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INSIDE

History and Implications of Changes to
State Approving Agencies' Responsibilities

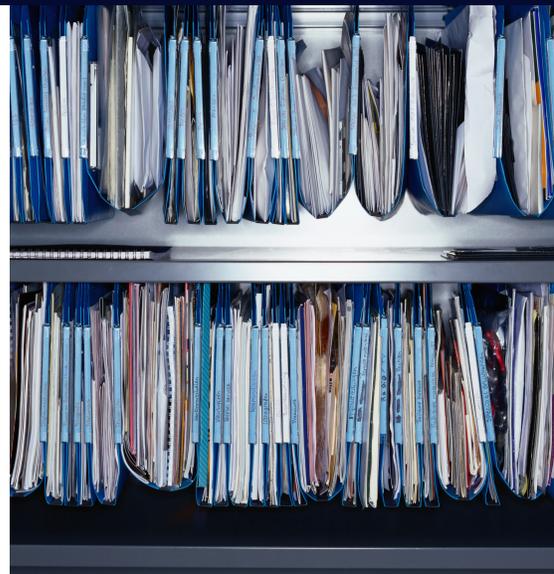
Payment Audits Crowd Out
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OVEREMPHASIS ON PAYMENT ACCURACY IMPEDES MORE EFFECTIVE SAA OVERSIGHT OF SCHOOLS PARTICIPATING IN THE GI BILL

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REPORT

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ABOUT VETERANS EDUCATION SUCCESS

Veterans Education Success (VES) works to advance higher education success for veterans, servicemembers, and military families, and to protect the integrity and promise of the GI Bill and other federal education programs. We are policy experts, academic researchers, and veterans' advocates. VES provides

- **Free Help for Veterans and Military-Connected Students:** Free legal services, advice, and college and career counseling for the GI Bill.
- **Research & Reports:** Non-partisan research on issues of concern to student veterans, including student outcomes and federal oversight.
- **Policy Advocacy:** Assistance to policymakers to improve higher education quality and veterans' success and to protect the integrity of the GI Bill.
- **Civic Engagement:** Helping veterans participate in their democracy by engaging government officials and the media.
- **Legal Advocacy:** Free legal assistance for military-connected students and whistleblowers, and legal work building cases to stop college consumer fraud.

“The relationship and relative authority and responsibility of the Veterans’ Administration and State Approving Agencies is not clearly defined by the present law, resulting in contention and confusion between Veterans’ Administration and State Approving Agencies.” House Select Committee to Investigate Educational Training and Loan Guarantee Programs Under the GI Bill (1952)

This report is one in a series of three reports by Veterans Education Success on State Approving Agency (SAA) and Department of Veterans Affairs (VA) oversight of GI Bill participating schools. A second [report](#) examines SAA and VA approval and disapproval authorities in statute and a third, forthcoming report examines the failure of VA and most SAAs to act on early warning signs when risks to GI Bill beneficiaries and taxpayers emerge at some schools.

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Abbreviations

| | |
|-------|--|
| ABA | American Bar Association |
| ACICS | Accrediting Council for Independent Colleges and Schools |
| CFPB | Consumer Financial Protection Bureau |
| COE | Council on Occupational Education |
| CRS | Congressional Research Service |
| EDMC | Education Management Corporation |
| FTC | Federal Trade Commission |
| GAO | Government Accountability Office |
| HELP | U.S. Senate Health, Education, Labor, and Pensions Committee |
| NASAA | National Association of State Approving Agencies |

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| OIG | Office of Inspector General |
| SAA | State Approving Agency |
| VA | Department of Veterans Affairs |
| VES | Veterans Education Success |

Executive Summary

State Approving Agencies (SAA), state-level entities that operate under contract with the Department of Veterans Affairs (VA), were established to serve as gatekeepers for GI Bill participating schools. Their ability to provide effective, ongoing oversight of institutions serving veterans and eligible family members has been eroded in the past 8 years by legislative changes and funding challenges, which has exacerbated the natural tension that has probably always characterized the relationship between VA and SAAs. A 1952 House Select Committee report noted that there was “contention and confusion” in the relationship that was attributable to Congress’s failure to clearly define their relative authorities and responsibilities in statute. Both Congress and VA bear responsibility for the changes that gave rise to the current tension and for undermining the ability of SAAs to serve as GI Bill gatekeepers.

Recent reports by both the Government Accountability Office (GAO) and the Department of Veterans Affairs Office of Inspector General (OIG) corroborate our findings that the 2011 decision to shift the focus of SAAs to determining GI Bill payment accuracy has crippled their ability to enforce and monitor compliance with statutory requirements. For example, the 2018 OIG report estimated that VA would pay an estimated \$2.3 billion in improper payments to schools over the next 5 years if it did not implement the Inspector General’s recommendations. The most common oversight weakness, involving 57 percent of the oversight errors, entailed potentially deceptive advertising by schools, including false claims about job placement rates, accreditation, and post-graduation earnings. Sec. 3696 of the statute governing the GI Bill bans schools that engage in misleading advertising and recruiting from participating in the GI Bill but has yet to be enforced despite having been enacted in 1974. Ninety percent of the misrepresentations identified by the OIG occurred at programs offered by for-profit schools.¹

The attenuation since 2011 of SAA’s longstanding oversight role coincided with the implementation of the new, more generous Post-9/11 educational benefit, whose expenditures totaled about \$77 billion from 2009 through 2017. The availability of this significant new revenue stream led to yet another [cycle of scandal](#) where low-quality, high-cost predatory schools engaged in misleading advertising and recruiting to enroll GI Bill beneficiaries. Rather than focusing on protecting beneficiaries and taxpayers from predatory schools, however, VA shifted SAAs’ activities to payment audits of GI Bill expenditures—expenditures that, in the case of some schools, could have been prevented in the first place by more effective oversight.

¹For example, DeVry retained its eligibility to enroll veterans despite its [2016 settlement](#) with the Federal Trade Commission (FTC) over the school’s exaggerated job placement rates.

Legislative Changes

Three legislative changes enacted in January 2011 initiated the shift in SAA’s oversight role from ensuring quality to monitoring payment accuracy. First, Congress authorized VA to assign compliance surveys, designed to ensure the accuracy of GI Bill payments, to SAAs. VA in turn rescinded a contract requirement for SAAs to conduct more substantive, quality oriented supervisory visits at 80 percent of schools annually. Only about 15 percent of facilities serving beneficiaries receive a compliance survey each year and the SAA Directors we interviewed noted that many schools had not had a supervisory visit in more than 5 years. According to an analysis conducted by the California SAA, about half of the participating schools in the state had not had a visit of any kind in from 4 to 10 years.

Second, Congress established a “deemed-approved” category to address the perceived SAA duplication of the activities of accreditors recognized by the Department of Education.² Concern about duplication is not a new issue: Congress held hearings in 2007 and again in 2009 about the potential duplication of the oversight responsibilities of state licensing authorities or Education Department-approved accreditors by SAAs.³ An important distinction between SAAs and accreditors, however, is that the former approve individual degree programs that participating schools offer to beneficiaries, while the latter generally focus on an institution’s overall qualifications to operate and participate in state and/or federal financial aid programs. Moreover, as demonstrated by the Accrediting Council on Independent Colleges and Schools’ (ACICS) lax oversight of the schools it accredited, institutional accreditation is no guarantee of an acceptable level of quality.⁴ ACICS accredited schools owned by Corinthian, ITT, and the Education Corporation of America, which were under legal scrutiny for misleading advertising and recruiting and closed precipitously.⁵

Third, although VA is prohibited from exercising any supervision or control over SAAs unless specifically enumerated in statute, Congress gave VA explicit authority to coordinate the approval activities of SAAs to avoid duplicating the actions of other oversight entities. Providing VA with this coordination authority opened the door to increased supervision of SAAs by VA, as evidenced by two 2018 developments—the negotiation of a new contracting vehicle and the issuance of a policy advisory curtailing the disapproval authority of SAAs that work proactively to protect GI Bill beneficiaries.

²Public and nonprofit institutions now undergo an abbreviated approval process because they are accredited.

³Ironically, the motivation for creating federally recognized accrediting agencies was the need to weed out predatory schools that emerged after the creation of the original GI Bill in 1944. The [Veterans’ Readjustment Assistance Act of 1952](#) required institutions receiving GI Bill funds to be accredited. To assist with this task, Congress required the Office of Education—located in the Federal Security Agency, the precursor to the Department of Education—to publish a list of recognized accrediting agencies.

⁴A [2016 report](#) by the Center for American Progress detailed ACICS’s long history of turning a blind eye to the serious shortcomings in the for-profit schools it accredited, often naming problematic schools to its “honor role” contemporaneously with the opening of federal or state investigations.

⁵A December 2018 VES [Issue Brief](#) examines the early warning signs suggesting that the Education Corporation of America was on the brink of failure—warnings that ACICS, VA, and the Education Department failed to heed.

- ***New Contracting Vehicle.*** Starting with fiscal year 2019, VA replaced the longstanding SAA “contract” with a “cooperative agreement.” The contract defines the relationship between VA and SAAs, primarily by establishing workload priorities and performance expectations. Despite significant push back from the National Association of State Approving Agencies (NASAA), which negotiated with VA on behalf of SAAs, the final cooperative agreement did not address several concerns, including (1) VA now has the final word if an SAA disagrees with its interpretation of statute or regulation; (2) SAAs can no longer appeal VA’s decision in any dispute over their performance because, unlike a contract, the new agreement is not subject to federal acquisition regulations; and (3) SAAs will no longer be reimbursed for new hires until the months-long National Criminal History Check has been completed, a decision that places a roadblock to using the increased funding that Congress authorized in 2017 to hire additional staff.

With the exception of one state, all SAAs signed the new cooperative agreement; the sole holdout finally agreed to identical terms about 4 months into the fiscal year—after having appealed directly to the VA Secretary and indicating that it would raise the issue again during fiscal year 2020 contract negotiations. A NASAA official suggested that two factors accounted for the acquiescence of SAAs to the agreement’s terms: (1) the limited amount of time between receipt of the final agreement and the expiration of the 2018 contract, and (2) the lack of independent state support for SAA activities, including the total dependence of many SAAs on funding from VA for their operations.

- ***Policy Advisory.*** In August 2018, VA issued a policy advisory instructing SAAs to discontinue re-adjudicating approvals issued by another duly authorized agency, such as an Education Department-approved accreditor. In effect, the advisory instructed SAAs to ignore the early warning signs identified by other oversight entities, such as accreditors, that have identified risks to GI Bill beneficiaries and taxpayers at schools eligible to enroll veterans. The advisory stated that “it is inefficient and a waste of VA resources for an SAA to repeat their work [the work of other duly authorized agencies] and expend further resources in an attempt to confirm or overrule their determinations.” Several SAA Directors and NASAA officials suggested that VA’s policy advisory was a reaction to approval and disapproval decisions made by the Arizona and California SAAs in the past several years. Consistent with this hypothesis, VA asked the California SAA to reverse several 2017 and 2018 school disapprovals or risk losing its contract for fiscal year 2019. The disapprovals were based on accreditors’ reports and the SAA’s interpretation of statutory requirements. For example, the Thomas Jefferson School of Law had been placed on probation by its accreditor, the American Bar Association. The probation notice cited concerns about the school’s finances, admission practices, bar pass rates, and the ability of its graduates to obtain employment as lawyers. News articles about these very problems had been circulating for several years. The California SAA restored GI Bill eligibility to the law school only after VA threatened to terminate the SAA’s contract.

