



VETERANS EDUCATION SUCCESS

STATEMENT FOR THE RECORD

EXAMINING MID-SEMESTER SCHOOL CLOSURES
IMPACT ON STUDENT VETERANS

BEFORE THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

U.S. HOUSE OF REPRESENTATIVES

May 15, 2019

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

Veterans Education Success (VES) is a non-profit organization with a mission to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill and other federal education programs.

In addition to research, providing free case work to students having trouble accessing their GI Bill benefits or impacted by predatory schools, and elevating the voices of students to share with policy makers both their positive and negative experiences in higher education, we are focused on addressing ways to increase the continued academic success of military-connected students who are pursuing their academic goals.

School Closures

The purpose of the Post 9/11 GI Bill is to aid service members and veterans in the transition from military service into the civilian workforce. Since its inception, hundreds of thousands of military-connected students have had the opportunity to take advantage of this generous benefit in hopes of increasing their economic mobility and the socioeconomic standing of their families.

When military-connected students use their hard-earned GI Bill benefits to attend institutions of higher learning, they do so with the understanding that the federal government's approval of degree programs at a school is an endorsement of those programs or training. In other words, they trust that the federal government has done its "due diligence." As we have seen, and as thousands of military-connected students across the country have unfortunately experienced, that is not always the case. At times, schools are barely hanging on by a thread financially and

military-connected students who rely on their GI Bill not just to pay for their education but also for their living expenses, show up to class one day and are told the school is closing.

VES has helped thousands of military-connected students who have been impacted by school closures. As a result, we see first-hand the negative impact that comes along with such closures. Students face serious hardships when the schools that they are attending suddenly close. We receive phone calls every month from students who are facing homelessness due to losing the housing allowance that they are no longer eligible to receive as a result of the school closure, or students who were merely one month away from graduating when their school abruptly closed. The students also often face the additional challenge of finding a school to transfer to that will accept the credits that they have earned at the closed institution. Since it is exceedingly rare that any other institution will accept these credits, the students must either choose to (1) completely start over at another institution, where they will likely incur debt as a result of having already used some portion of their GI Bill benefit *and* spend additional time obtaining a degree; or (2) to find a job without a degree which is almost always a struggle. As a result of school closures, military-connected students are ultimately left with worthless credits, diminished GI Bill funds, and time wasted that they can never get back. These realities are why Congress must act to ensure that further protections are put into place to protect military-connected students from school closures.

Tension and Disputes Between VBA and SAAs over Authority to Disapprove Programs

Even when there is clear need for a failing college to be cut off from GI Bill, ongoing tensions and disputes between VBA and SAAs over which has authority to disapprove programs leads to inaction. For example, when the US Education Department (ED) recently cut off Argosy for stealing Title IV funds, VA failed to disapprove Argosy and even told GI Bill students that their status was unchanged by the ED action against Argosy. One cause of this problem is tension and disputes between VBA and SAAs over which has authority to disapprove programs.

We urge the Committee to assist VBA and the SAAs in resolving these tensions and disputes and to heed the VA Inspector General's (IG) guidance on this statutory dispute.

This tension and dispute is playing out in real time regarding GI Bill approval of Ashford University. Ashford University should not currently be approved for GI Bill, as it currently has no SAA approval and lost its Iowa SAA approval. At this time, VBA believes it lacks authority to disapprove the school and the California SAA (CSAAVE) is under the impression it lacks authority to disapprove because it never first approved Ashford, and the disapproval statutes specifically provide for disapproval of courses "previously approved."¹ Therefore, a college without any SAA approval remains inexplicably eligible for GI Bill.²

¹ See 38 USC 3679 ("any *course approved* for the purposes of this chapter which fails to meet any of the requirements of this chapter shall be immediately disapproved by the Secretary or the appropriate State approving agency" (emphasis added); 38 USC 3672(a) ("Each State approving agency shall notify the Secretary of the disapproval of *any course previously approved* and shall set forth the reasons for such disapproval" (emphasis added)).

