



**Testimony of**

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**Legislative Hearing**

**House Committee on Veterans Affairs  
Subcommittee on Economic Opportunity**

**July 17, 2019**

Chairman Levin, Ranking Member Bilirakis, and Members of the Committee:

Thank you for the opportunity to provide input on pending legislation. Veterans Education Success (VES) is a non-profit organization that works to advance higher education success for all military-affiliated students, and provides free counseling and legal assistance to students using their GI Bill and military benefits.

We greatly appreciate the dedication and hard-work the Subcommittee has put into these crucial pieces of legislation. We believe that many of these bills are excellent and vitally needed to help veterans, servicemembers, and their families successfully utilize their hard-earned GI Bill benefits.

We are pleased to offer the following comments regarding the bills being introduced:

**Draft Legislation to require that educational institutions abide by Principles of Excellence**

VES strongly supports this bill, which would align the Department of Veterans Affairs' (VA) with the Departments of Defense (DoD) and Department of Education (ED) by codifying VA's Principles of Excellence. This bill would give VA clear authority to ensure schools are abiding by VA's Principles of Excellence for institutions of higher education.

Currently, VA's Principles of Excellence are only *voluntary*, making them *unenforceable* by VA. In contrast, DoD and ED currently have contractual power to cut off schools that fail to abide by their requirements. ED requires institutions receiving federal student aid to sign a "Program Participation Agreement."<sup>1</sup> Signing the agreement means a school certifies it will comply with statutes, regulations, and policies, including financial responsibility standards and program integrity rules such as refraining from making "substantial misrepresentations" to recruit students. These agreements empower the Secretary of Education to revoke a school's eligibility or impose limitations on a school's participation in Title IV.

Similarly, DoD requires institutions participating in Tuition Assistance to sign a "Memorandum of Understanding" (MOU). This MOU specifies rules and prohibitions related to deceptive recruiting and other practices, and explicitly incorporates ED's program integrity requirements. These requirements apply to the school itself, as well as to agents like third party lead generators, marketing firms, and companies that own or operate the school. DoD also prohibits aggressive recruiting, including prohibiting schools from making three or more unsolicited contacts (phone, email, in-person) to a servicemember or engaging in same-day recruitment and registration.

We strongly support this bill and offer several suggestions for the Subcommittee to further improve this bill:

- Update the Principles of Excellence to include quality metrics and more current standards for schools to abide by, to ensure military-connected students using GI Bill benefits are provided sufficient value. (Alternatively, the Subcommittee could direct VA to undertake a process to update the Principles of Excellence in conjunction with input from stakeholders).
- Give VA guidance in determining what constitutes a violation of the Principles of Excellence, as many instances may be murky. For example, the Subcommittee could direct the VA Secretary to consider such factors as federal or state agency punitive action or legal action against a school; the existence of a final court or administrative judgment against the school; whether a school's accrediting agency has taken punitive action against the school or raised questions about the school's validity (such as probation, a show-cause order, or requiring a teach-out plan for closing); whether the US Securities and Exchange Commission (SEC) has taken actions taken against a publicly traded college or de-listed its stock; and whether student complaints filed on the GI Bill Feedback system suggest a pattern of school violation of one of the Principles of Excellence.

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<sup>1</sup> U.S. Department of Education, Sec. 668.14 Program Participation Agreement, December 31, 1999, available at [https://ifap.ed.gov/regcomps/doc4072\\_bodyoftext.htm](https://ifap.ed.gov/regcomps/doc4072_bodyoftext.htm).

- Give VA intermediate authority (cutting off new enrollments rather than both current and new enrollments) where the violation is not egregious. For example, the Subcommittee could add language authorizing VA to also “suspend approval of new enrollments, depending on the Secretary’s discretion.”
- Provide VA an implementation process, such as: “VA shall post a caution flag and notify the institution it has 30 days to come into compliance; if the school is still not in compliance after 30 days, VA shall suspend new enrollments; if the school is still not in compliance after 90 days, then the Secretary shall disapprove all enrollments.”
- Regarding lead generators, rewrite the language (at page 3 line 1) to read “has a contractual relationship with the institution,” because lead generators do not “own” schools but rather have a contractual relationship with them. Similarly, we encourage the Subcommittee to address the problem of for-profit conversions by adding “or any entity that owns an educational institution” (on page 2, line 25).
- Section 2.B.ii.II, banning incentive compensation, may be superfluous because similar language was enacted by the Committee in 2012 as PL 112-249, Sec. 2. But we defer to the Subcommittee on the necessity of including this provision.

We suggest the Subcommittee work to merge this bill with section 3 of the draft Student Veteran Empowerment Act, also before the Subcommittee today.

**Draft Legislation: “Student Veteran Empowerment Act”**

Veterans Education Success strongly supports this bill.

*Section 2: Restoration of GI Bill for Closed Schools:*

We strongly support this provision, which would give full GI Bill restoration to all veterans at closed schools and disapproved schools.

Importantly, this bill would give GI Bill students parity with non-veteran students. Veterans should have the same rights as their non-veteran peers. At ED, students are entitled to reinstatement of their Pell Grants and forgiveness of their student loans if their school closed while they attended or within 120 days of their attendance.

