General, the Federal Trade Commission, or any other Federal Department or agency for misconduct or misleading marketing practices...*
 - (C) *Punitive action taken by a State against an educational institution.*

VA when they receive notice or otherwise become aware of one of the actions or events listed in paragraph 3, and, likewise, under subsection (e)(1)(A), VA is supposed to notify the relevant SAA if it receives notice or otherwise becomes aware of one of the actions or events.

We request that you review the following issues and make the corrections suggested:

1. The SOP currently does not include that ‘becoming aware’ of one of the actions or events described in 38 U.S.C. §3673(e)(3) triggers the VA and SAAs’ obligations.

The SOP prompts the VA and SAAs to take action if they receive a notice or “become[] aware of **a notice** of certain action(s) taken against” a school.² The statute, however, does not mention becoming aware of a *notice*. The statute provides that notification must be given and risk-based surveys conducted when VA/SAA receives notice **or otherwise becomes aware of the actions or events** listed in 3673(e)(3). In other words, the SOP suggests that SAAs should not take action (and that the 60 day clock does not begin) when they become aware of an event, but – instead – only when they become aware that they have been notified by VA or aware of notice to the school from another agency. In short, by instructing SAAs that they should act only after becoming aware of a *notice*, the SOP inadvertently raises the threshold for when an RBS is triggered. For instance, an SAA could discover a state’s punitive action against a school through a news media report, but – by following the wording of the SOP – delay notifying the VA or conducting the RBS because it did not actually become informed about a *notice* that was provided. The statute, however, starts the clock from the date the SAA receives notice or becomes aware of an action or event, not the date the SAA becomes aware of a notification about the event.

We recommend correcting the SOP to state that an RBS must be completed not later than 60 days after the date the SAA receives notice *or becomes aware of* the action or event, and not after the date the SAA notifies VA. To avoid any confusion and to ensure

(D) *The loss, or risk of loss, by an educational institution of an accreditation from an accrediting agency or association, including notice of probation, suspension, an order to show cause...*

(E) *The placement of an educational institution on provisional certification status by the Secretary of Education.*

² In the Background section on page 3, the SOP states: “section 1014 amended chapter 36 of title 38 USC 3673(e) to establish communication between the Secretary and State Approving Agencies **when either receives or becomes aware of a notice of certain action(s)** taken against an ETI [Education and Training Institution]. Additional requirements outlined by this legislation includes oversight activities in the form of a risk-based survey *when such notice is received.*” Immediately following is a list of the “Types of *notices.*” (emphasis added).

that SAAs conduct the risk-based surveys on the schedule that Congress carefully established (which is when the SAA becomes aware of one of the triggering events), the relevant SOP sections should be revised to incorporate the specific language from the statute: “or otherwise becomes aware of an action or event” described in 38 U.S.C. §3673(e)(3).

2. The SOP starts the 60 days to complete an RBS on the date when SAAs notify VA, which can give the SAA two weeks longer than the 60 days provided in the statute to complete the RBS.

Another issue impacting the timeliness of the risk-based surveys is that the SOP allows the SAAs to wait **10 business days** before notifying the VA.³ The SOP directs SAAs to provide to VA the notice or information received “as soon as feasible but no later than 10 business days after becoming aware of such action.”⁴ Thereafter, “[w]ithin 60 days of receiving notice from VA or when a SAA provides notice to VA of such an event, SAAs are to complete a risk-based survey.”⁵ That effectively extends the period for completing the risk-based surveys by two weeks beyond the 60 days allowed by statute.

Time is of the essence for completing a risk-based survey when one of the actions or events listed in the statute occurs. Those actions and events indicate serious compliance and financial risk, and often occur just before a school closes suddenly. In these circumstances, it is necessary for the SAA to complete the RBS as soon as possible to protect student veterans and their GI Bill benefits.

3. The VA should clarify that the Oversight and Accountability staff will complete their review within the 30 days to ensure that VA will notify the SAAs within 30 days of receiving notice or becoming aware of one of the actions or events in 38 U.S.C. §3673(e)(3).

Under 38 U.S.C. §3673(e)(1)(A), if VA receives notice or otherwise becomes aware of an action or event in subsection (e)(3), it must notify the relevant SAA not later than 30 days after the date on which it received the notice or became aware of the action or event. Unless the SAA has otherwise learned of the action or event, this notice by VA to the SAA triggers the SAA’s obligation to complete the RBS. The SOP’s provision covering this requirement explains that the VA will give notice to the SAAs within 30

³ The statute requires the SAAs to “**immediately** notify” the Secretary when they receive notice or otherwise become aware of one of the triggering actions or events. 38 U.S.C. 3673(e)(1)(B) The ten business days allowed in the SOP does not seem to meet the statutory requirement of **immediate** notification to the VA.

⁴ Notification Actions Required, SOP, p. 3.

⁵ Compliance Required Actions, SOP, p. 3.

days "after VA becomes aware of such event **and the** Oversight and Accountability (O/A) staff within Education Service has reviewed the action that gave rise to such notice" (emphasis added).

Perhaps it is understood within VA that the O/A staff must complete their review within that 30 days so that VA can notify the relevant SAA in accordance with the statutory timeframe. However, as written, the SOP suggests that the 30 days for VA to notify the SAA starts to run after the O/A staff complete their review. If O/A staff review can take longer than the 30 days from when VA received notice or became aware of the action or event, then the SOP appears to be extending the notification to the SAAs beyond the 30 days allowed by statute. We recommend clarifying in the SOP and with VA staff that the notification to the relevant SAA must happen no later than 30 days after the date that the Secretary received notice or otherwise became aware of an action or event listed in 38 U.S.C. §3673(e)(3) – as the statute specifies.

Thank you for considering these comments on the SOP. We would be happy to discuss these further if you would like. Also, if it would be helpful, we would be happy to send a mark-up of the SOP showing our comments on the document itself.

Respectfully,

Della M. Justice

Della M. Justice
Vice President for Legal Affairs