²As a result of Ashford's decision to close its Iowa brick and mortar campus, the Iowa SAA notified Ashford that it would have to seek approval for its online operations from the SAA where its main campus was located. After

The examples listed above highlight potential misunderstanding and miscommunication on the authority and roles of VA and SAAs, and warrant Congressional oversight to ensure students are protected from wasting their GI Bill benefits at schools that should not be approved for GI Bill.

Recommendations

VES has the following recommendations to provide greater protections for military-connected students from school closures:

- 1. Full reinstatement of GI Bill benefits for students impacted by school closures -**
Under the current law, GI Bill students are eligible to have only the current, interrupted semester of their GI Bill benefits restored when a school closes, regardless of how many semesters they had already been enrolled at that school. This means they lose out on all the previous semesters they spent at the school. In contrast, the Education Department (ED) provides its students full restoration of their Pell Grants and full forgiveness of federal loans when their school closes. ED also provides loan forgiveness if a school wrongly enrolls a student who cannot benefit or otherwise defrauds the student. Parity is needed across the agencies. GI Bill students use their GI Bill to pay for school just as civilian students use Pell Grants and student loans. As such, veterans should receive the same treatment.

Congress could pay for this by authorizing VA to mirror the Education Department (ED) on “Letters of Credit.”³ ED requires colleges to post a Letter of Credit (guaranteed by a bank or financial institution) for assorted reasons, including financial stability; the letters range in amount from 10% of the federal student aid received by the school to a higher percent. If the school closes, ED then draws on the bank’s Letter of Credit to cover student refund reimbursement and loan cancellation costs. VA should be automatically triggered to require a letter of credit to protect VA funds if, and in the same percent as, ED requires. There would be no burden on VA. Instead, VA would simply be triggered to follow ED’s lead. For example, if ED determines a school is a financial risk and requires the school to secure a letter of credit worth 10% of the Title IV funds the school

applying for approval in California—the location of its designated main campus for online operations—Ashford withdrew its application in June 2016 after the California SAA asked for additional information, and turned to Arizona. The Arizona SAA falsely filed with VA that Arizona was the site of Ashford’s main campus. As VBA correctly pointed out to Ashford and Arizona, the Arizona SAA lacks the statutory authority to approve the school’s application to enroll GI Bill beneficiaries and to receive GI Bill payments for tuition and fees, because the main campus is located in California. See Michael Vasquez, *Chronicle of Higher Education*, “Inside the Scramble to Save Ashford U: How Political Maneuvering Kept GI Bill Funds Flowing to a For-Profit University” (Nov. 10, 2017), available at: <https://www.chronicle.com/article/Inside-the-Scramble-to-Save/241747>; Veterans Education Success, “Ashford’s Fight to Maintain GI Bill Access Raises Questions About the Enforcement and Adequacy of Statutory Requirements” (November 2017), available at: <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5a05926b0d9297cba279c201/1510314604212/Ashford+Report.FINAL.pdf>

³ Letters of Credit at the Education Department are explained here: <https://studentaid.ed.gov/sa/about/data-center/school/loc>

receives, then VA should be triggered to require that school to secure a letter of credit worth 10% of VA funds the school receives. This would give VA cash-on-hand in case of a school closure or case of fraud, which would enable VA to reinstate the veterans' GI Bill funds.

Alternatively, Congress could consider creating a VA "student tuition recovery fund" like those in 21 states.⁴ Like Unemployment Insurance, all schools (or only "risky" schools, defined by law enforcement action or ED Heightened Cash Monitoring status) would pay in a tiny percent of their GI Bill funds into an insurance pool controlled by VA, available for pay-out to students.