VES has the following suggestions to strengthen this section:

- Make restoration of benefits retroactive to cover veterans who might fall through the cracks because their schools closed between August 16, 2017 (the date the Colmery Forever GI Bill became law), and the enactment of this bill.
- Specify that GI Bill restoration is not available to veterans who transfer “to a comparable course” at a new school.

- As currently written, the bill implies the veteran loses out on GI Bill restoration if he transfers even one credit out of 30 total credits. We suggest adding a threshold minimum number or percent of transferred credits before the veteran loses out on full restoration. The Subcommittee could also offer proportional restoration based on the number of credits transferred. We also suggest the subcommittee add a time limit on the transfer window (e.g., if the veteran hasn't transferred credits within 6 months of the school closing).
- Give student veterans the same rights as those using ED's Title IV funds by restoring GI Bill benefits for beneficiaries who were defrauded by their school. Significant law enforcement evidence exists documenting fraud against veterans by bad actor colleges.<sup>2</sup> At ED, students receive forgiveness of their student loans if their school took out loans in their name without their permission or signed their name without their knowledge ("False Certification"), wrongly enrolled students in a program they could not benefit from ("Ability to Benefit"), or deceived them ("Borrower Defense").

*Section 3: Additional Requirements for Approval of Educational Institutions:*

We strongly support this section, which would add additional requirements for VA approval of accredited educational institutions. This would keep GI Bill funds from flowing to schools that other federal agencies have found to be acting in a fraudulent manner.

We suggest the Subcommittee work to merge this bill with the Principles of Excellence bill also before the Subcommittee today.

We have the following suggestions to strengthen this bill:

- Strengthen subparagraph (4) to require not only that the program be *eligible* for Title IV, but also that the program be actually approved by ED and operating under a Title IV Program Participation Agreement. This ensures helpful oversight by ED of the school's financial stability and program integrity. The Subcommittee could do this by mirroring Congress' language in 10 USC § 2006a: "and has entered into, and is complying with, a Program Participation Agreement under section 487 of such Act (20 U.S.C. § 1094)."<sup>3</sup> In addition, it would be prudent to mirror the DoD MOU for schools, which explicitly requires that an institution be in compliance with program integrity requirements consistent with sections 668.71 through 668.75 and 668.14 of Title 34, Code of Federal Regulations "..... and refrain from high-pressure recruitment tactics such as making

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<sup>2</sup> See Law Enforcement Actions against Predatory Colleges, Veterans Education Success, available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5acba2540e2e72f4e5d5d067/1523294804610/Law+Enforcement+List.FINAL.pdf> ; 20 state Attorneys General letter to Chairman Bobby Scott detailing recent actions taken by the states, April 22, 2019, available at [http://www.marylandattorneygeneral.gov/News%20Documents/042419\\_Letter\\_for\\_profit\\_colleges.pdf](http://www.marylandattorneygeneral.gov/News%20Documents/042419_Letter_for_profit_colleges.pdf).

<sup>3</sup> See 20 U.S.C. § 1094.

multiple unsolicited contacts (3 or more)... and engaging in same-day recruitment and registration.”<sup>4</sup>

- Strengthen subparagraph (5) by clarifying definitions and a process for VA to handle schools that violate the Principles of Excellence, as suggested above for the Principles of Excellence bill.
- We note that some of our Veteran Service Organizations (VSO) partners are worried that some high-quality schools may not sign on to the Principles of Excellence. We would not oppose the addition to subparagraph (5) of a timeline and process by which VA could collaborate with highly-regarded schools to ensure their participation. We also would support revisions to the substance of the Principles of Excellence, to ensure they protect student veterans and weed out predatory schools while not presenting obstacles to high-quality, highly-regarded schools.
- Consider requiring private schools to charge VA a tuition that is no more than double the amount the school spends on student instruction. Congress previously required public colleges to charge VA no more than the in-state tuition rate for all veterans – even out of state veterans. Similarly, the Subcommittee could require all private colleges (or simply all colleges) to cap the amount they charge VA for tuition to no more than double the amount the school actually spends on the student’s instruction. Currently, some colleges redirect GI Bill dollars away from student education and towards unscrupulous spending on things like deceptive, late night TV ads. Of the ten colleges receiving the most Post 9/11 GI Bill tuition payments from Fiscal Years (FY) 2009-2017, totaling \$5.4 billion, seven spent less than one-third of students’ tuition and fees on education. These same schools produced graduation rates lower than 28% and only half of those who graduated earned more income than a high school graduate.<sup>5</sup>
- Close a loophole in 38 U.S.C., § 3676 (“Career Ready Student Veterans Act”) by inserting “specialized” before “accrediting agency” in paragraphs (14)(B) and (15)(B). The Career Ready Student Veterans Act forbids GI Bill approval of programs that leave graduates ineligible for licensing in occupations that require a license (such as registered nurses and electricians). Congress’ goal was to ensure GI Bill benefits are not wasted on a program where the graduate is ineligible for the job he thought he trained for. A 2018 VES report found that the Act’s intended ban had a loophole regarding law schools not

