



VETERANS EDUCATION SUCCESS

TESTIMONY

LEGISLATIVE HEARING ON THE
GI BILL OVERSIGHT ACT OF 2016

BEFORE THE

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

COMMITTEE ON VETERANS AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

APRIL 14, 2016

Chairman Wenstrup, Ranking Member Takano, and Members of the Subcommittee:

Veterans Education Success (VES) appreciates the opportunity to share its perspective on Representative Takano's GI Bill Oversight Act of 2016. VES is a non-profit organization focused on protecting the integrity and promise of the G.I. Bill and other federal educational programs for veterans and servicemembers.

VES believes that the G.I. Bill Oversight Act seeks to address a critical shortcoming in the management of G.I. Bill educational benefits by the Department of Veterans Affairs (VA)—the lack of enforcement to protect veterans from the predatory behavior of some schools. When it comes to oversight of the G.I. Bill, VA's practice to date has been to focus on managing and tracking benefit payments. Any other oversight issues, such as protecting veterans' hard-earned educational benefits and taxpayers' investment from fraud or abuse, receives far too little attention.

Some Schools Engage in Misleading and Deceptive Advertising and Recruiting

Last year, VES research demonstrated that 20 percent of the 300 G.I. Bill-approved degree programs it examined did not lead to jobs because they lacked the appropriate accreditation or failed to meet state-specific criteria required for licensure or certification. These schools recruit students by misleading them about the schools' accreditation and the ability of graduates to get a job in their field of study. To help address this problem, the House approved the Career Ready Student Veterans Act last month, a bill that received bipartisan support from this Committee.

Because our research only examined a small number of degree programs, we reported that our findings were just the “tip of the iceberg.” Indeed, over a dozen settlements by five different federal agencies and nine state Attorneys General since 2012 provide credible evidence that VES’s findings were not an anomaly. With your permission, we would like to submit, for the record, the attached summary. The basis for all but one of these settlements were findings of misleading and deceptive advertising and recruiting, including misrepresenting costs, quality, accreditation and the transferability of credits, job placement rates, and post-graduation salaries.¹

VA’s reaction to these settlements has been extremely limited—posting a caution flag for only one of the five federal settlements and for none of the state Attorneys General settlements.² And, all of the schools continue to participate in the G.I. Bill, despite a Vietnam era statute that obligates VA to deny revenue from veterans educational benefits to schools that engage in deceptive and misleading advertising and recruiting.

Ban on Deceptive and Misleading Advertising and Recruiting Enacted in 1974

Sec. 3696 of Title 38 was enacted in 1974 as part of the Vietnam Era Veterans’ Readjustment Act. It requires the VA Secretary to:

“not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilized advertizing, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.”

Why did Congress determine that G.I. Bill protections against misleading and deceptive advertising and recruiting were necessary 40 years ago?

The Senate Veterans Committee Report acknowledged that any increase in the amount of federal funds a veteran has available to purchase educational services served as a strong economic incentive for certain schools to seek out and enroll those veterans.³ But these same schools were offering low quality education and using erroneous or misleading advertising, sales, or enrollment practices. The result was degrees or certificates that did not qualify veterans for jobs in the fields that they studied. Such problems date back to the 1940s with the enactment of the original G.I. Bill.

The Senate Committee Report cited specific and credible evidence that such problems existed:

- FTC investigative file provided to the committee,

¹One of the settlements involved violations of ED’s incentive compensation regulations.

²For six of the nine schools with state AG settlements, VA has posted an unrelated caution flag indicating that the institution is subject to Department of Education Heightened Cash Monitoring.

³Report of the Committee on Veterans’ Affairs, U.S. Senate, to accompany S. 2784, Report No. 93-907, June 10, 1974.

- Brookings Institution Study for the Office of Education,
- Proceedings of the National Invitational Conference on Consumer Protection in Post-Secondary Education, and
- Boston Globe investigative series.

It's instructive that one of the examples detailed in the Boston Globe series is a predatory school that misled the Massachusetts State Approving Agency about its accreditation and succeeded in enrolling veterans who, when they graduated, learned that they could not obtain the state license necessary for employment. This same school operated 6 of the degree programs that our 2015 research found did not lead to the necessary state licensure or certification. Not only did history repeat itself, but the same "bad actors" continue to repeat their activity.