Funding Challenges

Despite the first funding increase in more than 10 years, a former VA official, SAA Directors, and representatives of NASAA told Veterans Education Success (VES) that SAAs are still underfunded. Even though neither organization independently examined the adequacy of SAA funding levels, recent reports by both GAO and VA OIG also raise questions about the adequacy of the resources available to SAAs.⁶ In 2017, Congress authorized two increases in SAA funding levels, from \$17 million to \$19 million in fiscal year 2018 and then to \$23 million in fiscal year 2019; an additional \$3 million in annual supplemental funds were also authorized starting in fiscal year 2019. VA told us that it does not plan to distribute any supplemental funds in fiscal year 2019 because it has no reason to believe that \$23 million is insufficient to allow SAAs to complete the requirements of the cooperative agreement.

VA, SAA, and NASAA officials also told GAO that limited reimbursement for SAA activities remains an issue. For example, the SAA Directors that VES interviewed for this report said that the reimbursement for their activities under the terms of the contract is consumed by their compliance survey workload, leaving no resources for other oversight such as routine monitoring via supervisory visits. Compliance surveys are essentially audits to ensure the accuracy of payments made to schools on behalf of GI Bill beneficiaries. Moreover, NASAA and SAA officials believe that 2017 changes to the methodology VA uses to allocate funds has negatively impacted state agencies' ability to fulfill SAA oversight responsibilities, such as hiring sufficient staff, providing technical assistance and training to schools, and promoting increased use of the GI Bill through outreach activities.⁷ For example, VA's allocation model uses a national average salary/benefit amount even though it is lower than actual costs in some states. In September 2018, VA hired a contractor to examine its allocation methodology, including the concerns raised by NASAA and SAA officials. VA officials told GAO, however, that no matter how VA divides the funding among SAAs, the total amount of program funding to these agencies will remain the same within any one fiscal year. In recent years, several SAAs have refused to renew their contracts to serve as SAAs because of the mismatch between state costs and VA reimbursements.⁸

A December 2018 VA OIG report addressed the adequacy of SAA funding obliquely—primarily in relation to its finding that SAA oversight, both compliance surveys and approvals, was not

⁶The GAO report was required by [Sec. 311](#) of the Harry W. Colmery Veterans Educational Assistance Act of 2017. The mandate asked GAO to assess SAA performance, including cooperation between VA and SAAs, the adequacy of SAA funding, and the use of alternative methods to oversee and disapprove schools. The questions themselves suggest that Congress was aware of several key issues that impede SAA oversight of schools, including funding.

⁷Outreach promotes the increased usage of GI Bill benefits through briefings and presentations, mass media marketing, and networking with a wide variety of stakeholders, to include providers of education and training, employers, military installations, and veterans groups.

⁸Alaska did not contract with VA for 5-1/2 years because of limited funding. VA's Oklahoma regional office staff faced challenges in assuming the state's oversight role and failed to complete all of the assigned compliance surveys. New Mexico did not renew its contract with VA in fiscal year 2018 because the funding was insufficient to cover its costs for salaries, travel, and technical assistance to schools.

ensuring continuous compliance of schools with statutory requirements. The OIG recommended that “the Under Secretary for Benefits assess whether SAA funding is sufficient to ensure the adequate review, approval, and monitoring of programs in conjunction with an external contract to update the SAA funding allocation model.”

We believe that our recommendations to both Congress and VA will help address the root causes of SAA oversight weaknesses and, in the process, lessen the tensions that impede a more collaborative approach to oversight.

1. Background

Created by Congress as “gatekeepers,” SAAs help to ensure that GI Bill-eligible programs meet statutory and regulatory standards for approval and maintain continuous compliance with those standards. The goal is to preclude the participation of predatory schools that defraud veterans as well as taxpayers by:

- aggressively marketing their programs, which often fall short of their promise of meaningful, well-paying jobs;⁹
- offering low-quality programs that employers don’t respect;
- using recruiting tactics that deliberately misrepresent costs, graduation rates, the ability to transfer credits, or accreditation; and
- exploiting loopholes in the GI Bill to avoid payment caps.

Despite the existence of SAAs as an important safeguard against fraud, waste, and abuse, veterans’ educational benefits have been systematically targeted by low-quality but costly credential and degree programs since the implementation of the original 1944 GI Bill. Each successive scandal has resulted in retrospective regulatory fixes that were either flawed or halfheartedly implemented, as noted in a history of this [cycle of scandal](#) published by The Century Foundation.

SAAs operate under a contract with and with oversight by the VA, which funds their operations.¹⁰ They are, however, state agencies—often situated within the departments responsible for veterans or education—and their staffs are state employees.¹¹ According to a 2016 Congressional Research Service (CRS) [report](#), VA provides the federal structure and interprets federal statutory provisions while SAAs apply and interpret the standards and processes at the local level, an arrangement that requires coordination and cooperation

⁹The 2012 Senate Health, Education, Labor, and Pensions (HELP) [report](#) on for-profit schools documented the sector’s reliance on misleading advertising to aggressively recruit veterans.

¹⁰Each SAA signs the same, identical contract.

¹¹According to [NASAAs](#) website, most states plus D.C. and Puerto Rico have an SAA, three states have two SAAs, and VA officials serve as the SAA for Hawaii, Oregon, and the Virgin Islands.

between the two entities. VA is [prohibited](#) from exercising any supervision or control over SAAs except as specifically provided by statute. One such provision, enacted in 2010, authorizes VA to coordinate SAA activities with other entities that oversee schools participating in the GI Bill.

Tension between VA and SAAs is likely inevitable given the hybrid nature of SAAs—state entities whose employees’ salaries are paid by VA. One former VA official described SAAs as “fiefdoms,” each with its own culture, characteristics, chain of command, and state perspective. For example, California has been proactive in protecting veterans from predatory schools while [Arizona](#) welcomed the opportunity in 2017 to approve Ashford’s eligibility to enroll GI Bill beneficiaries. Clearly, these two states have different GI Bill oversight perspectives.

2. SAA Oversight Weakened by VA’s Focus on Payment Accuracy

Prior to significant statutory changes in 2011, the respective roles of VA and SAAs were relatively clear.¹² SAAs served as the gatekeepers for GI Bill funds, helping to ensure the quality of the degree programs that they approved. SAAs were also responsible for disapproving programs that no longer met statutory requirements. Finally, SAAs were charged with monitoring schools to ensure their continuous compliance with 38 U.S.C., the statute governing the GI Bill. VA’s role, on the other hand, was to process payments to approved schools and to oversee the work of SAAs through an annual contract. Legislative changes made since 2010 as well as overlapping and seemingly inconsistent authorities have contributed to tension between VA and SAAs and, more importantly, changed the focus of SAAs oversight role.

Since 2011, SAA activities have been focused on payment accuracy, diminishing the priority assigned to approvals, disapprovals, and routine oversight. The explosive growth in GI Bill expenditures and enrollment after the 2009 implementation of the new Post-9/11 educational benefit underscored the importance of efforts to ensure payment accuracy. At the same time that routine SAA oversight was winding down, the potential revenue from the new GI Bill had incentivized predatory schools to aggressively recruit veterans, suggesting the need for increased, not decreased, routine oversight. Recruitment by such schools often relied on misrepresentation of key metrics, such as cost, quality, accreditation, job placement rates, and transferability of credits. Aggressive marketing to veterans was a reflection of for-profit schools’ need to offset their dependence on Title IV federal student aid, which is capped at 90 percent of total revenue. Even though GI Bill benefits are also federal revenue, they are counted as part of the 10 percent that schools must receive from private payers—individuals and employers who reach into their own wallets to pay tuition. As a result of this loophole, the market-based proxy for quality envisioned by the 90/10 rule has never been tested.

¹²Statutory provisions that define the roles and responsibilities of VA and SAAs are outlined in Title 38, which governs the administration of the GI Bill.

This chapter consists of six sections that illustrate how legislative changes have undermined SAAs' oversight role and increased VA's supervision and control of SAAs.

- *Section A* summarizes the legislative changes since 2010 that have fundamentally altered the role of SAAs.
- *Section B* analyzes the impact of the legislative authorization for VA to assign compliance surveys, which are essentially GI Bill payment audits, to SAAs.
- *Section C* summarizes the findings of the VA OIG's 2018 report on oversight of GI Bill participating schools; in criticizing VA's oversight of SAAs, the report in effect concluded that SAA oversight of schools was also inadequate, particularly as related to schools' use of misleading advertising to recruit beneficiaries.
- *Section D* discusses the 2018 VA-SAA contract negotiations and the contract modifications to which nearly every SAA objected because some changes undermined their independence.
- *Section E* analyzes the impact of VA's August 2018 policy advisory, which used the Department's authority to coordinate the approval activities of SAAs with those of other oversight entities to roll back several approval and disapproval actions initiated by the California SAA.
- *Section F* discusses the evidence that inadequate SAA funding has also contributed to SAA-VA tensions and weakened oversight of GI Bill participating schools.

A. Legislative Changes Since 2010 Fundamentally Changed the Role of SAAs

Legislative changes made since 2010 have focused SAAs' resources on compliance surveys, essentially displacing their traditional oversight activities. These legislative changes have further complicated the natural tensions between VA and SAAs, which are defined by overlapping and seemingly inconsistent statutory authorities.

- *Interpreting Statute and Enforcing State Requirements.* Both VA and SAAs share responsibility for interpreting the federal statute governing the GI Bill.¹³ In addition, Section 3672(a) of Title 38 explicitly authorizes SAAs to approve schools in accordance with the statute and "such other regulations and policies as the State approving agency may adopt."
- *Approval and Disapproval Authority.* Prior to 2011 legislative changes, SAAs had primary approval and disapproval authority for programs enrolling GI Bill beneficiaries. In 2011, at VA's request, Congress gave the Department a role in approving accredited programs and in program disapprovals. Additional changes in 2016 reversed some but not all of the approval authority granted to VA, but not its disapproval authority. Our analysis of the 2011 and 2016 statutory changes concluded that their piecemeal nature created ambiguity and

¹³See [CRS](#), *The Role of State Approving Agencies in the Administration of GI Bill Benefits*, December 29, 2016.

contributed to tensions between VA and SAAs and between VA and the VA OIG.¹⁴ As discussed below, these changes were part of a series of changes that fundamentally altered the scope and priority assigned to SAAs approval functions.