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<sup>4</sup> See DoD MOU Between DoD Office of the USD (P&R) and Educational Institution and Service-Specific Addendums, available at

[https://s3.amazonaws.com/dodmou/dodmouwebsite/documents/DODMOU+3+SAMPLE+July\\_10\\_2015.pdf](https://s3.amazonaws.com/dodmou/dodmouwebsite/documents/DODMOU+3+SAMPLE+July_10_2015.pdf)

<sup>5</sup> Veterans Education Success, *Should Colleges Spend the GI Bill on Veterans’ Education or Late Night TV Ads? And Which Colleges Offer the Best Instructional Bang for the GI Bill Buck?*, April 19, 2019, available at <https://vetsedsuccess.org/research-and-reports/ves/should-colleges-spend-the-gi-bill-on-veterans-education-or-late-night-tv-ads-and-which-colleges-offer-the-best-instructional-bang-for-the-gi-bill-buck/>.

approved by the American Bar Association (ABA).<sup>6</sup> Many such law schools operate in California, many of them online. GI Bill students who graduate from one of these law schools are generally not able to practice law in their state of residence. The General Counsel for California's State Approving Agency (SAA) concluded that the wording of the Career Ready Student Veterans Act did not specifically call for accreditation by a "specialized" accreditor, such as the ABA. Rather, the statute specifies only that a school must be accredited by an organization recognized by the Secretary of Education. Because law schools not recognized by the ABA may nevertheless be part of a larger university that has institutional accreditation by an organization recognized by the Secretary, the California SAA's General Counsel directed its SAA that the Career Ready Student Veterans Act ban was unenforceable against these unrecognized law schools.

*Section 4: Oversight of Educational Institutions Placed on Heightened Cash Monitoring Status by Secretary of Education:*

We strongly support this section, which would require SAAs to perform risk-based oversight of any school under Education Department monitoring or US Justice Department (DOJ) or Federal Trade Commission (FTC) legal action for misleading students. This bill is needed to ensure SAAs undertake proper risk-based program reviews, especially in the aftermath of high-profile DOJ and FTC legal action against schools in recent years, without proper review by SAAs of the appropriateness of continued VA approval of the schools.

In December 2018, the VA Office of Inspector General (OIG) conducted an audit of the VA and SAAs, concluding VA could waste an estimated \$2.3 billion over the next 5 years in GI Bill funds flowing to schools that should not be approved.<sup>7</sup> The OIG highlighted the problem of colleges that utilize potentially misleading, deceptive, or erroneous advertising practices.<sup>8</sup> Yale Law School raised similar concerns in its report, "VA's Failure to Protect Veterans from Deceptive College Recruiting Practices."<sup>9</sup>

We offer the Subcommittee the following recommendations to strengthen the bill:

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<sup>6</sup> Veterans Education Success, *Despite a 2016 Statute, the GI Bill Still Pays for Degrees that Do Not Lead to a Job*, December 2018, available at <https://vetsedsuccess.org/research-and-reports/ves/ves-report-despite-a-2016-statute-the-gi-bill-still-pays-for-degrees-that-do-not-lead-to-a-job/>; see generally Veterans Education Success, *The GI Bill Pays for Degrees that Do Not Lead to a Job*, September 2015, available at <https://vetsedsuccess.org/research-and-reports/ves/the-gi-bill-pays-for-degrees-that-do-not-lead-to-job/>.

<sup>7</sup> Department of Veterans Affairs, Office of the Inspector General, *VA's Oversight of State Approving Agency Program Monitoring for Post-9/11 GI Bill Students*, December 3, 2018, available at <https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> Yale Law School Veterans Legal Services Clinic, *Memorandum Re: VA's Failure to Protect Veterans from Deceptive Recruiting Practices*, February 26, 2016, available at [https://law.yale.edu/system/files/area/clinic/document/vlsc\\_ves-memo.pdf](https://law.yale.edu/system/files/area/clinic/document/vlsc_ves-memo.pdf).

- Add time limits, to ensure there are not lengthy delays. For example, the Subcommittee could require the Secretary to alert SAAs “within 30 days” and could require the SAA to complete the risk-based review “within 90 days.”
- Clarify what is entailed in an SAA “oversight visit” to ensure the SAA undertakes a thorough review to protect GI Bill funds.
- Expand the triggers for SAA review beyond DOJ and FTC legal action for “misleading marketing status.” If DOJ sues a school for defrauding the federal government (but not for misleading marketing), as it did in the case of Education Management Corporation,<sup>10</sup> or if DOJ sends the owners of a college to jail for defrauding ED, as it did in the case of American Commercial College,<sup>11</sup> or if ED cuts off a school entirely for stealing federal student aid, as it recently did with Argosy, it would be prudent for the Subcommittee to require careful SAA review. None of these cases involved “misleading marketing,” but it would nevertheless be prudent for the Subcommittee to require careful examination of such colleges’ trustworthiness to receive VA funds.

