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INSIDE

History and Analysis of Early Warning Signs at Schools

Latest Updates on VA-FTC Agreement to Investigate Misrepresentations

Inspector General's Findings on VA's Enforcement of Section 3696 and Oversight of Deceptive Advertising

VA's Response to Evidence of Misrepresentation

VA STILL NOT ENFORCING 1974 BAN ON SCHOOLS THAT ENGAGE IN DECEPTIVE ADVERTISING AND RECRUITING

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BRIEF**

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VA Still Not Enforcing 1974 Ban on Schools that Engage in Deceptive Advertising and Recruiting

Highlights

Forty-five years ago, Congress banned the GI Bill participation of schools that rely on misleading advertising and recruiting to enroll veterans and eligible family members. The ban was a response to contemporaneous findings of investigations of predatory schools. Despite numerous law enforcement settlements with schools, many of them chain-owned, over deceptive advertising and recruiting since enactment of the Post-9/11 GI Bill, the Department of Veterans Affairs (VA) is not enforcing the 1974 ban.

A December 2018 report by VA's Office of Inspector General (OIG) found that oversight of programs that enroll GI Bill beneficiaries was inadequate and that VA and the State Approving Agencies (SAA) it contracts with to oversee schools are not holding schools accountable. The most common oversight weakness, involving 57% of the oversight errors, entailed potentially deceptive advertising. 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.

At half of the schools where the OIG identified misrepresentations, the advertisements were in use at the time their programs were approved by SAAs. Together with other findings related to weak oversight of schools, the OIG projected that improper payments, overwhelmingly made to for-profit schools, would total \$2.3 billion over the next 5 years if VA did not strengthen oversight.

By statute, VA can also request the Federal Trade Commission's (FTC) assistance in determining if a school has violated the ban. Since 1974, the Department of Veterans Affairs (VA) has asked the FTC to investigate just two schools for alleged misrepresentation—both in 2016.

Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 added [§ 3696](#) to the requirements governing the administration of veterans educational benefits. Sec. 3696 prohibits schools from participating in the GI Bill if they utilize "advertising, sales or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission or intimation."

According to the 1974 [Senate report](#) that explains the rationale for the Readjustment Assistance Act provisions, Sec. 3696 was prompted by investigations of vocational schools by the FTC and the *Boston Globe* in 1973-74, and by a Brookings Institution report. According to the Senate report, the *Boston Globe's* eight-part series concluded that:

- "The career-training field has been cornered by a profit-making school industry that is dominated by a fast-buck mentality that sees students as dollar signs."
- "This highly profitable, publicly subsidized market has exploded in the past 5 years spawning a plethora of unscrupulous correspondence and resident 'career' schools that take the money and ignore the student."
- "The private correspondence and resident trade schools studied were selling expensive, virtually worthless courses."

One installment in the *Globe's* series highlighted ITT Technical Institute in Boston. At that time, two of ITT's most popular courses were medical and dental assisting. However, neither course was accredited by the professional associations in those fields, limiting graduates' ability to obtain jobs in their field of study.¹ The medical assistant's program had been approved for veterans in October 1973. The *Globe* investigation found that ITT and its sales personnel used misrepresentation to recruit students for these programs. Both programs are still the most common non-college degree credentials earned and provide the least return on investment for graduates.² Veterans Education Success published a [report](#) in 2015 that identified schools approved to participate in the GI Bill that lacked the accreditation needed for graduates to obtain a job in their field of study; a follow-up [report](#) in 2018 found that a 2016 statute banning the participation of such schools was not being enforced.

Enforcing § 3696

Sec. 3696 incorporated two enforcement mechanisms—oversight by SAAs and referrals to the FTC. Schools are required to maintain records of all advertising, sales, and enrollment materials utilized in the preceding 12 months (see text box). The statute assigns the disapproval of enrollment of GI Bill beneficiaries at schools that engage in deceptive advertising to VA.

Sec. 3696 Institutional Record-Keeping Requirements

"To ensure compliance with this section, any institution offering courses approved for the enrollment of eligible persons or veterans shall maintain complete record of all

advertising, sales, or enrollment materials (and copies thereof) utilized by or on behalf of the institution during the preceding 12-month period. Such record shall be available for inspection by the State approving agency or the Secretary. Such materials shall include but are not limited to any direct mail pieces, brochures, printed literature used by sales persons, films, video tapes, and audio tapes disseminated through broadcast media, material disseminated through print media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel, agents, or representatives of such institution.”

