



October 9, 2017

The Department of Veterans Affairs  
810 Vermont Ave, NW  
Washington, DC 20420

RE: VA-2017-VACO-0001 (82 FR 43288)

To Whom It May Concern:

As the Vice President of Government Affairs at Student Veterans of America, an organization representing more than 1.1 million student veterans in higher education, I am writing to express our concern over the intent behind the Federal Register Notice published on September 14, 2017.

The notice announces that the Department of Veterans Affairs (VA) will consider automatically applying waivers for all VA employees who receive any wages, salary, dividends, profits, gratuities, or services from, or own any interest in, a for-profit educational institution in which an eligible person or veteran is pursuing a program of education under a VA education benefits program.<sup>1</sup>

The Conflicting Interests provision, which is codified at 38 U.S.C. § 3683, states “Every officer or employee of VA who has, while such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any educational institution operated for profit in which an eligible person or veteran was pursuing a program of education or course under this chapter or chapter 34 or 35 of this title shall be immediately dismissed from such officer’s or employee’s office or employment.”<sup>2</sup>

As stated in the Supplementary Information section of the Federal Register notice, Congress passed this statute to prevent corruption in connection with VA’s administration of benefits under VA education benefits programs. This remains an important objective that SVA continues to support. In July 2017, the Senate Committee on Appropriations discussed strengthening 38 U.S.C. § 3683 and 38 C.F.R. 21.4005 with regard to state accrediting agencies.<sup>3</sup> Regardless of the criminal laws and conflict of interest statutes on the books, this protection addressing for-profit schools remains necessary. SVA recognizes that many military-connected students utilize their benefits at for-profit institutions.

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<sup>1</sup> VA-2017-VACO-0001 (82 FR 43288), <https://www.federalregister.gov/documents/2017/09/14/2017-19480/employees-whose-association-with-for-profit-educational-institutions-poses-no-detriment-to-veterans>

<sup>2</sup> 38 U.S.C. § 3683(a).

<sup>3</sup> See 2018 Military Construction, Veterans Affairs, and Related Agencies Appropriation Bill, 115 S. Rep. 130 (July 13, 2017) <https://www.congress.gov/congressional-report/115th-congress/senate-report/130/1>.

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Additionally, SVA agrees that the statute was not intended to go after a VA lab technician taking class on her own time with her own money at a for-profit institution where students are also using VA education benefits or a VA physician teaching an introductory biology course at a for-profit institution. While we agree that these situations generally pose no detriment to our veterans, the statute already provides a mechanism to address these types of “illogical and unintended consequences”: the waiver.

Section 3683(d) states, “The Secretary may, after reasonable notice and public hearings, waive in writing the application of this section in the case of any officer or employee of VA or of a State approving agency, if the Secretary finds that no detriment will result to the United States or to eligible persons or veterans by reasons of such interest or connection of such officer or employee.”<sup>4</sup>

The language clearly indicates the waivers are to be made on an individual basis. In light of a waiver provision already existing, waiving the application of this statute to more than 330,000 VA employees would result in serious harm to our veterans.

VA’s Office of Inspector General (OIG) released an administrative investigation report in July 2017 that directly involved 38 U.S.C. § 3683.<sup>5</sup> Although the report findings clearly indicate that the involved parties engaged in conflicting interests when they received wages, salary, and/or profits from educational institutions operating for profit, it also demonstrates the role of the waiver provision.

OIG Recommendation No. 4 states, “We recommend that VA OGC either enforce the law as written, or initiate the waiver provision found in subsection (d) of this statute.” The OGC response to this recommendation was, “We will advise employees that they must seek a waiver in accordance with 38 C.F.R. 21.4005, if they own any interest in, or receive or seek to receive compensation from, a for-profit educational institution.”

Section (b) of 38 C.F.R. 21.4005 delineates the various conditions where generally no detriment will result to the United States or to veterans or to eligible persons, including his or her position has no relationship with the processing of any veteran’s or eligible person’s application for education or training and his or her position precludes him or her from taking any adjudicative action on individual applications for education or training. The regulations clearly demonstrate waiver determinations must be made on an individual basis.

The second part of OGC’s Comment to Recommendation 4 is employees who receive services at a for-profit educational institution need not seek a waiver “as we would not seek enforcement of the law against them.” While we agree that VA employees receiving services at for-profit institutions often pose no detriment to our veterans, VA employees should continue to utilize the currently available and applicable waiver provision to publicly disclose these affiliations because receiving services is specifically mentioned in the statute.<sup>6</sup>

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<sup>4</sup> 38 U.S.C. § 3683(d).

<sup>5</sup> Department of Veteran Affairs Office of Inspector General, *Administrative Investigation Conflicting Interests and Misuse of Government Equipment Overton Brooks VA Medical Center Shreveport, Louisiana*, July 18, 2017, <https://www.va.gov/oig/pubs/VAOIG-14-03508-275.pdf>.

<sup>6</sup> See 38 U.S.C. § 3683(a).

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VA's proposed action in the Federal Register demonstrates a gross misinterpretation of OIG's recommendations and the OGC response by electing to waive certain ethics requirements for all VA employees. The effort to protect VA employees from the "unintended consequences" of this statute will come at our veterans' expense. Current law permitting individual waivers is a better interpretation than a sweeping dismissal of this important veteran protection.

Granting this express waiver also creates enforcement issues for 38 U.S.C. § 3683(c). Section (c) states, "A State approving agency shall not approve any course offered by an educational institution offered for profit, and, if any such course has been approved, shall disapprove each such course, if it finds that any officer or employee of the Department of Veterans Affairs or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or services from, such institution."<sup>7</sup> The administrative burden of disapproving courses would likely far outweigh the cost and time involved in the current waiver administration process.

The OIG report also revealed another big concern, the deficient ethics training, including the Annual Ethics Training and Ethics Review Training, not featuring instruction about compliance with 38 U.S.C. § 3683. SVA supports the part of OIG's Recommendation No. 3 that says the VA OGC Ethics Group should focus on 38 U.S.C. § 3683 in the annual Ethics training for all VA employees.

VA submitted this notice of intent and request for public comment on September 14, 2017 without any discussion or debate with policy experts from veterans service organizations and military service organizations who could have provided guidance about this significant provision. VA must do all it can to ensure that American heroes who have served our country are treated with honor and respect when they become college students and that our veterans can trust the federal government's proper administration of their hard-earned GI Bill benefits.

We hope to work closely with VA on protecting military-connected students as they pursue their educations. Thank you for your consideration of this comment, and please have your team reach out if we can help clarify any of this work. You may contact me for further coordination by phone at 847-987-7400 or by email at [will.hubbard@studentveterans.org](mailto:will.hubbard@studentveterans.org)

Very respectfully,



William Hubbard

cc: Jared Lyon

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<sup>7</sup> 38 U.S.C. § 3683(c).