Similarly, it would be prudent for the Subcommittee to require careful examination following any official state or action against a school, such as when a state agency halts new enrollments or revokes the certificates of 22 programs offered by a school, as the Texas Workforce Commission did after finding American Technical College had willfully filed false job placement numbers.<sup>12</sup> More recently, a bipartisan group of 49 state Attorneys General sued Career Education Corporation for operating colleges that defrauded students.<sup>13</sup> Similarly, some states have cut off schools for fraud. State action, alone, should warrant at least some examination of a school’s trustworthiness to receive VA funds.

We respectfully urge the Subcommittee to add the following triggers for careful oversight by SAAs:

- Law enforcement action against a school or its owners;
- Federal, state, or local government action against a school or its owners;

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<sup>10</sup> UPI News, “For-Profit College Must Pay \$200M to Forgive Student Loans, Pay Settlement,” (Nov. 17, 2015), available at [https://www.upi.com/Top\\_News/US/2015/11/17/For-profit-college-must-pay-200M-to-forgive-loans-pay-settlement/7611447773298/](https://www.upi.com/Top_News/US/2015/11/17/For-profit-college-must-pay-200M-to-forgive-loans-pay-settlement/7611447773298/)

<sup>11</sup> Department of Justice Press Release, *American Commercial Colleges, Inc. And Its President Sentenced On Federal Charges*, October 2, 2014, available at <https://www.justice.gov/usao-ndtx/pr/american-commercial-colleges-inc-and-its-president-sentenced-federal-charges>.

<sup>12</sup> Forbes, “For-loss education: How investors, lenders stand to lose everything in ATI Enterprises,” January 17, 2013, available at <https://www.forbes.com/sites/spleverage/2013/01/17/for-loss-education-how-investors-lenders-stand-to-lose-everything-in-ati-enterprises/#5da6453f374d>; US Senate Committee on Health, Education, Labor and Pensions, “For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success” (2012).

<sup>13</sup> Iowa Attorney General Press Release, *For-profit school to forgo collecting loans, change practices in agreement with Miller, 48 AGs*, January 3, 2019, available at <https://www.iowaattorneygeneral.gov/newsroom/for-profit-school-education-cec-career-ags-intercontinental/>.

- Final court or administrative judgment against a school or its owners;
  - Accrediting agency action against a school (e.g., probation, a show-cause order, or a teach-out plan);
  - SEC action against a publicly traded school (including delisting its stock);
  - VA OIG audit or investigation concerns;
  - More than 50 student complaints on the GI Bill Feedback System;
  - Poor outcomes for students, especially schools that leave students with abysmal job placement rates and earning less than a high school graduate; and
  - Extremely low percent of tuition spent on actual student instruction, with most GI Bill funds being diverted away from veterans.
- Authorize the VA Secretary to act immediately to suspend enrollments, without SAA review, if there has been egregious behavior. For example, when ED determined that Argosy had stolen Title IV funds and immediately cut off the school, VA expressed that it lacked authority to act in the wake of the ED’s action, thereby leaving VA funds at risk.
  - Add caution flags on the GI Bill Comparison Tool so student veterans may be better informed. Ideally, the Subcommittee would also add a risk-index to the GI Bill Comparison Tool so that students are aware of schools that pose a risk to their benefits.
  - Strengthen the existing ban on deceptive and misleading advertising and recruiting in 38 USC § 3696. In December 2018, the VA’s OIG reported that VA could waste an estimated \$2.3 billion in improper payments to ineligible programs over the next 5 years.<sup>14</sup> The risk was particularly high at schools that appeared to be in violation of 38 USC § 3696, and the OIG expressed concern that VA is not adequately implementing § 3696. Yale Law School raised the same concern in its report, “VA’s Failure to Protect Veterans from Deceptive College Recruiting Practices,” as did VSOs and MSOs in two letters to the Secretary.<sup>15</sup> The statute could be clarified and strengthened by amending it to:
    - Define “preliminary findings” in 38 U.S.C. § 3696(c) as “Any federal, state, or local government lawsuit, or any qui tam legal action”;
    - Clarify “erroneous, deceptive or misleading” in 38 U.S.C. § 3696(a) by including *automatic triggers* (e.g., any federal or state evidence of consumer protection violations; a final court or administrative judgment following a lawsuit for misleading or deceptive recruiting; or a threshold of student complaints filed);

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<sup>14</sup> Department of Veterans Affairs, Oversight of State Approving Agency Program Monitoring for Post-9/11 GI Bill Students, December 3, 2018, available at <https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf>.

<sup>15</sup> See Letter to VA Secretary (Feb. 14, 2019), available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5c6db4db1905f4690dd06f6f/1550693596300/VSO+Letter+to+VA+Secretary-1.pdf>; Letter to VA Secretary (May 16, 2016), available at: <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5744bdfc2eeb81f2ceb68358/1464122877006/VSO+MSO+Letter+to+VA+Secretary+re+GI+Bill+oversight.Signed+%281%29.pdf>.