VA Has Not Enforced Sec. 3696 for 40 Years

To enforce Sec. 3696, schools must maintain a complete record of all advertising, sales, or enrollment materials utilized by or on the behalf of the institution during the past year, which are to be made available to state approving agency (SAA) or VA inspectors. In August 2014, the VA finally added a requirement to the compliance survey form asking inspectors to determine "Does the school use fraudulent and unduly aggressive recruiting?" According to a former SAA director, SAAs rarely, if ever, review advertising materials during compliance reviews.⁴ Rather, they focus on whether the payments to the schools were accurate.

Furthermore, Sec. 3696 requires the Secretary to "enter into an agreement with the FTC to utilize the commission's services in carrying out investigations and making the Secretary's determinations" of deceptive or misleading advertising, sales, or enrollment practices. The implementing Memorandum of Understanding (MOU) between VA and the FTC was not signed until November 2015, more than 40 years after the enactment of Sec. 3696, and only after significant pressure from veterans organizations and the White House. VA has clearly been dragging its feet. Even now, it is not clear that VA has referred any cases to the FTC for investigation, as required by the MOU.

VA Has a Statutory Obligation to Protect Veterans

In February 2016, the Veterans Legal Clinic at the Yale School of Law briefed Congressional staff on a Memorandum titled "VA's Failure to Protect Veterans from Deceptive Recruiting Practices."⁵ Their work was spurred by a July 2015 letter from the VA Under Secretary of Benefits, Allison Hickey, to eight U.S. Senators, which stated that

⁴In December 2015, the Virginia SAA withdrew the approval of ECPI's Medical Career Institute for violating Sec. 3696. This is the only known SAA action taken under this statutory requirement. VA requested an SAA inspection based on veteran complaints.

⁵<http://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/57028cde9f72667cfc9d1a8f/1459784926780/Yale-VES+Memo+.pdf>

the Department had limited authority to take action against educational institutions that use deceptive marketing practices. The Under Secretary wrote:

The authority for the approval of educational programs is specifically granted to the State Approving Agencies (SAAs) under Title 38 of the United States Code... Any course approved for benefits that fails to meet any of the approval requirements should be immediately disapproved by the appropriate SAA. VA is prohibited, by law, from exercising any supervision or control over the activities of the SAAs, except during the annual performance evaluations.

VA has also told veterans groups that they cannot take intermediate steps, such as a suspension of funds to a school.

After researching statutes, their structure, regulations, and legislative history, Yale Law School determined there was a very clear answer: VA was wrong. Although SAAs do maintain authority to approve and disapprove courses, so does VA and both can take intermediate, such as suspending suspending courses. Yale Law School concluded there was no ambiguity in the statutes and no basis whatsoever for VA's position that it lacked authority to act to stop deceptive recruiting. Indeed, Sec. 3696 *obligates* VA to not approve veterans enrollment in courses offered by institutions that use erroneous, deceptive, or misleading advertising, sales, or enrollment practices.

VA Has Taken No Action in Response to the FTC Settlement with Ashworth College

As just one example of VA's failure to adhere to 38 USC 3696, VA has failed to do anything about a recent federal sanction against a school for misleading and deceptive recruiting. On May 26, 2015, the Federal Trade Commission announced a settlement with Ashworth College based on findings that the school had misled students about the training they received and their ability to transfer credits to another school.⁶ The FTC found that (1) many programs offered by this for-profit institution did not meet state requirements for those careers, including school teachers and massage therapists, and (2) claims made about credit transfers were often not true. In reaching the settlement, Ashworth College admitted no wrongdoing. The FTC settlement was announced about 5 months before the completion of the MOU with VA and the FTC investigation was not requested by VA. The settlement, however, appears to meet the criteria set out in Sec. 3696 for terminating the school's participation in the G.I. Bill.

As of April 11, 2016, however, Ashworth College is still approved to receive G.I. Bill educational benefits. Furthermore, the G.I. Bill College Comparison Tool contains no warning to veterans about the FTC settlement and findings. And, ironically, Ashworth is still listed as subscribing to and following the Principles of Excellence on the G.I. Bill College Comparison Tool.

⁶<https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about>

VA's failure to revoke approval of Ashworth or any of the other schools already successfully sued by state Attorneys General or federal agencies raises several questions about the processes in place to detect and respond to findings of deceptive and misleading advertising, sales, or enrollment practices.