- ***VA Oversight Responsibilities.*** Despite the prohibition on exercising control over SAAs, VA is responsible for oversight of SAAs, setting SAA priorities by establishing and negotiating contracts with SAAs, and evaluating SAA performance annually. As the December 2018 VA OIG [report](#) pointed out, VA has the discretion not to renew a contract with a state should it fail to achieve a satisfactory appraisal; it did so in the cases of Hawaii, Oregon, and Vermont in fiscal years 2015 and 2019, assuming their program review, approval, and monitoring responsibilities.¹⁵ On September 6, 2019, VA [announced](#) its decision not to renew its contract with California.
- ***Requirements to Help Avoid Duplication.*** The House Veterans Affairs Committee held hearings in [April 2007](#) and [July 2009](#) on overlap and duplication in the activities of organizations tasked with overseeing institutional quality, including the need to provide VA with stronger oversight of SAAs.¹⁶ In 2011, Congress took two steps to address the perceived duplication. First, Congress gave VA the authority to [coordinate](#) approval activities to avoid duplicative efforts by VA, SAAs, the Department of Labor, the Department of Education, and other entities, giving VA, in effect, permission to narrow the scope of SAAs' responsibilities.¹⁷ By explicitly authorizing VA to coordinate approval activities to avoid duplication, Congress created another exception to the prohibition on VA exercising any supervision or control over SAAs. Second, Congress also established a "deemed approved" category in 2011 to further address perceived duplicative activities by SAAs, which did narrow the scope of SAA activities and contributed to the lack of oversight of

¹⁴Veterans Education Success, [VA and SAA Approval and Disapproval Authority Should Be Clarified](#), June 2019.

¹⁵Vermont once again has an SAA.

¹⁶The 2007 hearing was prompted by a Government Accountability Office (GAO) report titled *Management Actions Needed to Reduce Overlap in Approving Education and Training Programs and to Assess State Approving Program*, [GAO-07-384](#), March 7, 2007. Witnesses noted the transformation of higher education since enactment of the original GI Bill in 1944, including the creation of accrediting agencies that now also oversee access to Title IV federal student aid funds; the proliferation of institutions with multiple campuses offering training programs; and the emergence of distance learning modalities, either online or in blended programs, which feature a mix of classroom and online courses.

¹⁷[38 U.S.C. §3673\(b\)](#). The perception that SAAs duplicate the activities of accreditors (and other federal and state oversight entities) persists despite the fact that accreditors offer a more subjective judgment of an institution compared to SAAs' more concrete examination of individual degree programs. See National Training Curriculum, Unit I, [Fundamental Knowledge](#), p. I-16.

flight schools enrolling GI Bill beneficiaries.^{18,19} The Senate Committee [report](#) describing the rationale for these changes noted that Congress intended to “monitor the approval process very closely as these new procedures are set in place and to respond quickly and appropriately should the need arise.”²⁰

- [SAA Workload Changes](#). At the same time the creation of the deemed approved category of schools decreased the SAAs’ approval workload, Congress authorized VA to assign compliance surveys to SAAs.²¹ According to VA, it asked Congress for this authority “partly” because of the decrease in the SAAs’ approval workload. The completion of compliance surveys, which SAAs first began to conduct in October 2011, is the top workload priority in each SAA’s contract with VA. Reflecting this priority, SAA contracts beginning with fiscal year 2012 [removed](#) the requirement for SAAs to conduct annual supervisory visits to at least 80 percent of schools that had GI Bill beneficiaries enrolled during the year. Finally, SAAs had been conducting risk-based surveys of schools since 2014—targeted reviews to investigate complaints filed by GI Bill beneficiaries.²² In 2017, Congress formally recognized risk-based surveys as an SAA oversight responsibility by amending Section [3673\(d\)](#) of Title 38 and allowing VA to use the services of SAAs to conduct not only compliance surveys but also risk-based surveys.²³ Overall, these workload changes have resulted in SAA’s visiting a fraction of the schools serving beneficiaries.

The statute governing the GI Bill appears to acknowledge the possibility of tensions between VA and SAAs by requiring them to coordinate their activities and cooperate.²⁴

“The Secretary and each State approving agency shall take cognizance of the fact that definite duties, functions, and responsibilities are conferred upon the Secretary and each State approving agency under the educational programs established under this chapter and chapters 34 and 35 of this title. To assure that such programs are effectively and efficiently administered, the cooperation of the Secretary and the State approving agencies is essential.”

¹⁸In order to streamline the approval process for certain programs, Congress established the “deemed approved” category for college degree programs offered by public and nonprofit institutions, which undergo an abbreviated approval process. According to [CRS](#), the rationale for establishing this category was the existence of another agency with an established process and related mission that had already approved a degree program. It is worth noting that SAAs approve degree programs, not institutions, for participation in the GI Bill. Regional and national accreditors focus on whether the institution as a whole meets certain quality standards. Only specialized accreditors conduct in-depth reviews of specific degree programs, such as medicine or law.

¹⁹In general, flight schools were able to avoid SAA oversight by contracting with public institutions, primarily community colleges, which are deemed approved and therefore undergo an abbreviated approval process. A legislative fix [enacted](#) in Section 408 of P.L. 114-315 lessens the opportunity for third-party contracted training programs to be deemed approved with no review.

²⁰See Sec. 203 of hyperlinked Senate report.

²¹See Sec. 203 of [Senate Report 111-346](#) describing the legislative provisions of P.L. 111-377, *Post-9/11 Veterans Educational Assistance Improvements Act of 2010*.

²²Executive Order 13607, Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members required VA to establish procedures for targeted risk-based program reviews of institutions in order to ensure compliance with the Executive Order.

²³See Sec. 310 of [P.L. 115-48](#).

²⁴38 U.S.C. §3673(a)-(b).

To effectively coordinate their activities, VA and SAAs must maintain a positive working relationship.²⁵ It is not clear, however, that such a positive relationship exists with every SAA.

B. Compliance Surveys Crowd Out Other SAA Oversight Activities

Since Congress authorized VA to assign compliance surveys to SAAs in 2011, NASAA has maintained that they crowd out other important oversight activities that help to protect veterans and taxpayers and to hold schools accountable, including approvals and supervisory visits. Although all three activities can be characterized as oversight, they should not be confused. Compliance surveys chase the money after it is spent at a small proportion of participating schools. In contrast, approvals and supervisory visits are about preventing taxpayer dollars from going to low-quality, predatory schools in the first place and on continuously monitoring schools' compliance by visiting most schools on an annual basis.

Compliance surveys have now replaced supervisory visits to schools that participate in the GI Bill, and even approvals are assigned a lower priority than compliance surveys. VA's [performance targets](#) for SAA-conducted compliance surveys range from 90 to 100 percent and VA's position is that additional institutional or facility visits "shall not impact" the required compliance or approval workload. According to 2016 NASAA [testimony](#), roughly 15 percent of active facilities (school campuses that have beneficiaries currently enrolled) receive compliance surveys annually. According to the California SAA, about 39 percent of its facilities have had compliance surveys since October 1, 2011, when SAAs first began conducting them.²⁶

[Compliance Surveys](#). The authority to assign compliance surveys to SAAs was granted by [Section 203](#) of the Post-9/11 Improvements Act of 2010.²⁷

"The Secretary may utilize the services of a State approving agency for conducting compliance and risk-based surveys and other such oversight purposes as the Secretary, in consultation with the State approving agencies, considers appropriate without regard to whether the Secretary or the agency approved the courses offered in the State concerned."

Prior to 2011, VA itself conducted compliance surveys, which focus on determining the accuracy of benefit payments. Because payments on behalf of enrolled beneficiaries increased significantly after the implementation of the Post-9/11 GI Bill, payment accuracy was a legitimate and growing concern. According to [GAO](#), most payment errors identified during

²⁵In August 2014, VA and NASAA created a [Joint Advisory Committee](#) consisting of the leadership of both organizations to demonstrate their partnership and cooperation in safeguarding the GI Bill.

²⁶According to the California SAA, the state has the largest population of veterans, eligible Title 38 beneficiaries, and GI Bill-approved institutions and training establishments collecting VA funds. The California SAA oversees the approximately \$3 billion dollars in GI Bill funds dispersed annually in California. Each year, approximately 60,000 veterans and eligible Title 38 beneficiaries are certified for enrollment at about 1,100 institutions and training establishments throughout the state.

²⁷Sec. 203 authorized VA to use SAA for compliance surveys. Their use for "risk-based" surveys was added by P.L. 115-48 in 2017.

compliance surveys involve overpayments to beneficiaries because of enrollment changes, such as withdrawing from classes for which VA had already paid. Several SAA Directors, however, questioned why SAAs should be involved in auditing payments because VA, not SAAs, is responsible for sending tuition and fee payments to schools based on their enrollment certifications of beneficiaries.

In essence, a compliance survey is a payment audit of a sample of student records from initial enrollment to the date of the compliance survey.²⁸ The objective is to determine if enrollment certifications submitted for the payment of tuition and fees were accurate. Examples of the audit areas covered include (1) Were all the classes covered by the tuition and fees payments related to the degree program in which the beneficiary was enrolled? (2) Were beneficiaries charged the same tuition as other students? (3) Did the beneficiary receive a scholarship and was it taken into account correctly when calculating tuition and fee payments? (4) Did the school accurately report when a beneficiary dropped a class for which VA paid tuition and fees, which could result in an overpayment? Accreditation and regulatory issues are not examined during a compliance survey nor do they cover all the general authorization criteria that SAAs review during the program approval process. One SAA Director characterized compliance surveys as “grueling” and “time consuming.” Because compliance surveys take longer to complete than supervisory visits, they cover only a small portion of the participating facilities in each state.

When the California SAA provided comments on VA’s 2018 draft cooperative agreement, it proposed negotiating the requirements for compliance surveys with VA, including the number conducted, tasks performed, procedures, systems, and reporting to VA. In justifying its proposal, California stated that conducting compliance surveys limits the SAA’s ability to (1) perform responsibilities prescribed under the provisions of 38 U.S.C. § 3671, 3672, 3673, 3674, and 3689;²⁹ (2) ascertain the qualifications of educational institutions and/or training establishments desiring to enroll veterans in courses of education; (3) adequately supervise educational institutions and/or training establishments; (4) protect veterans and other eligible persons, VA, California, and taxpayers; (5) prevent waste, fraud, and abuse; and (6) preserve GI Bill benefits for future students and generations. VA [declined](#) to negotiate the terms of the contract with the California SAA.

According to the 2018 VA OIG report, about 5,700 compliance surveys were conducted in fiscal year 2016, almost equally split between VA and SAAs. In December 2016, Congress gave VA greater flexibility in conducting compliance surveys. Rather than having to conduct annual

²⁸The number of student records [examined](#) is based on the number of beneficiaries enrolled. According to VA, the Department reduced the number of records sampled in fiscal year 2014 and the required number has remained the same since then. For example, the maximum sample size at a facility with 300-399 beneficiaries was reduced from 35 to 25.