- Provide VA with a strict timeline to act (e.g., “must undertake review *within 90 days* of learning of a law enforcement investigation or receiving student complaints”);
- Address VA’s fear of disrupting current student enrollments by adding an option for barring “*new enrollments*” (vs. current enrollments);
- Reassure VA about student relief by citing “student relief shall be in accordance with Forever GI Bill Colmery Act”; and
- Explicitly empower SAAs to cut off schools that are in violation of 3696, as SAAs currently believe they lack authority to act.

*Section 5: Verification of Enrollment for Purposes of Receipt of Post-9/11 Educational Assistance*

We support this section of the bill that requires monthly verification of Post-9/11 GI Bill enrollment, as the Montgomery GI Bill (MGIB) already does. The US Government Accountability Office (GAO) recommended exactly this solution (monthly verification of Post-9/11), as one of its eight recommendations, to solve the problem of GI Bill overpayments, which cost \$416 million in FY 2014, affecting one in four GI Bill students.<sup>16</sup> Currently, veterans incur significant amounts of overpayments between the time the student drops a course and the verification occurs much later. This has a negative impact on veterans as well as on taxpayers.

We offer the following suggestion to strengthen this bill:

- Consider shifting the monthly reporting burden from students to the schools, a process schools already do regularly for students using Title IV student aid.

**Draft Legislation authorizing VA to require Letters of Credit**

VES strongly supports this bill, which would give VA Letter of Credit authority similar to ED’s, allowing VA to collect money from a failing school’s line of credit, to help cover GI Bill restoration. This bill would thereby ease the burden on taxpayers to fund the cost of restoring GI Bill benefits to veterans at colleges that suddenly close or are disapproved.

By enabling VA to have the funds to cover benefit restoration for VA students, this bill also would enable parity for VA students with students at ED. Currently, veterans at closed and disapproved schools are entitled to restoration of only the current (interrupted) term of GI Bill benefits (except for schools that closed from 2015 to August 16, 2017, such as ITT Tech and Corinthian, for whom the *Forever GI Bill* provided full restoration of benefits).<sup>17</sup>

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<sup>16</sup> U.S. Government Accountability Office, *Post 9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections*, October 2015, available at <https://www.gao.gov/assets/680/673230.pdf>.

<sup>17</sup> See Department of Veterans Affairs, *Restoration of Benefits After School Closure or if a School is Disapproved for GI Bill Benefits*, available at <https://www.benefits.va.gov/gibill/fgib/restoration.asp>.

In contrast, ED provides the following protections to students receiving federal student aid:

- Reinstatement of their Pell Grants;<sup>18</sup>
- Forgiveness of their student loans if their school closed while they attended or closed within 120 days of their attendance and if they do not transfer their credits to a similar program;<sup>19</sup>
- Forgiveness of their student loans if their school took out loans in their name without their permission or signed their name without their knowledge (“False Certification”) or wrongly enrolled them in a program they could not benefit from (“Ability to Benefit”);<sup>20</sup> and
- Forgiveness of their student loans if their school deceived them (“Borrower Defense”).<sup>21</sup>

ED pays for these student protections, in part by requiring “Letters of Credit” (guaranteed by a bank or financial institution) from colleges. ED requires such Letters of Credit for assorted reasons, including financial stability; letters of credit range in amount from 10% of the federal student aid received by the school to a higher percentage.<sup>22</sup> The letters protect students and taxpayers from having to cover liabilities caused by a school. If the school closes, ED may draw funds from the credit to cover expenses, such as Pell Grant restoration and student loan cancellation costs.

VES has the following recommendation to strengthen this bill:

- As drafted, the bill requires VA to review schools’ financial stability. We are concerned VA lacks the bandwidth and expertise to study school financial stability. In contrast, ED maintains a team of experts dedicated to studying the financial stability of schools. Therefore we urge the Subcommittee to remove the burden from VA by turning the bill into a simple trigger mechanism in which VA would be prompted by an ED decision: If ED has determined a school is not financially stable and should post a letter of credit worth 10% of Title IV funds received by the school, then VA should be automatically triggered to similarly require the school to post a letter of credit worth 10% of GI Bill funds received by the school. In this way, VA (and the taxpayers funding the GI Bill)

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<sup>18</sup> See U.S. Department of Education, October 28, 2016, available at

<https://www.help.senate.gov/imo/media/doc/ED%20response%20to%20Senator%20Murray.pdf>.

<sup>19</sup> See If your school closes while you’re enrolled or soon after you withdraw, you may be eligible for discharge of your federal student, available at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/closed-school>.

<sup>20</sup> See Department of Education, “In certain situations, you can have your federal student loan forgiven, canceled, or discharged,” available at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation#false-certification>.

<sup>21</sup> See Department of Education, “Borrowers may be eligible for forgiveness of the federal student loans used to attend a school if that school misled them or engaged in other misconduct in violation of certain laws,” available at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/borrower-defense>.

<sup>22</sup> See Department of Education, “Financial Responsibility Standards Requiring a Letter of Credit,” available at <https://studentaid.ed.gov/sa/about/data-center/school/loc>.

would have the same authority as ED with access to bank-guaranteed funds to cover liabilities caused by a school closure.