2. **Heed the Warning Signs** - It is fiscally irresponsible to fail to ignore obvious warning signs about a crumbling school. Congress should consider rigorous safeguards to guarantee that the schools that are receiving GI Bill funds are providing quality education, producing gainful employment, and are not in jeopardy of shutting down. In a recent study conducted by VES, "*Could Education Corporation of America's Sudden Closure Have Been Avoided?*,"⁵ we identified six warning signs that should have made it abundantly clear that the schools owned by Education Corporation of America (ECA) were in serious danger of closing:
 - a. **Dismal Student Outcomes** – Students who complete a post-secondary program should, more often than not, be better off than a high school graduate and be on par with similar certificate- and degree-granting institutions. At ECA, for example, only one in three students earned more than the average high school graduate.
 - b. **Degree Programs that Do Not Lead to Jobs, in Violation of "Career Ready Student Veterans Act"** – In 2016, Congress passed P.L. 114-315, which, in section 409, prohibits GI Bill approval for programs that do not meet state licensure and certification requirements. This provision is referred to as the "*Career Ready Student Veterans Act.*" This law is not being implemented. In VES' research report, "*Despite a 2016 Statute, the GI Bill Still Pays for Degrees That Do Not Lead to a Job,*"⁶ VES found that half of the problematic degree programs identified in a 2015 report⁷ are still enrolling GI Bill students even though they fail to prepare graduates for the licensure or certification required to get a job, and an additional 49 degree programs in fields such as law and

⁴ Veterans Education Success, "Student Tuition Recovery Funds and Other State Programs," available at: <https://vetsedsuccess.org/wp-content/uploads/2018/09/state-tuition-recovery-programs.pdf>

⁵ Veterans Education Success, Issue Brief #7: [Could Education Corporation of America's Sudden Closure Have Been Avoided?](https://vetsedsuccess.org/wp-content/uploads/2019/01/could-education-corporation-of-america-sudden-closure-have-been-avoided.pdf) (Dec. 2018), available at: <https://vetsedsuccess.org/wp-content/uploads/2019/01/could-education-corporation-of-america-sudden-closure-have-been-avoided.pdf>

⁶ Veterans Education Success, "[Despite a 2016 Statute, the GI Bill Still Pays for Degrees That Do Not Lead to a Job](https://vetsedsuccess.org/wp-content/uploads/2019/01/2018-career-ready-act-update.pdf)" (April 2018), available at: <https://vetsedsuccess.org/wp-content/uploads/2019/01/2018-career-ready-act-update.pdf>.

⁷ Veterans Education Success, "The GI Bill Pays for Degrees That Do Not Lead To a Job" (Sept. 2015), available at: <https://vetsedsuccess.org/wp-content/uploads/2015/09/gi-bill-pays-for-degrees-that-do-not-lead-to-a-job.pdf>.

dental/medical assisting that are also not preparing beneficiaries for licensure and certification but are GI Bill eligible - in violation of PL 114-315. When ECA recently shuttered, their campuses were approved for GI Bill benefits, however, nineteen of their 32 programs failed to meet state licensure and certification requirements including the dental assisting programs offered by Brightwood College campuses.

This law was put in place to protect students from wasting education benefits at low performing schools that cost a significant amount of money yet provide worthless degrees that do not allow them to work in the career field they are studying for.

- c. **Lack of a Respected Accreditor** – ECA was accredited by the Accrediting Council for Independent Colleges and Schools (ACICS) which was derecognized as an accreditor by the Department of Education in 2016 —the same ACICS that told Congress that Corinthian was in compliance with its accreditation standards until the day it closed. Most ACICS-approved schools found new accreditors when ACICS was formally terminated in December 2016, and ACICS-accredited schools were given 18 months to find a new accreditor.

ECA was among 85 schools that remained accredited by the discredited ACICS, only, a likely indication that no other accreditor was willing to approve its schools.⁸ At a bare minimum, programs approved by discredited accreditors or those under scrutiny should be going through regular risk-based reviews by SAAs to ensure programs approved for GI Bill benefits are indeed offering high quality programs and outcomes.