²⁹Sec. 3672, 3674, and 3689 govern VA and SAA approval authorities. Sec. 3673 recognizes that cooperation and coordination between VA and SAAs are needed to effectively administer the GI Bill. Sec. 3671 and § 3674 govern designation of SAA by state authorities and reimbursement of SAA expenses by VA under the cooperative agreement, respectively.

[compliance surveys](#) at any school enrolling 300 or more beneficiaries, the requirement was changed to conducting such surveys once every 2 years at schools enrolling 20 or more beneficiaries.³⁰ We asked VA how this legislative change had affected the number of compliance surveys conducted since fiscal year 2016. VA said that the statutory change decreased the number of compliance surveys that had to be completed annually. For example, SAAs were assigned 457 fewer compliance surveys in fiscal year 2019 compared to the prior fiscal year—a 21 percent reduction (see table 1).³¹

Table 1: Number of Compliance Surveys Conducted by VA and SAAs, Fiscal Years 2017-2019

| | Fiscal year 2017 | | Fiscal year 2018 | | Fiscal year 2019 | |
|-------|------------------|-----------|------------------|-----------|------------------|-----------|
| | Assigned | Completed | Assigned | Completed | Assigned | Completed |
| VA | 3,046 | 3,418 | 2,220 | 2,142 | 2,374 | N/A |
| SAA | 2,070 | 2,263 | 2,206 | 2,038 | 1,749 | N/A |
| Total | 5,116 | 5,681 | 4,426 | 4,180 | 4,123 | N/A |

Source: VA.

Note: The 2016 legislative change was enacted 3 months into fiscal year 2017 and would not have affected compliance surveys until at least fiscal year 2018. Data on completed surveys for fiscal year 2019 will not be available until the end of the fiscal year. The number of completed compliance surveys reported by NASAA for [fiscal years 2017](#) and [2018](#)—2,105 and 2,069, respectively—differed from data provided by VA.

According to several of the SAA directors we interviewed, their compliance survey workload has been reduced somewhat for fiscal year 2019 by between 1 and 37 surveys. For two states with the largest reduction, the change represented a 15-20 percent reduction in workload. VA said that it had decided to use the resources freed by the December 2016 legislative change to increase the quality, rather than the quantity, of compliance surveys performed. In addition, VA said that the change allows VA to focus on institutions that have the most risk of noncompliance based on a school’s compliance history, complaints, and other factors. For example, SAAs can now conduct compliance surveys at schools with fewer than 20 students that have risk factors indicating a likelihood of noncompliance even though statute does not require compliance surveys for schools with so few GI Bill beneficiaries. VA made no change in the priority attached to compliance surveys versus other oversight activities.

Supervisory Visits. After VA was authorized to assign compliance surveys to SAAs, VA eliminated the contract requirement for SAAs to conduct annual supervisory visits at 80 percent of schools

³⁰In changing the frequency and criteria for selecting schools, Congress also directed VA to “design the compliance surveys to ensure that...approved courses are in compliance with all applicable provisions of chapters 30 through 36 of this title.” The December 2018 VA OIG report referenced this requirement in its finding that compliance surveys, by focusing on payment accuracy, failed to reaffirm that degree programs were still compliant with all applicable statutory provisions.” See [OIG](#) comments on pp. 21 and 31 of its December 2018 report.

³¹The SAA Directors we interviewed confirmed that they had been assigned fewer comparative surveys in fiscal year 2019 compared to the prior year. SAA Directors pointed out, however, that it is difficult to quantify the impact of the reductions without looking at the number of beneficiaries attending the schools eventually selected for compliance reviews. For example, the sample of student records ranges from 10 at schools enrolling from 0-99 beneficiaries up to 45 at institutions with 700 or more beneficiaries.

with GI Bill beneficiaries. According to VA, there was inconsistency in how supervisory visits were conducted across SAAs and very few student records were reviewed for errors. “VA believed that asking the SAAs to assist with the performance of standardized compliance surveys was a better use of SAA time and efforts.” (See Appendix 1, question 5.) An SAA Director, however, said that the review of a small sample of student records during a supervisory visit would be sufficient to identify if there were systemic problems in how a school certified beneficiaries for GI Bill tuition and fee payments.

In contrast to compliance surveys, supervisory visits provide an opportunity to revisit an institution’s original approval by ascertaining if it has maintained compliance with the standards that formed the basis for that approval. As with compliance surveys, supervisory visits entail a sample of student veterans, albeit smaller. The focus of a supervisory visit, however, is on the quality of an institution’s educational programs, not the accuracy of its certifications for payments, and the visit also provides an opportunity for onsite training of school officials. In addition, these visits also allow SAAs to determine if there have been any changes in the rules or policies surrounding a veteran’s entrance into (enrollment) or departure out of (graduation) a degree program. In general, an institution is not permitted to change its degree program requirements after a veteran has enrolled.

According to the California SAA, as of 2018, about half of California facilities had no supervisory visits at all in 4 years to more than 10 years, and many facilities were operating with an expired approval. For example, only one Art Institute campus in California has had a compliance survey since 2005, even though the chain’s owner was fined (1) \$4.4 million in 2014 for misrepresenting tuition and the projected earnings of graduates, and (2) over \$200 million in 2015 for similarly deceptive recruiting practices (see text box).³² Moreover, almost 20 percent of California facilities had neither a compliance survey nor a supervisory visit in 10 years. The Director of a different SAA said that the SAA no longer has the resources to conduct supervisory visits because it must complete about 30 compliance surveys annually; as a result, this SAA visits only about 10-15 percent of schools currently serving beneficiaries and no facilities that are considered inactive (currently enroll no beneficiaries).³³ The last time this SAA conducted supervisory visits was 2011 when it completed 235—most of its active facilities. The Director said that it would be better if the SAA could visit more schools each year. A third SAA Director said the state went from 400-500 supervisory visits annually to, at most, 60 now and that the SAA has not visited about 200-300 schools in more than 5 years.

³²In a 2018 [report](#), GAO noted that “states generally have limited opportunities to select specific schools for compliance surveys, because VA develops the annual priorities for compliance surveys” and then works with VA regional office staff to select specific schools based on those priorities.

³³Only active facilities are included in workload estimates when VA allocates funding to each SAAs funding. One SAA, which has more inactive than active facilities, observed that excluding the former from the workload entirely was unfortunate because a beneficiary could choose to enroll at an inactive facility at any time. In response to a question, VA said that because the time dedicated to an inactive school varies by SAA, it is unable to accurately measure the associated workload. As a result, the level of effort and workload associated with active facilities within a state is the major factor in determining SAA funding.

Art Institute Campuses in California Have Had Almost No Oversight for More than 10 Years

- The Art Institute has eight California campuses. Only one campus has had a compliance survey (2016), and only one of the eight locations has had a supervisory visit (2015) since 2005.
- In 2014, the Education Management Corporation (EDMC), the owner at that time, reached a \$4.4 million [settlement](#) with the City Attorney of San Francisco following an investigation into consumer complaints that the Art Institute’s recruiters underestimated program costs and inflated student earnings projections. The settlement required the company to create a (1) \$1.6 million scholarship program for students who enrolled at one of its California campuses and did not obtain their diplomas or degrees, and (2) an \$850,000 unrestricted scholarship program for students attending one of the California Art Institutes. The agreement also required payment of \$1.95 million to the City Attorney of San Francisco for investigation costs and other fees.
- In 2015, EDMC settled lawsuits with the [Justice Department](#) (\$95.5 million) and 39 state [Attorneys General](#) (\$103 million). The settlements involved allegations that EDMC had (1) run a “recruitment mill” that paid admission staff purely on the number of students they enrolled, a violation of the statutory ban on incentive compensation; and (2) used aggressive and misleading recruiting practices to persuade students to enroll.

Source: California SAA data and news reporting on the terms of the EDMC settlement.

Note: In October 2017, EDMC finalized the [sale](#) of its assets to the nonprofit Dream Center. For a chronology detailing the slow-motion dissolution of the Dream Center and the closure of all remaining Art Institute and its other campus brands, see a forthcoming companion VES report, *VA and SAAs Should Act on Early Warning Signs at Participating Schools when Risks to GI Bill Beneficiaries and Taxpayers Emerge*.

According to NASAA and California officials, the paucity of supervisory visits contribute to the type of school payment errors identified during compliance surveys, the vast majority of which involve overpayments to schools.³⁴ GI Bill Overpayments were the subject of a 2015 [GAO report](#), which the agency attributed, in part, to inadequate training of school officials.³⁵ GAO found that overpayments affected one in four beneficiaries. Moreover, during discussions over the new cooperative agreement, [NASAA officials](#) informed VA that “Compliance surveys are a workload so demanding that you [VA] have given it as much or more impact on our funding model as our approvals workloads.” As a result, “We have seen our ability to provide outreach shrink more and more as we devote so much more time to trying to keep up with not only the increased workload, but also with all of the high-pressure performance and deadlines [sic] requirements.”

Risk-Based Metrics and a New Category of Oversight Surveys. As noted earlier, Congress formally recognized risk-based surveys as an SAA oversight responsibility in 2017 by amending Section [3673\(d\)](#) of Title 38 and allowing VA to use the services of SAAs to conduct not only compliance surveys but also risk-based surveys.³⁶ At the same time, Congress identified but did not mandate the use of seven factors that could be used to help identify schools for risk-based reviews: (1) rapid increases in beneficiary enrollment; (2) rapid increases in tuition and fees per

³⁴During supervisory visits, SAAs provide training to the staff who certify beneficiary enrollment to VA, which is the basis for tuition and fee payments to schools. Based on compliance surveys conducted from October 2015 through September 2017, California reported identifying \$217,000 in overpayments vs. \$13,000 in underpayments.

³⁵In 2018, NASAA officials told [GAO](#) that many state agencies had reduced the number of visits to train school employees on VA education benefits requirements. They noted that this training is important because it helps reduce over- and underpayments and the misuse of VA education benefits.

³⁶See Sec. 310 of [P.L. 115-48](#).

enrollee; (3) student complaints; (4) deficiencies identified by accreditors; (5) veteran student loan default rates; (6) compliance survey deficiencies; and (7) veteran completion rates.³⁷ At the same time Congress amended § 3673, it tasked GAO with evaluating SAAs’ use of risk-based methods to identify violations of statutory requirements and to report on how SAAs use the seven risk factors in their oversight.

GAO’s 2018 [report](#) did not evaluate SAAs’ use of risk-based methods but rather addressed the extent to which VA and SAAs use risk-based approaches to oversee schools, primarily in selecting schools for compliance surveys and as an independent tool in oversight of participating schools.³⁸ With respect to use of risk-based surveys as an independent oversight tool, GAO reported on VA’s use of targeted surveys based on veteran complaints and VA’s exploration of a new, risk-based approach to oversight that would be in addition to compliance surveys.³⁹ VA officials told GAO that they recognized that a more risk-based approach could help prevent problems, such as some schools’ use of deceptive practices in recruiting veterans. They also indicated that they had recently taken steps to explore using a risk-based approach that would be in addition to compliance surveys. In October 2018, five schools were selected for risk-based reviews to be completed by the end of the year. Apparently, the risk factors used to select schools, the data sources, and the procedures were adopted from a “charter” developed by a joint VA and SAA working group.