### **Draft Legislation: “Forever GI Bill Class Evaluation Act”**

VES supports this bill, which would defer disbursement of GI Bill payments until 14 days after the start of the academic term. This bill would address two problems: It would stop the incentive for recruiters at low-quality, predatory schools to target veterans, and it would address the problem of GI Bill overpayments.

Currently, VA disburses GI Bill tuition to a school for the entire term after a student sits for just 1 day of class. If students drop out after the first day, the school still gets the tuition and fees for the entire term. This incentivizes predatory schools to use deceptive tactics to convince military-connected students to sit for just 1 day. This “Just 1 Day” mentality leads unscrupulous schools to focus primarily on convincing a veteran to enroll, rather than on the academic success of their students. Many such schools explicitly adopt a business model called “churn,” in which they plan for students to drop out quickly, so they focus on quick and short enrollments. This causes significant waste, fraud, and abuse of a student’s hard-earned education benefits and taxpayer dollars. Passage of this bill would stop schools from receiving a veteran’s entire term of GI Bill benefits after just one day of classes. It would require schools to demonstrate sufficient quality so that students do not drop out in the first 14 days.

This bill also would provide a grace period for students as they navigate the “add/drop period” at the beginning of a term so they can choose their classes and determine their course load. This would enable veterans to figure out how many classes they can manage during a semester, rather than signing up for too many credits. It would also help solve the problem of GI Bill “overpayments,” in which VA has paid out more in tuition and fees than the student’s course load requires. GAO reported that GI Bill overpayments cost \$416 million in FY 2014, affecting one in four GI Bill students.<sup>23</sup> A major cause of GI Bill overpayments is the way VA pays out the full term of GI Bill after a veteran sits for just one day of class. Should a student using GI Bill benefits withdraw from classes after that first day, the school has already accrued the entire term of GI Bill funds, creating an “overpayment” of GI Bill funds by VA.

In contrast, ED prorates the amount of tuition the school has “earned” during the term, up until 60 percent of the semester has passed (after the 60 percent cutoff, a school is viewed as having earned 100 percent of the term of Title IV funds). ED handles overpayments by adjusting future disbursements to reflect past overpayments.

VES has the following recommendation to strengthen the bill:

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<sup>23</sup> U.S. Government Accountability Office, *Post 9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections*, October 2015, available at <https://www.gao.gov/assets/680/673230.pdf>.

- To further address the problems of GI Bill overpayments identified by GAO: Because schools receive GI Bill tuition payments directly from VA, we urge the Subcommittee to direct VA to collect tuition overpayments from the schools, not the students. Currently, VA claws back GI Bill tuition overpayments from students, not from schools, even though the school received the tuition payments.<sup>24</sup> This policy places the veteran in the position of having to come up with tens of thousands of dollars in cash to pay VA for an overpayment, even though the student never handled a dime of that tuition money. To recoup GI Bill overpayments from students, VA currently can garnish a veteran's tax returns and withhold a veteran's disability payments, as well as report debts to credit rating agencies. Such actions can cause unbelievable stress and hardship on veterans. For example, in 2017, *Task and Purpose* published a story about Lance Corporal Brian Easley who was killed by police in an armed stand-off.<sup>25</sup> Easley was driven to this point in part because of his dependence on his disability check from the VA, which had been garnished due to overpayments for classes he had taken a year before. The school Easley attended was known for overcharging veterans and having abysmal outcomes for their programs. While veterans should be responsible for repaying any overpayment on the housing allowance they receive directly from VA, they should not be held responsible for any overpayments on tuition made directly to the schools.

### **Draft Legislation to extend the time period under which an election must be made for Montgomery GI Bill Enrollment**

VES supports this bill, which would extend the amount of time available to servicemembers to consider their options before they are confronted with the choice of opting-out of the MGIB.

We have two suggestions to further improve this bill:

- In 2015, The US Military Compensation and Retirement Modernization Commission recommended to Congress that the "Montgomery GI Bill – Active Duty (Chap. 30, 38 U.S.C) should be sunset."<sup>26</sup> The Commission stated that "duplicative education assistance programs should be sunset to reduce administrative costs and to simplify the education benefit system."<sup>27</sup> We agree, and encourage the Subcommittee to sunset the MGIB.

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<sup>24</sup>See 38 USC § 3680 (e).

<sup>25</sup> Task and Purpose, *They Didn't Have To Kill Him: The Death of Lance Corporal Brian Easley*, Aaron Gell, April 9, 2019, available at <https://taskandpurpose.com/didnt-kill-death-lance-corporal-brian-easley>.

<sup>26</sup> VES Statement for the Record on Legislative Priorities for the 115th Congress, March 22, 2017, available at <https://vetsedsuccess.org/wp-content/uploads/2019/01/march-2017-ves-legislative-priorities-svac.pdf>.

<sup>27</sup> Politico, *Thousands in GI Bill fees paid by recruits for 'essentially no reason at all,'* Kimberly Hefling, July 10, 2019, available at <https://www.politico.com/story/2019/07/10/thousands-in-gi-bill-fees-paid-by-recruits-for-essentially-no-reason-at-all-1561175> (quoting the 2015 Commission).