Recently, VA issued a policy advisory in August 2018 that requires SAAs to accept the decisions of accreditors and other agencies regarding whether a school is properly preparing students for licensed occupations and other Title 38 requirements, rather than having SAAs come to their own decision about whether a school warrants concern.⁹

⁸ Center for American Progress, “The 85 Colleges That Only ACICS Would Accredit,” (July 3, 2018) *available at*: <https://www.americanprogress.org/issues/education-postsecondary/news/2018/07/03/453079/85-colleges-acics-accredit/>

⁹ VBA Policy Advisory, “Acceptance of Certifications by Other Appropriately Authorized Agencies or Offices that Applicable Standards Have Been Met” (Aug. 30, 2018), *available at*: <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5cdaedba24a6941b952f3abe/1557851579166/VBA+Aug2018+Policy+Advisory+to+SAAs+on+Accreditor+Actions.pdf> (“In all instances where an agency or office (either Federal, state or nongovernmental) outside of the SAA has been duly authorized, appointed or designated by state or Federal law or regulations as the agency or office responsible for certifying compliance with applicable laws, regulations, or non-governmental standards, those offices have already expended resources to ensure compliance with the standards. Therefore, it is inefficient and a waste of VA resources for a SAA to repeat their work and expend further resources in an attempt to confirm or overrule their determinations. Furthermore, these agencies and offices are presumed to be the authoritative experts on these requirements, and the same cannot be presumed of the SAA.... Actions Required: SAAs should discontinue current practices of re-adjudicating certification (including, but not limited to: certifications; business licenses; licenses, approvals, or authorizations to

Several SAAs interpreted this advisory to mean that, regardless of whether an accreditor has put a school on probation or given the school a deadline to correct the deficiencies, if the school technically retains its accreditation, SAAs are not allowed to suspend new enrollment for GI Bill beneficiaries. VBA also threatened one SAA with termination of its contract because it had suspended a law school that remained technically accredited despite being on probation and showing serious warning signs of financial trouble.¹⁰

- d. **Student Complaints** – Student complaints filed with VA’s GI Bill Comparison Tool and the Education Department provide another warning sign about a failing school. In the case of ECA, VA and the Education Department had significant student complaints, especially about financial improprieties. Schools that receive regular complaints about the quality of education they are receiving as well as the institution’s handling of tuition and fees should be automatically flagged for a risk-based reviews by SAAs.
 - e. **Over-reliance on Taxpayer Support** – Schools that are unable to attract employer investment or private paying students, and are instead almost completely reliant on federal funds should be flagged for further review. Any school that cannot attract employer or private students and instead relies on federal funds to stay in business should be closely monitored for its financial viability.
 - f. **Indications of Financial Instability and an Unsustainable Business Model** – Since June 1, 2015, ECA was regularly subject to Heightened Cash Monitoring by the Department of Education (ED). Despite communicated concerns by ED, the school maintained its ability to received federal funds right up until it shuttered.
3. **Better communication between Veterans Affairs (VA) and the Department of Education when a school is put on warning by an accreditor or by the Department of Education** - The VA is not always aware that a school is at risk of closing or that a school has been reprimanded in some way. It is important that VA be made aware of such findings as it is their role to disburse GI Bill funds. If VA has no knowledge of such problems, it is impossible for measures to be taken that protect military-connected students and their GI Bill benefits. VA also needs to be proactive to stay aware of state and federal agency actions against a school.

operate; accreditation; authorization to provide postsecondary education; authorization to confer degrees, etc.) issued by an agency or office duly authorized, appointed or designated by state or Federal laws or regulations as the agency or office responsible for certifying compliance with applicable laws, regulations, or non-governmental standards.”)

¹⁰ Letter from Robert Worley, VBA, to Keith Boylan, California Department of Veterans Affairs (Aug. 24, 2018), available at:

<https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5cdaef219140b7f577f64ce3/1557851937687/VA+ltr+to+CA+re+disapprovals+Aug2018.pdf> (“CSAAVE inappropriately took action as if the programs were not accredited and advised the school to request a waiver from VA. Thomas Jefferson School of Law’s programs were accredited at the time, although in a probationary status”).