In general, VA appears to have been exploring the concept of risk to identify schools for surveys for several years but has made limited progress. When asked for data on the number of risk-based surveys conducted since 2014, VA provided information on completed “targeted risk-based surveys,” which may not be the same as the risk-based surveys that Congress mandated. According to VA, the number of “targeted” risk-based surveys decreased significantly in fiscal years 2017 and 2018 compared to the two prior fiscal years (see table 2).

Table 2: Targeted Risk-Based Surveys Completed, Fiscal Years 2014-2018

| Fiscal year | 2014 | 2015 | 2016 | 2017 | 2018 |
|------------------------------|------|------|------|------|------|
| Risk-based surveys completed | 47 | 30 | 43 | 15 | 6 |

Source: VA.

It remains to be seen how the concept of risk will be incorporated into VA and SAA oversight activities.

³⁷The Education Department is unable to identify GI Bill beneficiaries in its student loan database and, as a result, data on veteran student loan default rates is not available. VA and the Education Department signed an [agreement](#) in 2016 to help identify Post-9/11 beneficiaries in the student loan database, but it has never been implemented.

³⁸See p. 20 of the hyperlinked GAO report.

³⁹Between 2014 and July 2018, VA initiated 160 surveys based on complaints, resulting in the withdrawal of approval for 21 schools. Most of the surveys were conducted by VA staff. To put these numbers in context, VA and SAAs conduct about 5,000 compliance surveys each year. [P.L. 112-249](#) mandated the creation of a system for tracking and publishing “feedback” from student veterans, allowing VA to use such complaints to initiate targeted complaint surveys.

C. VA OIG Identifies Lapses in VA Oversight of SAAs and SAA Oversight of Schools

The findings of a December 2018 VA OIG [audit report](#) corroborate our findings that oversight of GI Bill participating schools is weak. The report addressed the effectiveness of VA's oversight of SAA and, in turn, SAA's oversight of schools. The OIG recommended clarifying requirements for approvals, requiring periodic reapproval of programs, reporting schools with misleading advertising to the FTC for investigation, strengthening compliance surveys, revising program assessment standards, and confirming that SAA funding can support the recommended steps. The OIG suggested that compliance surveys were not comprehensive enough but did not address the high priority attached to such surveys or the fact that they target a small percentage of active facilities.

The OIG identified deficiencies in SAAs' initial degree program approvals at schools, which are assigned a lower priority by VA because of the compliance survey workload. The OIG determined that 35 programs approved by six of the seven SAAs it had examined had unsupported or improper program approvals; missing or delayed program modification reporting and reviews; or potentially erroneous, deceptive, or misleading advertisements in violation of 38 U.S.C. § 3696, which forbids such tactics. Deceptive advertising was the most common oversight weakness, involving 57% of the oversight errors. Ninety percent of these misrepresentations occurred at programs offered by for-profit schools. The misrepresentations included false claims about job placement rates, accreditation, and post-graduation earnings. Currently, determining if a school's advertising and recruiting materials are accurate is an additional task that VA expects SAAs to undertake during compliance surveys. Moreover, SAAs are also expected to examine a school's adherence to the requirements of the Principles of Excellence.⁴⁰ Given the intensive nature of the payment accuracy audits, it is unclear how much attention SAAs pay to these two tasks. Moreover, the OIG concluded that compliance surveys were not the best vehicle for identifying deceptive advertising.⁴¹

Overall, the OIG found that 29 ineligible or potentially ineligible programs (83 percent) were at for-profit schools that received about 97 percent of the \$1.54 million in payments to the 35 schools. The report also criticized VA for not establishing more effective controls to ensure that schools' approved degree programs continued to meet eligibility requirements after they were approved and suggested that compliance surveys should be used to verify that schools were continuing to maintain their eligibility. The report concluded that oversight of schools was not safeguarding beneficiary interests and taxpayer funds, estimating that VA could make \$2.3 billion in improper payments over the next 5 years if it did not act on the OIG's recommendations and improve oversight.

⁴⁰In April 2012, the administration issued Executive Order [13607](#), "The Principles of Excellence" which established guidelines for schools that enroll veterans. For example, schools that sign on to the Principles commit to refraining from the use of abusive and deceptive recruiting practices that target military and veterans educational benefits.

⁴¹See p. 20 of hyperlinked OIG report.

D. New Contracting Vehicle Gives VA More Control Over SAAs

For the 2019 contract year, VA informed SAAs that it intended to move to a new “contracting” vehicle. This new option, a cooperative agreement, would replace the traditional contract, but unlike the contract would not be governed by federal acquisition regulations.

In a May 2018 [letter](#), VA’s Director of Education Services stated that the agreement would serve as a more practical and appropriate means to address the relationship between VA and SAAs, avoiding some of the administrative burdens inherent in the federal contracting process. According to the Director of Education Services, the decision was based on a thorough review by VA’s Acquisitions Office and Office of General Counsel’s Procurement Law Group that determined a cooperative agreement provided more flexibility. For example, it allowed VA to combine performance standards and reimbursement requirements into one document. In the May letter, the Education Services Director assured SAAs that the change would in no way affect the nature of the relationship or strong partnership between VA and the SAAs.

NASAA officials and most SAA Directors strongly objected to several provisions in the new cooperative agreement.⁴² Some of the areas of disagreement appear to reflect an attempt by VA to assert more control over SAAs.

VA Published Interpretation. In addition to statutory and regulatory requirements, VA added language to the cooperative agreement that requires SAAs to approve and supervise degree programs in accordance with “VA’s published interpretation of statute, regulation, and case law.” This [new language](#) appears in the preamble to the cooperative agreement and in Article II, which covers approvals, suspensions, and disapprovals. In contrast, the [2018 contract](#) stipulated that SAAs “would take into account” VAs interpretation of statute and regulation. Moreover, the cooperative agreement provides for some entity—presumably VA—to direct SAAs to suspend or disapprove degree programs and to take corrective steps for such actions not in compliance with VA’s published interpretations. As a result of the new language, if an SAA makes a decision that VA disagrees with, VA has the final word.

In a July 2018 [memo](#) to VA commenting on a draft of the proposed cooperative agreement, the NASAA contract committee objected to the removal of “will take into account,” a compromise that it had negotiated with VA for the 2018 contract year. The memo asserted that:

“Removing the phrase ‘will take into account’ gives you [VA] the opportunity to elevate your interpretations of Title 38 to the status of law. This is impermissible. The vehicle for an authorized Federal agency to interpret statute is the CFR via the Federal Register where the public is provided a comment period.... States are not bound by federal interpretations; even those that come from Federal courts (other than the US Supreme Court)!”

⁴²During contract negotiations with VA, SAAs are represented by a NASAA committee consisting of nine members from SAAs. In addition, NASAA surveyed SAA Directors in June 2018.

In a member [survey](#), 75 percent of SAA Directors said that this change was “entirely unacceptable” and 11 percent believed it was a “big problem.”⁴³ A state that is among the top 10 in terms of the number of GI Bill beneficiaries refused to sign a cooperative agreement for more than 3 months because the agreement language gave VA the final word on interpreting statute and regulation.⁴⁴

Annual Evaluations. Annual evaluations of each SAA are conducted by a committee of eight, comprising four representatives each from SAAs and VA. SAAs may comment on and appeal their rating to the Director of Education Services and the President of NASAA. If a joint decision cannot be reached, the Director will make the final determination. Although this language was carried over from the contract to the cooperative agreement, the latter, unlike the contract, is not subject to the [Contract Disputes Act of 1978](#). According to 38 CFR 21.4153(g), “Disputes arising under, or relating to, the contract will be resolved in accordance with the disputes article of the contract and with appropriate procurement regulations.”

In effect, the switch to a cooperative agreement removed “a whole body of regulations and case law that provides for proper dispute remedies.” According to the NASAA contract committee, VA had referenced an “alternative dispute resolution process” when it proposed moving from a contract to a cooperative agreement. The final cooperative agreement contains no reference to such a process.

Termination. The [2018 contract](#) did not address the grounds for terminating an SAA. Instead, it advised SAAs that “VA will take into account the result of the annual evaluation of the SAA when negotiating the terms and conditions of a contract or agreement for any subsequent contract period.” In contrast, the cooperative agreement specifies that VA will determine whether termination may be warranted if an SAA is noncompliant with any provision of the agreement, including refusal of an SAA to take corrective action after a VA notice of noncompliance. It also outlines the administrative process leading to termination, such as providing a notice of concerns in writing, holding a meeting to discuss concerns, allowing 30 calendar days to resolve those concerns, and responding in writing to the SAA response to VA concerns. As with the evaluation, the Education Service Director is responsible for making the final termination decision. The NASAA contract committee expressed concern about the loss of access to proper dispute remedies that existed under the 2018 contract.

Other Workload Completion Impediments. The NASAA contract committee raised two additional concerns about provisions in the cooperative agreement. First, the agreement prohibits the use of newly hired SAA staff until completion of a National Criminal History Check

⁴³Forty-four SAA directors responded to the June 2018 survey. Most states plus D.C. and Puerto Rico have SAAs. VA acts as the SAA in Hawaii, Oregon, and the Virgin Islands.

⁴⁴This SAA signed a cooperative agreement in January 2019 after the Commissioner for the state Department of Veterans Affairs had met with the VA Secretary to express concerns about this provision in the cooperative agreement. State officials told us that they had “made their point” and informed VA that they plan to bring up this issue again during negotiations over the fiscal year 2020 cooperative agreement. VA never sent a notice out to schools in this state indicating that a VA regional office had assumed the SAA’s responsibilities. In contrast, VA did provide this [notice](#) to California schools in early October 2017, after the state had failed to [sign](#) the fiscal year 2018 contract before the October 1st deadline.

Clearance. Although VA proposed allowing “state clearance procedures” as a substitute for national clearance until it had been completed, not all states have such a system or they may need to initiate legislative changes in order to use one. The national clearance generally takes 1-2 months. As a result, it will be impossible for many SAAs to cover the costs of new hires, which are anticipated in light of the \$2 million funding increases for fiscal years 2018 and 2019 and authorized annual supplemental funds that are potentially available beginning in fiscal year 2019.⁴⁵ In a member survey, half of SAA Directors indicated that operating under this requirement was “an impossibility” and another 40 percent responded that it would be a “big problem.”⁴⁶ VA did not revise the final cooperative agreement to respond to SAA concerns.

Second, the NASAA contracts committee pointed out that VA assigns each SAA’s workload at the beginning of the fiscal year but does not provide access to the necessary VA systems for months into the fiscal year. Despite this access delay, VA still expects almost all of that workload to be completed on time even though SAAs have a compressed timeline to complete their compliance surveys. NASAA proposed a pro rata reduction in compliance surveys until VA has provided all personnel needed to complete the workload with access to VA systems. In response, VA promised to consider performance issues related to systems access as a mitigating circumstance at the time of each SAA’s evaluation.

