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Testimony by Senator Richard J. Durbin

“Department of Defense Actions Concerning Voluntary Education Programs”
United States Senate Committee on Armed Services

Department of Defense (DoD) Voluntary Education programs, including the Tuition Assistance (TA) program, play a critical role in strengthening our military readiness and offering professional development opportunities to the men and women who serve. I have supported these programs in my role as Chairman and, now, Vice Chairman of the Senate Appropriations Subcommittee on Defense. In Fiscal Year 2014, the Tuition Assistance program cost taxpayers \$538 million.

Given the importance of these programs to service members and the substantial investment by taxpayers, it is vital that both Congress and Executive branch agencies exercise robust oversight of the institutions of higher education that participate and aggressively enforce federal laws, regulations, and other program requirements. As Chairman of the Defense Subcommittee, I held a hearing to examine these programs and shed light on widespread evidence that some institutions, mainly for-profit companies, were exploiting service members to enrich themselves at the expense of federal taxpayers.

On April 27, 2012, to protect service members and veterans from these types of abuses, President Obama signed Executive Order 13607 Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members. As a result of this Executive Order, the Department of Defense issued DoDi 1322.25 and developed a Memorandum of Understanding (MOU) to be signed and adhered to by any institution of higher education participating in TA. While it could be strengthened further, the MOU provides for a number of important protections and disclosures for service members and requirements of participating schools.

Congress should expect the Department of Defense to uphold its responsibility to investigate possible violations of the MOU and other applicable federal laws and regulations and take appropriate enforcement action where violations are found. This was the case in June 2015, when an investigation by Aaron Glantz of the Center for Investigative Reporting (CIR) documented troubling recruiting and marketing tactics employed by the University of Phoenix, which in Fiscal Year (FY) 2014 was the fourth largest recipient of TA funds amounting to more than \$20 million.

Glantz found that University of Phoenix spent \$250,000 over three years to sponsor 89 events at Fort Campbell with one concert featuring reality television personality “Big Smo” costing \$25,000 alone. Across the country the company sponsored events on military bases including rock concerts, Super Bowl parties, father-daughter dances, Easter egg hunts, a chocolate festival, and even “Brunch with Santa.” The events and sponsorships were a foot-in-the-door for the University of Phoenix – allowing the company and its recruiters access to service members on military bases.

In addition, according to Glantz, the University of Phoenix paid DoD to have its employees serve as the exclusive resumé advisors at Hiring Our Heroes job fairs and workshops, many of which took place on military bases. A CIR hidden camera documented that all of the resume workshop materials, presentation slides, and sample “successful” resumes were labeled with University of Phoenix marketing, and trainers (University of Phoenix employees) urged attendees to go to the University of Phoenix website for additional information. The investigation also revealed that the company used “challenge coins” with DoD seals and logos to show its close relationship with the military.

On October 7, 2015, DoD notified the University of Phoenix that “In response to allegations published by the Center for Investigative Reporting on June 30, 2015...the Department has conducted a review of the agreements between the University of Phoenix and the DoD, as reflected in the DoD MOU. This review revealed several violations of the DoD MOU attributed to the University of Phoenix.” DoD’s investigation also found that “the frequency and scope of these previous violations of the DoD MOU is disconcerting.”

In its letter to the company, DoD also noted with concern that the University of Phoenix was “under review by both the Federal Trade Commission (FTC) and the California State Attorney General.” DoD was right to be concerned by this. In fact, the company faces two separate investigations by the FTC--one related to deceptive marketing and advertising and a second related to safeguarding student and staff personal information. The company also faces investigations by at least three other state Attorneys General, the U.S. Securities and Exchange Commission, and the Department of Education Inspector General.

As a result of its findings, the Department placed the company on probation and “with a view to minimizing harm to students” prohibited new TA enrollments and transfers as well as restricting the company’s access to DoD installations. As part of its due process procedures, DoD gave the University of Phoenix 14 days to submit a response to be considered during a review of “whether continued participation in the DoD TA program will be allowed and, if so, in what status, and whether further action, to include termination in accordance with paragraph 6(f) of the University of Phoenix MOU with the DoD, is warranted.”

I was pleased, that with these steps, the Department of Defense took seriously its obligation to protect service members and taxpayers and to enforce its MOU with the University of Phoenix. But I was not alone. A number of veterans service and other organizations sent a letter to Secretary Carter on October 27 commending the Department for its actions “to protect the integrity of the Tuition Assistance program and to protect service members from deceptive recruiting practices” in the case of University of Phoenix. Among the signers were the Air Force Sergeants Association, Association of the U.S. Navy, Blue Star Families, Iraq and Afghanistan Veterans of America, Paralyzed Veterans of America, Student Veterans of America, Veterans Education Success, Veterans for Common Sense, Veterans Student Loan Relief Fund, VetJobs, VetsFirst, and Vietnam Veterans of America.

But the University of Phoenix is not the only for-profit education company that poses a risk to service members and taxpayers. The high profile bankruptcies of Corinthian Colleges, Incorporated and ITT Tech were the end result of years of predatory and deceptive corporate practices that put profits above students. Their closures left tens of thousands of students, including service members, in the lurch. But it hasn't stopped there. Other for-profit education companies participating in TA are accused of engaging in similar fraud and have closed or are on the brink of closure. With for-profit colleges closing due to fraudulent behavior at an alarming rate and such a large share of TA funds flowing to this industry (46 percent in FY 2014), active oversight by the Department of Defense is more important than ever.

Increasing DoD's obligation to engage in strong oversight and enforcement is the fact that federal law actually incentivizes for-profit colleges to target service members and veterans. The 90/10 rule requires for-profit colleges to derive at least ten percent of their revenue from non-federal sources. Shockingly, a loophole in the law, allows companies to count Department of Defense and Department of Veterans Affairs (VA) education benefits as non-federal revenue. This encourages for-profit companies to aggressively target and recruit, even using false or deceptive information, service members and veterans in order to line their pockets with more federal taxpayer dollars while still complying with the law.

It means that many for-profit companies actually receive greater than 90 percent of their revenue directly from federal taxpayers. According to a 2013 analysis from the Department of Education obtained by the Center for Investigative Reporting, 133 for-profit colleges received more than 90 percent of their revenues from taxpayers when DoD and VA benefits were included in the calculation. I believe Congress must close this egregious loophole that puts our men and women in uniform in jeopardy and have authored the Protecting our Students and Taxpayers (POST) Act (S. 2272) to do so. I hope my colleagues in both parties will work with me on the common-sense measure.

I thank the Ranking Member, Senator Jack Reed of Rhode Island, for submitting this testimony on my behalf. I thank Secretary Carter and the dedicated staff at the Department of Defense for their work to ensure the integrity of DoD Voluntary Education programs and to protect service members from predatory companies that seek to exploit our brave men and women in uniform.