4. **More Caution Flags on the Comparison Tool** - The Comparison Tool is a resource for students when deciding what institution of higher learning to attend. By providing students with transparent information about problems institutions are facing, students will be better able to make an informed decision as to whether or not they want to take a risk by attending such schools. Currently, VA caution flags on the Comparison Tool are inadequate. Despite letters from Congress - including HVAC Chair Takano - calling on VA to expand the use of its Caution Flags and to create a “risk index” for students,¹¹ it has not. Students remain in the dark when a school is under law enforcement action for defrauding students or when it is under federal or state agency penalty or action.
5. **VA and SAAs Must Not Ignore Other Government Agency Punitive Actions** - When schools fail to perform, there should be triggering events that preclude institutions from getting access to GI Bill funds. Congress could legislate better “risk-based program reviews” by VA and SAAs when another government agency has taken punitive action against a school. One such event should include when the ED revokes Title IV funding or DOD revokes a school’s eligibility for voluntary education programs. Very recently, ED discovered Argosy schools were stealing Title IV funds from students and failing to disburse the funds, so ED cut off the school entirely. VA, citing lack of authority to cut a school off without the SAA doing so first, continued to fund the schools and sent a letter to GI Bill students saying that their funding was not at risk and they could continue to attend. This again, reinforces the need to more clearly delineate the roles and expectations for VA and the SAAs. When a school is cut off by a federal agency for stealing federal funds, VA and SAAs should immediately suspend the school and investigate.

Congress also should stop the flow of funds to fraud. Federal or state law enforcement lawsuits against a school for defrauding students or the government should similarly trigger a “risk-based program review,” and depending on the severity of the fraud alleged - should trigger a suspension or disapproval of GI Bill funds.

6. **VA Has the Authority to Disapprove Schools** - VA often claims it has no authority to disapprove schools and that only the SAAs have such power. But the VA Inspector General (IG) and Yale Law School both say this is wrong.¹²

¹¹ See Letter from Mr. Takano and other Members of Congress to the Secretary of Veterans Affairs calling on the Secretary to “**add a ‘risk index’ to the GI Bill Comparison Tool that would rate schools as low-risk, medium-risk, or high-risk based on factors such as heightened monitoring by the U.S. Department of Education, investigations and settlements with state Attorneys General and the federal government, failure of credits to transfer, and other appropriate factors. Such an index would significantly improve the consumer protection information available to veterans. It is vital not only to veterans but to their smart use of taxpayer dollars.**” (June 22, 2015), available at: <https://www.blumenthal.senate.gov/newsroom/press/release/sen-blumenthal-reps-brown-takano-and-colleagues-urge-va-to-increase-protections-for-veterans-against-for-profit-college-predatory-practices>

¹² U.S. 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](https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf)” (Dec. 3, 2018), available at: <https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf>; Yale Law School, “[VA’s Failure to Protect Veterans from Deceptive College Recruiting Practices](https://www.insidehighered.com/sites/default/server_files/files/Yale-VES%20Memo%20.pdf)” (2016), available at: https://www.insidehighered.com/sites/default/server_files/files/Yale-VES%20Memo%20.pdf.

As the VA IG explains, “According to VA OGC, SAAs have nearly exclusive authority to approve, suspend, or withdraw programs for the Post-9/11 G.I. Bill, not the VA, and this SAA authority is largely unchallengeable.”¹³ The IG refutes this: “The IG does **not** agree that VBA’s responsibility is so narrow.”¹⁴ The IG outlines four reasons, which we would like to draw to your attention:

- **VBA Has Statutory Program Disapproval Authority under 38 USC 3679:** 38 USC § 3679 clearly provides the Secretary program disapproval authority, in addition to SAAs: “Any course approved for the purpose of this chapter which fails to meet any of the requirements of this chapter shall be immediately disapproved **by the Secretary or the appropriate state approving agency.**”