E. VA’s August 2018 Policy Advisory Raises Questions about Role and Expertise of SAAs

On August 30, 2018, VA issued a [policy advisory](#) asking SAAs to discontinue readjudicating approvals issued by another duly authorized agency, such as an accreditor recognized by the Department of Education:

“...it is inefficient and a waste of VA resources for a SAA to repeat their work [the work of other duly authorized agencies] 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. Consequently, it seems illogical for a SAA to assume the roles and responsibility of these agencies and offices in an effort to overrule their adjudicatory findings. Finally, given that fact that the Federal or a state government has already determined that such agencies or offices are competent and capable of ensuring compliance, VA likewise has confidence in their abilities to ensure compliance.”

VA’s policy advisory is consistent with its authority to exercise control over SAAs when specifically provided in statutory provisions. As noted earlier, [Section 3673\(b\)](#) of Title 38 requires VA to coordinate SAA activities with other entities that oversee schools that participate in the GI Bill. However, as discussed below, VA’s policy advisory sends the wrong message to SAAs: “just ignore the early warning signs identified by oversight partners of the risks posed by schools to GI Bill beneficiaries and taxpayers.”

⁴⁵VA told VES that it does not plan to distribute the \$3 million in supplemental funds in fiscal year 2019.

⁴⁶Forty-four SAA Directors responded to the June 2018 survey.

It is important to keep in mind differences in the oversight focus of institutional accreditors recognized by the Department of Education and SAAs. Institutional accreditors review the academic and organizational structures of a college or university as a whole with the goal of ensuring that quality assurance mechanisms are functioning across all of the departments and disciplines at that institution. Institutional accreditors do not conduct an in-depth quality review of each of the degree programs offered by a school, which can be numerous. In contrast, SAAs assess the quality of the specific degree programs that the school proposes to offer to GI Bill beneficiaries.

Most of the SAA Directors that agreed to be interviewed said that the Policy Advisory merely reiterated their responsibility to coordinate with other organizations that also review and approve schools, such as state licensing boards and accreditors. These organizations need to work together and draw on each other's expertise, they said. Most SAA Directors did not view the policy advisory as rendering the role of SAAs superfluous because schools still had to be reviewed to determine their compliance with Title 38-specific requirements.

One SAA Director who had previously worked on accreditation policy for 20 years, characterized accreditors as "slow moving dinosaurs." This Director said that the SAA had contacted a school's regional accreditor because the SAA believed that the school was in trouble and on the verge of closing—it had canceled classes for the fall semester.⁴⁷ The accreditor indicated that it had no concerns about the school's viability. Another SAA Director pointed out that accreditors visit schools once every 10 years. A third SAA Director noted that the administrative processes of some of the sister organizations that they coordinate with may preclude those from taking timely action against a school but that the SAA can suspend a school more quickly.

Several SAA Directors and NASAA officials have suggested that VA's policy advisory was a reaction to suspension and approval decisions made by the California SAA over the past several years, including the use of accreditors' findings to suspend new enrollment and eventually rescind a school's ability to enroll veterans. In 2017, California rescinded GI Bill eligibility at two schools—Spartan College of Aeronautics and Technology and Thomas Jefferson School of Law—based on findings by the schools' accreditors—the Council on Occupational Education (COE) and the American Bar Association (ABA). Spartan is a for-profit school and Thomas Jefferson [converted](#) from for-profit to nonprofit status in 2001.

⁴⁷The majority of schools with national accreditation are private, for-profit colleges—often those that offer career-focused programs. In contrast, the vast majority of public colleges have regional accreditation from seven, geographically-based accreditors, as do most nonprofit institutions. However, regional accreditors also accredit some private, for-profit colleges, including large national chains such as the University of Phoenix and Strayer University. These distinctions may fade as several large for-profit schools have converted from for-profit to nonprofit (Grand Canyon, Kaplan) or have applied to their accreditors and the Department of Education to do so (Ashford). Ashford's accreditor recently [approved](#) its conversion but the Department is still reviewing the school's application. A Century Foundation report has dubbed such conversions "[covert for-profit](#)," characterizing them as an attempt by for-profit owners to escape federal regulations, such as the 90/10 cap on Title IV revenue or the Gainful Employment regulation, while still operating to the private financial benefit of the owners.

Spartan College of Aeronautics and Technology, Inglewood, California. In September 2016, [COE](#) conducted an unannounced focused review and determined that Spartan was not in compliance with COE accreditation standards. The school responded to COE’s findings on November 28, 2016. Based on an unsatisfactory school response, COE notified Spartan in January 2017 that it was being placed on probation for failure to adequately correct findings of noncompliance identified during the site visit.⁴⁸ Among the 24 areas of noncompliance cited were (1) failure to give the accreditation team access to student complaints; (2) the need to replace very old equipment to ensure relevant practices were being taught; (3) failure to provide copies of all lawsuits filed against the school; (4) inability to document that instructors were qualified to teach, such as having appropriate certification or licensure in their area of expertise (see text box). Based on the probation, the California SAA suspended new enrollment of GI Bill-eligible individuals on March 22, 2017, and subsequently rescinded the school’s eligibility. Spartan’s GI Bill eligibility was reinstated by the California SAA after COE lifted Spartan’s probation in [November 2017](#).

Thomas Jefferson School of Law, San Diego, California. The [ABA](#) placed Thomas Jefferson on probation in November 2017 for noncompliance with five standards (see text box). The California SAA suspended new enrollment and then subsequently rescinded the school’s eligibility to participate in the GI Bill. The probation [notice](#) cited concerns about Thomas Jefferson’s finances, admission practices, bar passage rates, and graduates’ employability as lawyers. On June 10, 2019, the ABA [notified](#) the Thomas Jefferson of its decision to withdraw ABA approval. Thomas Jefferson will appeal the decision and its loss of accreditation would not be effective until the outcome of the appeal, which the ABA has indicated would be a 6- to 9-month process.

Examples of Accreditor Findings on Spartan and Thomas Jefferson

Spartan

- “On the date of the visit, the classroom sizes were 10-18 students. There were not enough equipment models for practice. Students reported they had to wait their turn. One student reported that much of the equipment was missing as well as many of the tools were broken. The equipment was old. One example is an aviation engine repair pump from 1945 (See picture). The majority of the manuals for teaching was [sic] outdated. There needed to be more teaching manuals that followed the current FAA regulations.”
- “When the team considered the faculty credentials, there were 23 instructors listed as teaching the Airframe and Powerplant programs; however, 22 of the 23 had no documentation of an Associate degree in the field in which they were teaching.”
- “The team was not allowed to review the complaint file. When pressed, the Director of Academics gestured that her lips were sealed. The team leader asked if there was a reason the President would not let us see them. She just smiled apologetically and gestured that her lips were sealed.”

Thomas Jefferson

- “The ABA’s Council of Legal Education and Admissions to the Bar determined that the Law School’s present and anticipated financial resources, admissions practices, academic program, and bar passage outcomes have resulted in the Law School now being in a position where only immediate and substantial action can

⁴⁸According to a recent fact sheet titled “[What Happens When Accreditors Sanction Colleges](#)” by the Center for American Progress, most accreditors use the terms “probation” or “show cause” to reflect a high level of concern.

bring about sufficient change to put the Law School on a realistic path back to operating in full compliance within the time allowed by the Standards and Rules of Procedure.”

- According to a notice about the ABA’s probation decision posted in the ABA Journal
 - The law school’s [509 Report](#) from 2016 states that its median GPA was 2.89, and the median LSAT score was 143. The school had a total of 572 students.
 - The school’s 2017 bar pass [rate](#) for first-time test takers was 30 percent, 1 percentage point [lower](#) than in 2016. Many other California law schools saw their bar passage rates increase from 2016 to 2017.
 - Thomas Jefferson’s [website](#) states Annual full-time tuition at the law school is \$51,000. According to its [employment summary](#) for the class of 2016, out of 210 graduates, 46 had full-time, long-term jobs that required bar passage.

Source: Accreditation reports by COE and ABA.

On August 24, 2018, VA’s Director of Education Services [wrote](#) to the California SAA to express concerns about the SAA’s performance under the fiscal year 2018 contract with VA, including the SAA’s failure to complete 60 percent of its compliance survey workload.⁴⁹ Among the concerns was the SAA’s suspension/withdrawal of Thomas Jefferson School of Law. According to the letter, the California SAA “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.” The letter concluded by noting that the performance concerns, combined with the fact that the California SAA was rated as minimally satisfactory for fiscal year 2017, will impact VA’s decision to offer a cooperative agreement for fiscal year 2019.⁵⁰ In response, the SAA restored Thomas Jefferson’s eligibility to enroll veterans and was offered a fiscal year 2019 cooperative agreement. VA reiterated its concern about the California SAA’s action against Thomas Jefferson School of Law on September 6, 2019, when it [informed](#) the SAA that its contract would not be renewed.

The longer-term implications of the August 2018 policy advisory are now coming into focus. Even when GI Bill eligible schools are struggling financially and under intense scrutiny by regulators, SAAs are unable to take prudent steps to protect beneficiaries because that scrutiny has not resulted in a final action, such as loss of accreditation. The [slow-motion dissolution](#) of former EDMC schools is a case in point. While overturning California’s actions against Thomas Jefferson School of Law, VA refused to use its own disapproval authority to suspend new enrollment at Argosy University after the Education Department rescinded the school’s participation in federal student aid because of Title IV fraud. Since the sale by EDMC to the nonprofit Dream Center Holdings in 2017, questions have been raised about the viability of Argosy, The Art Institutes, and South University. At no juncture, however, did VA or SAAs take prudent action to prevent the enrollment of new GI Bill beneficiaries, not even after the

⁴⁹The California SAA told VES that it decided to use the resources allocated to compliance surveys to meet its own oversight priorities, including education and training of participating institutions, outreach to institutions, and surveys of schools that had not been visited within the last 5 years.

⁵⁰VA cited the SAA’s 2017 evaluation because its 2018 performance evaluation had not yet been completed. We asked VA why it renewed the California SAA’s fiscal year 2019 cooperative agreement. Without confirming the SAA’s minimally satisfactory rating, it did volunteer that, among other remedial actions, it works closely with SAAs that receive such a rating to provide training and conduct a joint visit with staff from a neighboring SAA; it also asks NASAA to assign a mentor.

Education Department ended Argosy's participation in Title IV because of financial aid fraud. The Dream Center Holdings shut down all three schools the following month. Our forthcoming report on Early Warning Signs has a more complete chronology of the Dream Center's descent into bankruptcy and VA's response.

F. Funding Challenges Also Contribute to Weakened SAA Oversight

A former VA official told VES that the SAA funding increases authorized in 2017 are "not nearly enough." SAAs are being asked to do more with less, he said, which contributes to the tension between VA and SAAs. No one, he asserted, has ever studied how much funding SAAs need to fulfill their statutory oversight role. He characterized VA's allocation model as "needs based," reflecting the lack of adequate resources. His comments are echoed in recent reports by [GAO](#) and [VA OIG](#), which also raised questions about the sufficiency of SAA funding increases and the allocation model that VA uses to determine the level of funding for each SAA.