- What standard of proof should the VA utilize to enforce findings of false advertising, sales, or enrollment practices by participating schools?
- What facts or findings by another government agency are sufficient to trigger a VA response of suspension or withdraw of approval from participation in GI Bill benefits?
- Does VA consider a settlement that is based on findings of fact by a government agency, but that does not include admission of wrongdoing by the school, to be insufficient evidence to withdraw a school's approval?
- What is the basis for a determination that a school has violated Sec. 3696?
- Has the VA referred any cases to the FTC since the VA/FTC MOU was signed in November 2015?

VA's Recent Action Against DeVry: Harbinger of Stronger Enforcement?

On March 6, 2016, the Veterans Advisory Committee on Education outlined the issues discussed at their fall meeting and offered Secretary MacDonald recommendations.⁷ The Committee noted that compliance and enforcement of the Principles of Excellence Executive Order was a priority concern because of the absence of any standard operating enforcement plan, aside from the discovery of a violation during a compliance survey.⁸

To help manage expectations of participating schools and systematize oversight, the Committee called for establishment of a compliance framework that includes a checklist for VA employees to measure compliance and standards for school probation and/or removal.⁹ In conjunction with the framework, the Committee also recommended additional caution flags on the G.I. Bill College Comparison Tool so that veterans are informed about other government actions related to G.I. Bill participating schools.

About a week later, VA announced suspension of DeVry University's participation in the POE program. To be designated a POE school, an institution must agree to avoid aggressive recruiting and abide by federal laws and regulations, including those prohibiting misrepresentation and incentive compensation of recruiters. VA's actions

⁷<http://static.politico.com/6f/db/0eff47e14e7ea18730dd924a0aa6/va-panel-recommendations.pdf>

⁸The POE establishes behavioral expectations for schools that enroll veterans using their GI Bill educational benefits.

⁹In contrast, DOD already has an assessment process in place to help ensure compliance with the MOUs schools must sign in order to participate in Tuition Assistance. The assessment process includes a range of penalties and a commitment to share findings with appropriate federal agencies.

were based on a review of the FTC lawsuit against DeVry, which allege that the school had deceptively advertised job placement rates and salary levels; VA also cited the Department of Education's notice of intent to place limitations on DeVry based on related conclusions and the significant number of complaints it had received from veterans about misrepresentations by DeVry. Finally, VA posted caution flags on the G.I. Bill College Comparison Tool calling attention to the FTC and ED actions.

It is worth emphasizing that the FTC lawsuit is ongoing, and, as with many legal actions against predatory schools, the *lawsuit* could end up in a settlement. Acting on the basis of a lawsuit is a departure for VA, which has only posted caution flags on the G.I. Bill College Comparison Tool about one of five federal *settlements*. VES applauds VA's action and believes that it is an encouraging sign.

Conclusion

The G.I. Bill Oversight Act would help to elevate the priority placed on protecting veterans and increase the efforts to enforce VA's existing statutory and regulatory requirements to prohibit misrepresentation and deceptive recruiting. By engaging the VA Office of Inspector General in the enforcement process, the bill jump-starts Departmental enforcement by turning to an existing, well trained, resourced and audit/investigation oriented organization. Equally important, however, is changing the mindset at VA that paying benefits is only one part of VA's mission to serve veterans; VA must do more than simply track the dollars out the door. It must take seriously its statutory obligation to protect veterans from deceptive recruiting and protect taxpayers' investment from waste, fraud, and abuse.

While a more proactive VA is an important step in helping to protect veterans from predatory schools, more effective coordination, cooperation, and data sharing among all federal agencies—ED, DOD, CFPB, FTC, Justice, and the SEC—are also critical.

Combating fraud and abuse by predatory schools needs to be a top federal as well as a top VA priority.

Thank you for opportunity to testify. I would be happy to answer any questions.