The IG cites this as a prime reason the IG believes VA is wrong that it lacks authority to disapprove programs.¹⁵

This is also the central finding of Yale Law School’s report: “The VA’s statutory authority is clear: The VA is responsible for approving, disapproving, and suspending G.I. Bill funds for educational institutions according to various criteria. Although SAAs also have authority to act, the VA retains authority to disapprove schools or courses and approve schools **‘notwithstanding lack of State approval.’**”¹⁶

- **Under OMB Guidance and the Financial Integrity Act, VBA is “Ultimately Responsible” for Stewardship of Taxpayer Funds:** As the IG wrote: “VBA’s position also does not address its responsibilities under the Federal Managers’ Financial Integrity Act of 1982 (FMFIA) and OMB Circular A-123, which state

¹³ U.S. 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](#)” (Dec. 3, 2018).

¹⁴ *Id.* at 4.

¹⁵ IG Report at 28-29 (“The OIG also does not agree with the statement that that SAAs are primarily responsible for approvals and are given this authority nearly exclusively under the law. The provisions of 38 CFR § 21.4152, Control by agencies of the United States, prohibits VA from supervising or controlling the SAAs, but also specifically states that VA retains the right to determine whether the SAAs are complying with Title 38. Furthermore, 38 U.S.C. §3679, Disapproval of courses, also allows VA to approve or disapprove schools, courses, or licensing or certification tests and does not include any limitations stating VA can only exercise this authority when acting in the role of an SAA.”)

¹⁶ Yale Law School Report at 6 (quoting 38 C.F.R. § 21.4152(b)(5)). *See also* Yale Law School at 5, footnote 31 (“38 U.S.C. §§ 3675, 3679 (granting both “[t]he Secretary or a State approving agency” authority to approve and disapprove educational institutions); *see also* 38 U.S.C. § 3690(b)(3)(A) (granting *suspension* authority to the VA); 38 C.F.R. § 21.4210 (detailing the process that must accompany a mass *suspension* of funds, and of enrollments or reenrollments at educational institutions); 38 C.F.R. § 21.4259 (granting *suspension* authority to the SAA); S. REP. NO. 111-346, at 21 (2010) (noting that the 2010 amendments to the G.I. Bill were intended “to expand VA’s authority regarding approval of courses for the enrollment of veterans (and other eligible persons) who are in receipt of VA administered educational assistance programs”) (emphasis added).

*that agency managers and staff are responsible for the proper stewardship of federal resources.”*¹⁷

- **VBA Has Overridden SAAs, Directly Contradicting VBA’s Claim That Only SAAs Have Program Disapproval Authority:** As the IG wrote: *“The OIG also noted that the statement about the nearly exclusive authority of the SAAs, except in cases where the state does not have an SAA, **directly contradicts prior VBA actions:** VBA stopped an Arizona college in 2015 from enrolling additional students in flight training programs approved by the Arizona SAA until the college complied with Title 38 regulations and suspended payments to Ashford University after the Arizona SAA approved the university’s programs in 2017.”*¹⁸
- **VBA has power to oversee SAAs:** Finally, the IG assigns VBA central authority to oversee SAAs to ensure they satisfy Title 38 standards.¹⁹

7. VA Can Suspend New Enrollments If It Does Not Want to Disrupt Current Students - VA officials often explain they do not want to disapprove schools because they are concerned about displacing current students. This ignores the harm done to current students of remaining enrolled at a failing or fraudulent college. Nevertheless, Congress could remind VA it also has the authority to take the intermediate step of suspending new enrollments, only, and leaving current students enrolled, if the evidence of an impending failure is somewhat murky. As Yale Law School explained, VA has *“explicit authority to suspend courses, in addition to their authority to approve and disapprove courses.”*²⁰

8. Clarify VA’s Authority to Disapprove Schools - Despite the IG and Yale Law School’s finding that VA does have authority to disapprove schools, Congress could legislatively clarify VA’s authority to avoid any further confusion:

¹⁷ IG Report at 15 (“Agency managers and staff are expected to ensure programs operate and resources are used to meet agency missions with minimal potential for waste, fraud, and mismanagement.”); see also IG Report at 18 (“Although VBA may comply with a strict interpretation of Title 38 requirements, it is not effectively overseeing the program to safeguard students’ interests and taxpayers’ funds and ensure the proper stewardship of federal resources as required by FMFIA and OMB Circular A-123.”)