- We also urge the Subcommittee to strengthen the bill by changing the MGIB election from opt-out to opt-in, so that servicemembers have to actively opt-in if they want MGIB. Last fiscal year, 70% of new recruits failed to opt-out of the MGIB.<sup>28</sup> These servicemembers pay \$100/month (\$1200/year), but only 3% end up using MGIB, and only a small percentage who use Post-9/11 GI Bill are able to get their \$1200 back because they must meet strict requirements.<sup>29</sup> In essence, the \$1,200 payroll reduction operates as a “troop tax,” whereby Uncle Sam is taking advantage of first-year servicemembers.

### **Draft Legislation to authorize SAAs to carry out outreach activities**

We do not oppose SAA outreach activities, but question the importance of it, given the VA OIG’s recent conclusion that SAAs will waste \$2.3 billion over the next 5 years in GI Bill payments to schools that should not be approved for GI Bill, but nevertheless are. The VA OIG estimated 86% of SAAs “did not adequately oversee the education and training programs.”

SAAs have consistently expressed (including to this Subcommittee) that they are stretched too thin, with a heavy workload of compliance surveys, which has limited their ability to conduct robust college oversight and risk-based reviews. This has enabled fraudulent colleges to continue receiving GI Bill benefits, when they should not, including schools sued by DOJ for defrauding ED or cut off from ED for stealing Title IV funds. We urge the Subcommittee to encourage SAAs to dedicate their time and attention to risk-based program reviews and college oversight.

### **Draft Legislation: “GI Bill Access to Career Credentials Act”**

This bill would authorize GI Bill funds to pay for preparatory classes for professional licenses and certifications. As currently drafted, this bill is vulnerable to abuse by subpar licensing prep companies. VES has the following suggestion to resolve this vulnerability:

- Add quality controls so that GI Bill benefits are not wasted on licensing and certification preparatory classes that do not meet government requirements for licensing and certification. We suggest the Subcommittee adopt the unanimous Congressional quality control language from 10 USC § 2006a: “and which meets the instructional curriculum licensure or certification requirements of the State or is a program approved or licensed by the State board or agency.”

We would support this bill if such quality control language were added.

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<sup>28</sup> US Consumer Financial Protection Bureau, *What does the Coast Guard know about the GI Bill that the other services do not?*, Patrick Campbell, December 12, 2017, available at <https://www.consumerfinance.gov/about-us/blog/what-does-coast-guard-know-about-gi-bill-other-services-do-not/>.

<sup>29</sup> *Supra* note 24.

### **Draft Legislation to increase the monthly housing stipend for online education**

We oppose this bill because it is likely to incentivize online colleges to push veterans into enrolling to get a higher monthly allowance for housing. Students should not be making decisions related to education based on how much housing allowance they will receive but on what works best for them.

In addition, online schools do not always provide a strong return on investment for students and may not leave graduates eligible to work in licensed jobs. VES provides free assistance to thousands of veterans who have told us they experienced a subpar education at an online college. For example, one student veteran, Brandon T, said of his online program:

*"[I] was told that I could get some credits online while I worked so that I could transfer to a local university when I was ready. I got 33 credits [online] using a 18 months of benefits of my post/9-11 GI Bill. Finally transferred to the University of South Carolina and none of my credits transferred."*

Another student veteran, Deandre A., expressed a fairly common student concern about hidden costs at an online program:

*"I enrolled into the online BS Psychology program and have taken out Student Loans along with Financial Aid and that seems to never be able to cover the cost of the degree which I don't quite understand. It seems that the closer I get to completing my degree the more money that has to come out of my pocket because financial aid and student loans don't cover the cost of the classes."*

VES also has the following suggestion:

- Close the current loophole in 38 U.S.C. § 3313(c)(1)(B)(iii), which provides that individuals eligible for the Post-9/11 GI Bill who are pursuing a program of education on more than a half-time basis "solely" through distance learning are eligible for 50 percent of the BAH. By taking just one class required to earn a certificate or degree in an actual classroom, beneficiaries qualify for the full BAH. This loophole has allowed schools to game the GI Bill by offering essentially online programs with one class offered in a classroom setting. To close this loophole, the statute should be amended to specify that a full BAH is available only to beneficiaries enrolled in online education who take a specific percentage of classes in a brick and mortar setting, for example 25 percent or 30 percent of their classes. Congress closed a similar loophole in 2017 by requiring that BAH be based on the location of the campus where the individual physically participates in the majority of classes, rather than on the zip code of the institution of higher learning where the individual is enrolled. The change was a response to schools with a VA facility code located in a high-cost area, which was used to determine the amount of the BAH, even though instruction took place at a branch campus in an area with a lower cost of living. (The transition to this new basis for determining living stipends was delayed because the VA was unable to set up a new system that accurately calculated the monthly payments.)