In 2017, Congress authorized the first increase in SAA funding since 2006.⁵¹ SAAs' funding grew from \$19 million to \$21 million for fiscal year 2018 and to \$23 million for fiscal year 2019. In addition, Congress (1) authorized an additional \$3 million in supplemental funding beginning in fiscal year 2019 and each subsequent fiscal year, and (2) required VA to provide a cost of living adjustment increase to the SAAs budget beginning in fiscal year 2019 in an amount that equals the same percentage increase as benefits provided under the Social Security Act. According to VA, 41 SAAs had a funding increase in fiscal year 2018 and 7 saw a funding decrease.⁵² VA told VES that it doesn't plan to distribute any supplemental funds during fiscal year 2019 because it has no reason to believe that \$23 million is insufficient to allow the SAAs to complete the requirements of their contracts with VA, which prioritize SAAs' conduct of compliance surveys.⁵³ The statute authorizing the supplemental funds does not address the issue as to whether the decision to distribute the \$3 million is at VA's discretion.

In explaining the rationale for the funding increase, the [House Veterans Affairs Committee](#) noted that SAA funding had been flat for more than 10 years despite the additional workload assigned to the SAAs, including compliance surveys.⁵⁴ The Committee also acknowledged the significant increase in GI Bill usage since the implementation of the Post-9/11 GI Bill in 2009.⁵⁵ According to annual VA benefits [reports](#), the number of GI Bill beneficiaries increased from

⁵¹See Section 301 of [P.L. 115-48](#).

⁵²VA does not make the amount of funds allocated to any specific SAA publicly available. Based on our interviews with SAA Directors, an increase in funding for fiscal year 2018 did not guarantee a funding increase for fiscal year 2019. SAA Directors attributed what they viewed as inconsistencies in the distribution of the 2018 and 2019 funding increases to the allocation model used by VA.

⁵³Beginning in fiscal year 2019, VA switched from an annual contract to a cooperative agreement with each SAA, which is discussed in chapter 2.

⁵⁴In a 2007 report, [GAO](#) noted that the \$19 million devoted to SAA oversight activities was less than 1 percent of total educational benefits in that year. In fiscal year 2018, the \$21 million devoted to SAA oversight activities was still less than 1 percent of the \$11.7 billion in GI Bill benefit payments.

⁵⁵Moreover, as SAA officials noted, the Post-9/11 GI Bill is much more complex and requires more SAA oversight resources.

564,000 in fiscal year 2009 to about 1.1 million in fiscal year 2013 while program expenditures increased from [\\$3.6 billion](#) to \$12.1 billion over the same timeframe.⁵⁶ The Committee emphasized that the work of the SAAs is vital to the success of all VA education programs as they are the front-line staff tasked with ensuring veterans attend quality education and training programs.

GAO. VA, NASAA, and SAA officials also told GAO that limited reimbursement for their activities remains an issue despite the funding increases approved by Congress in 2017.⁵⁷ Moreover, they believe that changes to the methodology VA uses to allocate funds, implemented in fiscal year 2017, had negatively affected state agencies' ability to fulfill SAA oversight responsibilities in three areas: "(1) paying and training oversight staff, (2) visiting geographically dispersed schools due to travel costs, and (3) providing technical assistance and training to schools." For example, the allocation model uses a national average salary/benefit amount even though it is lower than actual costs in some states and travel allowances do not take into account differences in geographic size among states. Moreover, NASAA officials told GAO that they believe the time estimates for completing various oversight activities are inadequate.

In September 2018, VA hired a contractor to examine its allocation methodology, including the concerns raised by NASAA and SAA officials. VA officials told GAO, however, that regardless of how VA divides the funding among SAAs, the total amount of program funding provided to SAAs will remain the same within any one fiscal year.

VA OIG. A December 2018 OIG report addressed the adequacy of SAA funding obliquely—primarily in relation to its finding that SAA oversight, both compliance surveys and approvals, was not ensuring continuous compliance of schools with Title 38 requirements. The OIG recommended that "the Under Secretary for Benefits assess whether SAA funding is sufficient to ensure the adequate review, approval, and monitoring of programs in conjunction with an external contract to update the SAA funding allocation model."⁵⁸ See chapter 2 for a summary of the OIG's findings with respect to VA and SAA oversight of schools.

⁵⁶About 34,000 beneficiaries were using the Post-9/11 benefit in fiscal year 2009 because the new benefit was implemented only 2 months before the end of the fiscal year.

⁵⁷See p. 9 of [hyperlinked](#) GAO report. Despite the SAA funding increase in fiscal year 2018, New Mexico did not renew its contract with VA because reimbursement for its expenditures on salaries, travel, and technical assistance to schools was insufficient. The state subsequently contracted with VA and now has an SAA.

⁵⁸During negotiations over the fiscal year 2019 cooperative agreement and the funding allocation model used to support SAAs' workload, SAA Directors [strongly supported](#) increasing the priority attached to approvals, and other oversight activities. For example, they asked that the allocation model assume that if a state had 10 institutions of higher learning with more than 300 veterans, 8 would have an approval action. At the time the model assumed there would be 1.5 such approval actions. According to the SAA Directors we interviewed, the priorities were not changed.

3. Conclusions

In addition to the findings outlined in this report, a Congressionally mandated study by the GAO and an extensive audit by the VA OIG send flashing red lights about (1) the state of the partnership between VA and SAAs, and (2) the effectiveness of their oversight of schools participating in the GI Bill.

The enactment of the Post-9/11 GI Bill significantly increased the number of beneficiaries using education benefits and VA payments to schools on behalf of those beneficiaries. According to historical GI Bill Comparison Tool data released by VA in March 2018, the number of beneficiaries using Post-9/11 benefits increased from 5,704 in fiscal year 2010 to over 900,055 by fiscal year 2017.

Concomitant with the increase in GI Bill enrollment and expenditures, Congress and VA have incrementally altered the traditional oversight role of SAAs and increased VA's authority over SAAs. SAA's workload priorities were refocused on payment accuracy with insufficient consideration given to ensuring the integrity of both beneficiary and taxpayer investments.

Neither Congress nor the VA should be surprised by the findings of this report or the reports by the GAO and VA OIG. The alarm bells were already ringing by the time of a November 2014 House Committee on Veterans Affairs [hearing](#) on the SAA's role in ensuring quality education programs for veterans. Witnesses reflected on the narrowed role of SAAs: payment audits of student veteran records, known as compliance surveys, crowding out approvals and recurring oversight displacing more routine scrutiny of degree programs intended to help ensure continuous compliance with the basis for the original approval. In effect, the focus of SAA activities had already become reactive—chasing the dollar after it is spent—rather than proactive, which would help ensure that payments are made only to institutions providing high quality training and education in the first place.

As tensions rose between VA, NASAA, and some SAAs, VA began to rely on the authority Congress provided in 2011 to coordinate SAA activities in order to avoid duplication and ensure efficiency. VA's actions appear to place a lower priority on the statutory requirement for cooperation between SAAs and VA. Rather than acting as partners, VA and SAAs were unable to reach a compromise during negotiations over the new contracting vehicle—the cooperative agreement—on a number of issues, including oversight priorities, interpretations of statute and regulation, and processes to adjudicate differences of opinion over SAA performance evaluations. Many SAAs remain concerned about the terms of the cooperative agreement. For several months, one SAA refused to sign a new agreement for fiscal year 2019 because of disagreement with VA over its terms. Based on the belief that several SAAs had overstepped their authority, VA issued a Policy Advisory in August 2018 that denigrated the expertise of SAAs and suggested that they were failing to coordinate with other federal and state entities involved in school approvals. Another perspective, however, is that some of these “renegade”

SAAAs were in fact attempting to protect both GI Bill beneficiaries and taxpayers. Several of the SAA Directors we interviewed, however, told us that they viewed the advisory as a restatement of their role and indicated that they have a good working relationship with VA.

In 2017, Congress acknowledged, belatedly, that SAAs had been underfunded for years. Both the GAO and OIG reports suggested that the increase in SAA funding in 2017 was insufficient to address years of systematic SAA underfunding. GAO expressed concern over the risk that states would refuse to renew their contracts with VA, in part because of insufficient funding. Currently, VA has assumed the oversight responsibilities of two states. VA's threat to terminate contracts with other, larger SAAs over differing interpretations of statutory authority rings hollow because VA lacks the resources to assume their workload. The OIG recommended that VA assess the sufficiency of SAA funding to ensure adequate review, approval, and monitoring of schools, but the OIG did so based on an assumption that inadequate funding had contributed to the weaknesses it identified in SAA oversight. Those weaknesses, however, have largely been created by the redirection of SAA activities to the conduct of compliance surveys. Although the OIG did criticize compliance surveys for being too narrowly focused on payment issues, it paid insufficient attention to the concomitant decrease in the priority VA assigned to other SAA oversight activities, such as approvals, supervisory visits, and the training of school officials.

In 2019, Congress must make it a priority to determine the steps required to (1) help ensure effective oversight of GI Bill participating schools, and (2) foster a return to a more productive relationship that recognizes the *interdependence* of VA and SAAs while protecting the integrity and independence of SAAs.

3. Recommendations

Senate and House Committees on Veterans Affairs

- To address issues raised by GAO, the VA OIG, and this report, convene hearings focusing on:
 - the low priority assigned to some SAA oversight activities, such as approvals and supervisory visits, because of the focus on compliance surveys;
 - options for reducing VA's reliance on SAAs to conduct compliance surveys, which would allow SAAs to engage in other oversight activities;
 - issues raised by NASAA about the terms of the new cooperative agreement for fiscal year 2019, including how to resolve disagreements between VA and SAAs over the interpretation of statute and regulation;
 - the relevance, in SAA oversight, of punitive accretor actions against a school;
 - suggestions for clarifying the statutory authorities involving VA supervision and oversight of SAAs;
 - the sufficiency of funding, which despite recent increases, may still be insufficient; and

- measures to safeguard SAA independence and integrity.
- To have an independent assessment of SAA funding needs to accomplish their oversight responsibilities, ask GAO to examine the adequacy of SAA funding.
 - In the interim, consider directing VA to distribute the additional \$3 million in supplementary funding Congress authorized beginning in fiscal year 2019, which would allow SAAs to engage in oversight other than compliance surveys.
- To ensure that Congress is fully informed about SAAs' ability to accomplish their oversight workload, require VA to annually report statistics on (1) the number and type of oversight surveys and visits, including risk-based surveys; and (2) the number of active facilities that did not have a survey or visit.