¹⁸ IG Report at 28-29.

¹⁹ IG Report at 13-14 (“VBA believed it had a very restricted role in the SAA oversight process and subsequently did not identify its weaknesses. The former Executive Director stated VBA is prohibited under federal law from exercising control over the SAAs . . . The former Executive Director stated that the primary responsibility for the review, approval, and continuous monitoring of the programs resided with the SAAs and that VBA had no control over what the SAAs did. He maintained this position even though VBA has the authority to establish and negotiate contracts with the SAAs [and] the authority to determine whether an SAA is complying with the standards and provisions of the law.”)

²⁰ Yale Law School Report at 5 (citing 38 U.S.C. § 3690(b)(3)(A) (granting *suspension* authority to the VA); 38 C.F.R. § 21.4210 (detailing the process that must accompany a mass *suspension* of funds, and of enrollments or re-enrollments at educational institutions); 38 C.F.R. §21.4259 (granting *suspension* authority to the SAA); S.REP.NO.111-346, at 21 (2010) (noting that the 2010 amendments to the G.I. Bill were intended “to expand VA’s authority regarding approval of courses for the enrollment of veterans (and other eligible persons) who are in receipt of VA-administered educational assistance programs”) (emphasis added).

- a. **Clarify VBA’s Authority to Disapprove Schools Even if an SAA Fails to Disapprove a School.** This would solve VBA’s current feeling that its hands are tied when it sees a school that has been cut off by ED for stealing funds or that lacks any State SAA approval.

- b. **Codify the Principles of Excellence so Schools Must Sign a Contract to Participate in GI Bill** - Both DoD and ED have signed contracts schools must sign in order to participate in their education funds.²¹ When a school violates the terms of that contract, DoD and ED have the contractual authority to disapprove the school. Congress could strengthen VA’s authority to disapprove schools by aligning VA with DoD and ED by codifying VA’s Principles of Excellence (which are currently voluntary and unenforceable) in a contractual framework schools must sign, which would empowers VA to limit or end a school’s participation in VA education funds. This new VA MOU should incorporate the elements in DoD’s MOU, where appropriate, and should explicitly incorporate ED’s “program integrity” requirements – just as DoD did in its MOU for schools.

- c. **Strengthen 38 USC 3696** - One reason schools shutter is because they are engaged in fraud that is exposed by law enforcement. Bipartisan state and federal law enforcement is taking action to protect students, such as the lawsuit brought by 48 states plus the District of Columbia, against one school for defrauding students. 38 USC 3696 requires VA to disapprove schools that engage in misleading and deceptive advertising and recruiting.²² VA has failed to adhere to this statute. If VA were following this statute, it would have disapproved some of the worst bad actor schools before they shuttered, and would have saved tens of thousands of veterans from wasted time and GI Bill.

Congress could strengthen 38 USC 3696 by adding a time limit on VA to act (e.g., “*within 90 days of learning of a government agency action, lawsuit, or settlement, or of more than 50 student veteran complaints filed with VA about the institution.*” Congress also could strengthen the law by specifying steps VA must take, including:

- Disapprove the enrollment of future eligible persons, or disapprove the enrollment of both future and current eligible persons if, in the Secretary’s or SAA’s discretion, the situation warrants such;
- Post a caution flag on the GI Bill Comparison Tool;
- Alert currently enrolled GI Bill students; and
- Refer the matter to the Federal Trade Commission for its preliminary findings, in accordance with 38 USC 3696(e).