Walter Ochinko
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Attachment

State Attorneys General and Federal Agency Settlements with Schools

School	Agency	Settlement date	Settlement amount	Findings	VA action
Alta <i>(Westwood College)</i>	CO-AG	March 2012	\$4.5 million	Provided misleading information to students on job placement rates, tuition, and transferability of credits. Veterans were falsely told that their GI Bill benefits would cover the cost of tuition. ^a	Heightened Cash Monitoring Caution Flag
Alta <i>(Westwood College)</i>	IL-AG	Nov. 2015	\$15 million	Misrepresented costs and employment opportunities in its criminal justice program. ^b	Heightened Cash Monitoring Caution Flag
Ashworth	FTC	May 2015	\$11 million ^c	Many programs did not meet state licensure requirements for those professions, including teachers and massage therapists, and the claims made about credit transfers were often not true. ^d	None
ATI	Justice	Aug. 2013	\$3.7 million	Misleading recruiting practices at campuses in Texas and several other states. ^e	Filed for bankruptcy in Jan. 2014
Bridgepoint <i>(Ashford College)</i>	IA-AG	May 2014	\$7.5	Misleading recruiting practices. ^f	None
Career Education Corporation <i>(Sanford Brown, Briarcliff, American Continental University, Colorado Technical University)</i>	NY-AG	Aug. 2013	\$10.25 million	Significantly inflated job placement rates and provided misleading information about credit transfers. ^g	Heightened Cash Monitoring Caution Flag
EDMC <i>(Argosy)</i>	CO-AG	Dec. 2013	\$3.3 million	Falsely claimed that PhD graduates could become licensed clinical psychologists even though its program was not accredited by the American Psychological Association. ^h	Heightened Cash Monitoring Caution Flag
EDMC	SF City	June 2014	\$4.4 million	Used illegal marketing	Heightened

(Art Institute)	Attorney			practices, including providing misleading data on placement rates, actual or average salaries, and graduation/completion rates. ⁱ	Cash Monitoring Caution Flag
EDMC	Justice	Nov. 2015	\$95.5 million	Violated the Dept. of Education incentive compensation regulations. ^j	Settlement with U.S. Government Caution Flag
EDMC	40 state AGs	Nov. 2015	\$103 million	Used misleading and deceptive recruiting practices. ^k	
Education Affiliates (Fortis Institute and numerous other brands)	Justice	June 2015	\$13 million	Misrepresented job placement rates. ^l	Heightened Cash Monitoring Caution Flag
Kaplan	FL-AG	June 2014		Misleading recruiting practices. ^m	None
	Justice	July 2015	\$1.3 million	Used unqualified instructors who did not meet minimum Texas standards in its medical assisting program. ⁿ	None
Premier Education Group (Salter College)	MA-AG	Dec. 2014	\$3.75 million	Misrepresented job placement rates and used deceptive enrollment tactics. ^o	None

^ahttp://www.denverpost.com/smart/ci_20172161/colorado-attorney-general-reaches-settlement-westwood-2-

^b<https://www.cfpbmonitor.com/wp-content/uploads/sites/5/2014/11/IL-AG-second-amended-complaint.pdf>

^cThe \$11 million fine was waived because of the school's inability to pay.

^d<https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about>

^e<http://www.justice.gov/opa/pr/2013/August/13-civ-953.html#sthash.fla0snpj.dpuf>

^f<http://www.ashfordsettlement.com/faqs.html>

^g<http://www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>

^hhttps://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney_general_suthers_announces_consumer_protection_settlement_argosy_unive and

<http://www.bizjournals.com/denver/news/2013/12/05/argosy-university-pays-colorado-33m.html>

ⁱ<http://www.sfgate.com/bayarea/article/SF-wins-4-4M-settlement-with-for-profit-art-5559635.php>

^j<http://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>

^k<http://kentucky.gov/Pages/Activity-Stream.aspx?viewMode=ViewDetailInNewPage&eventID=%7B15E27858-880A-4479-A5F6-B1966D22274F%7D&activityType=PressReleasej>

^l<http://www.justice.gov/opa/pr/profit-education-company-pay-13-million-resolve-several-cases-alleging-submission-false>

^mThe Florida AG entered into a voluntary assurance of compliance with Kaplan.

[http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/\\$file/KaplanAVC.pdf#sthash.YDI8hEsG.dpuf](http://myfloridalegal.com/webfiles.nsf/WF/JMEE-9L6QDA/$file/KaplanAVC.pdf#sthash.YDI8hEsG.dpuf)

ⁿ<http://www.justice.gov/usao-wdtx/pr/profit-college-kaplan-refund-federal-financial-aid-under-settlement-united-states>

^o<http://www.mass.gov/ago/news-and-updates/press-releases/2014/2014-12-12-salter-college.html#sthash.fla0snpj.dpuf>