Department of Veterans Affairs

- To improve the efficiency of and prevent duplication in SAA oversight activities consistent with the VA OIG compliance survey recommendations, form a working group with NASAA to study the SAA oversight toolbox, including but not limited to approvals, supervisory visits, education and training events, risk-based surveys, and compliance surveys. Provide the relevant oversight committees with recommendations by December 2019 to help reduce overlap across those activities and ensure consistency in SAAs' performance of those tasks.
- To free up SAA resources for other important oversight activities:
 - provide the relevant oversight committees with options for reducing, or perhaps eliminating reliance on SAAs to complete compliance surveys;
 - propose options other than compliance surveys, such as risk-based surveys, for examining schools' conformance with the requirements of the Principles of Excellence;
 - consider options other than compliance surveys for SAAs to review a school's advertising and recruiting materials; and
 - develop guidance for SAAs on assessing the accuracy of advertising and recruiting material used by schools.
- To ensure that schools participating in the GI Bill are held accountable for compliance with approval requirements, develop a plan, in conjunction with NASAA, to:
 - reduce the number of active facilities that have not had a survey or visit in 5 years or more;
 - determine what oversight is appropriate for inactive facilities;
 - make certain that each school has an onsite supervisory visit at least once every 1-2 years; and
 - prioritize the review of schools that have been placed on probation or show cause by their accreditor or that are being investigated by another federal or state regulator or law enforcement entity.

4. Methodology

To research this report, we reviewed statutory requirements governing the authorities and responsibilities of VA and SAAs with respect to the approval and oversight of schools participating in the GI Bill and examined the rationale for statutory changes that had an impact on SAAs' oversight workload. We also examined Congressional hearings that focused on the roles of SAAs and conducted a literature review. A 2016 CRS report on the role of SAAs was particularly informative. We also reviewed both the GAO and the VA OIG reports released in November and December 2018, respectively, that assessed VA and SAA oversight of schools that participate in the GI Bill.

In addition, we interviewed former VA officials, NASAA leadership, and several SAA Directors. We reached out to 12 SAA Directors, but only 6 agreed to be interviewed for this report. Those 6 SAAs represented different geographic regions; states with a large number of schools/beneficiaries; and states with fewer schools but also small SAA staffs charged with overseeing schools that were geographically dispersed. In order to encourage candor on the part of SAA Directors and NASAA officials, VES pledged not to disclose the identity of officials that agreed to be interviewed. Topics covered during these interviews included their respective authorities and responsibilities; the adequacy of SAA funding; contract negotiations; several controversial suspension and disapproval actions initiated by SAAs; and the August 30, 2018, VA policy memo directed at ensuring the efficiency of SAA oversight resources. In general, SAA Directors declined to comment on the actions of other SAAs.

Although VA officials declined our request for an interview, they did respond in writing to questions related to the scope of this report. We incorporated the information they provided for this report. Their full responses to our questions are included as Appendix 1.

In addition to interviews, NASAA and SAA officials provided extensive documentation related to both the fiscal year 2018 contract negotiations and the negotiations over the new cooperative agreement that took effect on October 1, 2018. Prior [research](#) by VES informed our analysis of Title 38 statutory requirements related to the controversy surrounding the eligibility of Ashford University to enroll veterans in its online programs. We also reviewed SAA press releases related to suspensions and disapprovals, press reports of those actions, any lawsuits filed by schools, and court decisions related to those lawsuits.

5. Appendix 1

Note: VA subsequently provided a revised table on compliance surveys, which includes the number assigned as well as the number completed. Table 1 in this report incorporates those data. However, the reduction in the number of compliance surveys from fiscal year 2018 to 2019 is 457, not the 625 that VA cites in this appendix.

VA’s Response to VES Data Requests and Questions

- 1) **How many compliance surveys were accomplished in fiscal years 2017 and 2018 in total and how many were conducted by VA versus SAAs? How many compliance surveys do you anticipate for FY 2019—total and broken out between VA and SAAs?**

Response: Please see the table below.

| Compliance Surveys Completed | | | |
|------------------------------|--------------|--------------|---------------|
| | FY17 | FY18 | FY19 Estimate |
| VA | 3,418 | 2,142 | 2,374 |
| SAA | 2,263 | 1,947 | 1,749 |
| Total | 5,681 | 4,089 | 4,123 |

- 2) **Did VA decrease the total number of compliance surveys assigned to SAAs in fiscal year 2019? Were VA staff also assigned fewer surveys or were they asked to conduct additional surveys because SAAs were assigned fewer? How many fewer were assigned to SAAs?**

Response: The number of surveys decreased for both the SAAs and VA in FY 2019. Due to the change in statute requirements in 38 U.S.C. § 3693, the number of compliance surveys that must be completed annually has decreased. VA decided to use the resources freed up by this change to increase the quality, rather than the quantity, of compliance surveys performed; and to spend more time on the training of school officials in order to reduce benefit overpayments.

In FY 2019, SAAs were assigned 625 fewer compliance surveys.

- 3) **Did VA decrease the sample sizes of veteran student records for compliance surveys? If so, when did lower sample sizes go into effect?**

Response: Yes, VA determined that the number of student records required on compliance surveys would decrease. This was implemented in FY14 and the required number has stayed the same since then.

- 4) **How have you used the flexibility Congress provided in 2016 with respect to compliance surveys—the requirement to conduct annual surveys of facilities enrolling 300 or more veterans was replaced by a requirement to survey facilities with 20 or more veterans once every 2 years.**

Response: As mentioned above, VA is using the flexibility created by the statutory change to increase the quality, rather than the quantity, of compliance surveys performed. In addition, the change is also allowing VA to focus on institutions that have the most risk of non-compliance with approval requirements. To that end, VA is looking at a number of factors (such as compliance history, complaints, referrals, etc.) in order to develop a proactive and data driven approach to compliance surveys to be performed in addition to those mandated by statute.

- 5) **Why did VA ask Congress for authority to assign compliance surveys to SAAs in 2010? If you accomplished this workload yourself previously, why did you need help from SAAs? Do you currently have the resources to have VA staff conduct all compliance surveys?**

Response: VA asked Congress for the authority to assign compliance surveys to SAAs partly because of the decrease in the workload of SAAs due to the change in statute creating so-called “deemed approved” programs in 38 USC 3672(b)(2)(A) pursuant to meeting a small subset of approval requirements. In addition, SAAs were already performing visits called “Supervisory Visits,” but there was inconsistency in how they were conducted across the various SAAs, and very few student records were reviewed for errors. VA believed that asking the SAAs to assist with the performance of standardized compliance surveys was a better use of SAA time and efforts. Finally, while VA may be able to conduct the mandatory surveys with its staff alone, this would only cover mandatory surveys. SAAs also assist VA by helping to review schools with less than 20 students that have risk factors indicating a likelihood of noncompliance.

- 6) **How many risk-based surveys were completed in each fiscal year since they were initiated? Will risk-based surveys take the place of the decreased compliance surveys assigned to SAAs?**

Response: There were 141 total Targeted Risk Based Reviews (TRBR) conducted since FY 2014.

| Targeted Risk Based Reviews Completed | | | | |
|---------------------------------------|---------|---------|---------|---------|
| FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
| 47 | 30 | 43 | 15 | 6 |

The amount of TRBRs assigned to SAAs is based on the overall compliance strategy established within Education Service. TRBRs are, and will continue to be, assigned based on complaints, referrals, and other data collected regarding GI Bill-approved educational or

training institutions throughout the year. Furthermore, TRBRs may be assigned to VA or SAA personnel based on the risk factors identified and/or availability of staff. There is no set quota established for SAAs to complete each fiscal year.

** Risk Based Surveys just started this year. The first 5 were just sent to the SAAs for assignment.*

- 7) The VA OIG suggested the need for “hybrid surveys” that would “beef up” compliance surveys to ensure continued compliance. VA set up a committee to examine this issue several years ago. What is the status of this committee? Did the committee make any recommendations? If so, can you share any reports they prepared or recommendations that they made with VES?**

Response: The Compliance Survey Redesign Working Group (CSRWG) was formed in 2012 to work together with SAAs to review and streamline the compliance survey process. The CSRWG thoroughly reviewed statutes, regulations, and procedures and made recommendations for changes to compliance surveys. Based on those recommendations, VA updated its compliance survey guidance to make changes pertaining to priorities, waiver criteria, and number of records to be reviewed.

- 8) Does VA plan to distribute the \$3m in discretionary funding in fiscal year 2019?**

Response: No, VA does not currently plan to distribute the \$3M in discretionary funds during FY 2019. The amount of funding available for the SAAs increased by \$2M (to \$23M) in FY 2019, and VA has no reason to believe that \$23M is insufficient to allow the SAAs to complete the requirements of the VA/SAA cooperative agreement for the year.

- 9) What is the rationale for excluding inactive facilities when allocating funding?**

Response: When determining funding for a SAA, the level of effort and workload associated with active facilities within its state is a major factor. The time dedicated to an inactive school varies by SAA, so VA is unable to accurately measure the time required for inactive facilities.

- 10) In fiscal year 2018, how many SAAs received a funding increase and how many saw a decrease? Please identify the SAAs that had a decrease in funding.**

Response: From FY 2017 to FY 2018, a total of 41 SAAs had an increase in funding, and a total of 7 had a decrease in funding. VA does not make the amount of funds allocated to any specific SAA publicly available.

- 11) Given that the California SAA had a minimally satisfactory rating in 2017 and only completed 75 of 188 assigned compliance surveys in FY 2018, why did you renew its contract?**

Response: VA considers individual SAA ratings to be a confidential matter and does not provide specific rating information or justifications to other SAAs or to the public. VA works closely with any SAA that receives less than a fully satisfactory rating to provide training, conduct a joint visit with staff from a neighboring SAA, and requests the National Association of State Approving Agencies to assign a mentor, among other remedial actions.

12) [REDACTED] has still not signed a contract for fiscal year 2019? Why haven't you notified schools in in [REDACTED] that VA is assuming the SAA's role?

Response: The state of [REDACTED] signed an agreement with VA for FY 2019.

13) In 2017, you disagreed with the Arizona SAA's approval of Ashford and threatened to terminate its contract, yet they were offered and signed a new contract for fiscal year 2019. You sent a letter to the California SAA asking the state to reverse actions you disagreed with? Why didn't you do the same for Arizona?

Response: As noted above, VA considers individual SAA ratings to be a confidential matter and does not provide specific rating information, or justifications therefore, to other SAAs or to the public. Likewise, VA does not publicly disclose its correspondence with SAAs regarding disagreements over the interpretation of statutes or VA regulations. However, it should be noted that VA's publicly stated belief that the Arizona SAA lacks jurisdiction to approve Ashford's online programs remains unchanged.

14) At a hearing in 2016, Rep. Takano asked Mr. Coy if VA had made any referrals to the FTC under the authority of Sec. 3696, which prohibits the participation of schools that engage in misleading advertising and recruiting. Has VA made any Sec. 3696 referrals to the FTC since the spring of 2016? If you did make referrals, can you identify the number of referrals and the schools involved?

Response: To date, VA has formally referred two educational institutions to the FTC pursuant to 38 U.S.C. § 3696(c).