²¹ DoD’s “Memorandum of Understanding” with schools is available at <https://dodmou.com/>. ED’s Title IV “Program Participation Agreement” is available at https://ifap.ed.gov/regcomps/doc4072_bodyoftext.htm.

²² 38 USC 3696(a) (“The Secretary shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.”)

Congress also could specify the time period until a bad actor school could reapply for approval, such as: “*An institution of higher education shall not be eligible to enroll new GI Bill students until 24 months have passed and the institution presents independent, third-party verification that its practices are no longer in violation of 38 USC 3696(a).*”

- 9. Protect GI Bill Funds by Adjusting How VA Disburses Funds** - The US Government Accountability Office reported that GI Bill overpayments cost \$416 million in FY 2014, affecting 1 in 4 GI Bill students.²³ VA claws back GI Bill tuition overpayments directly from students,²⁴ even though the school received the money. This places the student in the position of having to beg the school for a refund. To recoup GI Bill from the student, VA will garnish tax returns and even withhold a veteran’s disability money, as well as report debts to credit rating agencies. A major cause of the GI Bill overpayment is the way VA differs from ED on how much tuition a school can keep. VA disburses the entire semester of Post-9/11 GI Bill benefits directly to the school after a veteran (or his/her designated beneficiary) sits for just one day of class. This “Just 1 Day” mentality incentivizes colleges to deceive veterans to get them to enroll for “Just 1 Day,” and denies veterans the opportunity to experience and evaluate the product being provided without being on the financial hook. Historically, Congress carefully avoided direct payments to schools because of such fraud.²⁵

In contrast, ED disburses Title IV funding immediately, but prorates the amount of tuition the school has “earned” during the term, up until 60 percent of the time in a semester has passed; after the 60 percent cutoff, a school is viewed as having earned 100 percent of Title IV funds.²⁶ ED also maintains a disbursement delay of 30 days for new students (covering a college “add/drop period”), to ensure they can find the right school prior to ED’s releasing funds.²⁷ ED handles overpayments by adjusting future disbursements to reflect past overpayments, including situations when a student does not begin attendance at an institution and when a student withdraws.

Similarly, DoD pays a school only after the student successfully completes the class.²⁸ The student is on the hook for any paid funds only if the student drops out of the military; withdraws from school for any reason other than military transfer, mission requirements, or personal health; or fails the class.

²³ U.S. Government Accountability Office, “[Post-9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections](https://www.gao.gov/assets/680/673230.pdf)” (2015), available at: <https://www.gao.gov/assets/680/673230.pdf>.

²⁴ See [38 USC 3680\(e\)](#).

²⁵ The Century Foundation, “[Truman, Eisenhower, and the First GI Bill Scandal](#)” (2017), available at: <https://tcf.org/content/report/truman-eisenhower-first-gi-bill-scandal/>.

²⁶ See US Education Department, “Withdrawals and the Return of Title IV Funds,” available at: <https://ifap.ed.gov/sfahandbooks/attachments/0708Vol5C2a.pdf>;

²⁷ See 20 U.S. Code § 1078–7 “Requirements for disbursement of student loans.”

²⁸ See, e.g., <https://www.militaryonesource.mil/education-employment/for-service-members/preparing-for-higher-education/how-to-use-the-military-tuition-assistance-program>.

VA should follow ED's pro-rated basis for determining how much tuition the school has "earned," and follow ED's method of clawing back tuition overpayments from the school, not the student, since the school got the tuition money. VA also should immediately comply with the 8 GAO recommendations on overpayments, including monthly enrollment verification by each veteran. (Housing allowance overpayments would still need to be clawed back from the student, but VA should not clawback a student's monthly housing allowance if a college changes its zip code/VA facility code, and the student did not change anything.)

We appreciate the amount of time, effort, and attention the Committee has given to ensure military-connected students are protected when institutions close. Thank you for considering the views of VES on this important topic.