## **Draft Legislation to require proprietary educational institutions to comply with federal revenue limits**

This bill would close the 90/10 loophole in the Higher Education Act (HEA) by creating and then closing the same loophole in Title 38. Thirty-seven Veterans and Military Service Organizations wrote to Congress this year to say our number one collective priority for HEA reauthorization is to close the 90/10 loophole: “Closing the loophole creates parity for military-connected students using their education benefits with those students using Title IV funds. It is inconsistent to protect some federal funds (Title IV) from low performing schools and not others (VA and DoD).”<sup>30</sup>

The HEA’s 90/10 rule stipulates that a for-profit education business may derive no more than ninety percent of its revenues from the Title IV federal student aid.<sup>31</sup> The purpose of this revenue cap is to force schools to prove market viability, ensuring that federal student aid isn’t used to prop up low quality schools that are unable to attract at least 10% of their revenue from private sources, including employers, scholarship providers, and families. The Supreme Court wrote that the rule’s precursor was “a device intended by Congress to allow the free market mechanism to operate and weed out those institutions [which] could survive only by the heavy influx of Federal payments.”<sup>32</sup>

The current loophole hurting veterans was created because the GI Bill and DoD’s Tuition Assistance program were largely dormant when the federal law was written and were not enumerated in the statute as sources of federal student aid.<sup>33</sup> Through an accounting gimmick roundly criticized by state Attorneys General, for-profit colleges are able to count the GI Bill and DoD tuition assistance as non-federal revenue; as a result, they can receive up to 100% of their revenues from federal funds without demonstrating market viability by support from employers or individuals willing to pay with their own money,<sup>34</sup> in violation of the law’s rationale upheld by the Supreme Court.

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<sup>30</sup> Letter from Thirty-Seven VSOs/MSOs to Congress sharing priorities for Higher Education Act reauthorization, May 2, 2019, available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5cca11f91905f41be87648f5/1556746746801/VSO+MSO+HEA+Priorities.FINAL.2May2019.pdf>.

<sup>31</sup> Title IV of the Higher Education Act of 1965 [20 USC § 1094(a)(24)]: § 487(a).

<sup>32</sup> See *Cleland v. Nat’l College of Business*, 435 US 213 (1978).

<sup>33</sup> See Bloomberg, *For-Profit Colleges Target the Military*, Daniel Golden, December 30, 2009, available at <https://www.bloomberg.com/news/articles/2009-12-30/for-profit-colleges-target-the-military> (quoting Sarah Flanagan, former Senate staffer: “When the law was enacted, for-profits hadn’t yet moved into the military market, so the legislation’s sponsors weren’t focused on Defense Dept. tuition assistance.”).

<sup>34</sup> Veterans Education Success, *What is the 90/10 Loophole*, available at <https://veteranseducationsuccess.org/90-10-loophole/>.

We are hopeful that a bipartisan agreement to close the 90/10 loophole will emerge through the HEA this summer. If the House and Senate education committees fail to close the 90/10 loophole this year, we would request the Veterans Affairs Committees step in to close it by creating and then closing the same loophole in Title 38.

We appreciate the Subcommittee's creative approach to closing the 90-10 loophole and we encourage Congress to continue work to finally close this loophole.

The Subcommittee could also consider exempting colleges that dedicate at least half of tuition to student instruction and that produce graduates who earn more than a high school graduate, indicating that the college provided some benefit to those who enrolled.

#### **116 HR 2618: Military Spouse Residency Requirements**

We support this bill that ensures military spouses are able to satisfy state residency requirements. We understand that many spouses struggle with license portability and state residency requirements while they move multiple times during their spouse's military career.

#### **116 HR 2227: "Gold Star Spouses and Spouses of Injured Servicemembers Leasing Relief Expansion Act of 2019"**

This bill would give spouses the ability to get out of leases if the servicemember is killed or severely injured. We support this bill. We note that the Office of Servicemember Affairs at the US Consumer Financial Protection Bureau reports complaints from servicemembers' spouses who are negatively affected by the situation this bill would help solve.

#### **Draft Legislation: "VA Economic Hardship Report Act"**

VES does not have expertise on this bill, which would require VA to study the link between veteran poverty factors and suicide rates. However, we have noticed suicidal comments from veterans who were defrauded out of their one shot at the GI Bill by predatory colleges. We suggest the Subcommittee consider adding GI Bill usage and success as a factor to study in the correlation between poverty indicators and veteran suicide.

#### **116 HR 2924: "Housing for Women Veterans Act"**

We have no particular expertise on this bill.

#### **Draft Legislation to authorize specially adapted housing for blind veterans**

We have no particular expertise on this bill.

#### **Draft Legislation to collect overpayments of specially adapted housing assistance**

We have no particular expertise on this bill.

#### **116 HR 561: "Protecting Business Opportunities for Veterans Act"**

We have no particular expertise on this bill.



**116 HR 1615: “Verification Alignment and Service-disabled Business Adjustment Act”**

We have no particular expertise on this bill.

**116 HR 716ih: “Homeless Veterans Legal Services Act”**

We have no particular expertise on this bill.

**Draft Legislation: “Legal Services for Homeless Veterans Act”**

We have no particular expertise on this bill.

Veterans Education Success sincerely appreciates the opportunity to express our views on legislation before the Subcommittee today. Pursuant to Rule XI2(g)(4) of the House of Representatives, Veterans Education Success has received no federal grants in Fiscal Year 2019, nor in the two previous fiscal years.