Source: Sec. 3696 of Title 10.

The statute stipulates that such material shall be available to SAAs or the VA during inspections. Marketing and enrollment materials are examined when a program applies for approval to enroll beneficiaries and during compliance surveys, which are detailed audits of GI Bill payments to schools.

The statute also requires VA to establish a Memorandum of Understanding (MOU) to allow VA to utilize the FTC’s “available resources” to carry out investigations and render “preliminary findings.” Based on those findings, VA is required to take appropriate actions within 90 days.

VA-FTC MOU

It is unclear if an implementing MOU was ever negotiated contemporaneously with the enactment of § 3696. In November 2015, however, the FTC [announced](#) that it had signed an [MOU](#) with VA “to further their ongoing efforts to stop fraudulent and deceptive practices targeted at U.S. service members, veterans and dependents who use military education benefits.” The MOU:

- requires VA to explain in writing to the FTC the basis for any referral and to provide any documentation to support its belief that a school engages in deceptive advertising and recruiting;
- gives the FTC discretion in determining whether to accept a referral based on its resources and the seriousness of the allegations;
- stipulates that the rejection of a referral does not preclude VA from rendering its own decision under § 3696;
- requires the FTC to provide VA with the FTC’s analysis of the advertising and sales practices of any referral it accepts at the conclusion of its investigation; and
- stipulates that the FTC analysis is intended for use by VA in rendering a decision on violations of § 3696 and is not a finding that a school has violated any laws enforced by the FTC.

The MOU did not address the statute’s requirement for the FTC to render “preliminary findings,” a term not used by the Commission. In November 2018, however, the FTC released an updated [MOU](#) incorporating the term

“preliminary findings.” In effect, any analysis provided by FTC to VA following a VA referral meets the MOU’s requirement for preliminary findings.

According to VA, it has [referred](#) only two schools to the FTC since the 2015 MOU.³ VA declined to name the schools. In response to a 2018 Freedom of Information Act request, VA [reported](#) that it had received no preliminary findings from the FTC pursuant to the MOU nor had VA made any determinations that schools had violated the ban on deceptive advertising.

Enactment of Post-9/11 GI Bill Puts Target on the Back of Beneficiaries

In August 2009, the new, more generous Post-9/11 GI Bill started paying educational benefits for eligible veterans and family members. 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.

Predatory schools are incentivized to aggressively recruit veterans because of a statutory loophole in the Higher Education Act—the educational benefits of military-connected students are excluded from the requirement that schools receive no more than 90% of their revenue from Title IV. For every dollar a predatory school receives from the GI Bill or DOD educational benefits, it can receive an additional \$9 from individuals who depend on Title IV to pay for their tuition and living expenses. As Holly Petraeus [wrote](#), this loophole “gives for-profit colleges an incentive to see service members as nothing more than dollar signs in uniform, and to use aggressive marketing to draw them in.”⁴

VA’s Non-Response to Mounting Evidence of Misrepresentation

Despite incontrovertible and growing evidence that some predatory schools engage in deceptive advertising and enrollment practices, VA is not enforcing the 1974 ban.

The 2012 U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee [report](#) documented aggressive and misleading recruiting by predatory schools and U.S. Government Accountability Office [undercover agents](#) found deceptive recruiting by all of the 15 schools it investigated.

Since the release of the Senate HELP report, numerous schools have settled with a law enforcement entity or had a final judgment rendered that documented misleading claims about quality, transferability of credits, job

placement rates, post-graduation salaries, accreditation, and costs (see text box).

Law Enforcement Settlements with and Final Judgments Against Predatory Schools Since July 2012

Alta, Ashworth, ATI, Bridgepoint, Canyon College, Career Education Corporation, Daymar College, DeVry, Education Affiliates, Education Management Corporation (EDMC), Globe University and Minnesota School of Business, Herzing University, Hosanna College of Health, Kaplan, Keiser University, La'James International College, Lincoln Technical Institute, National College, New England College of Business and Finance, Penn Foster, Premier Education Group, and Sullivan and Cogliano Training Centers.

Source: VES, Law Enforcement Actions Against Predatory Colleges.

The Ashworth and DeVry settlements with the FTC are of particular interest because § 3696 identifies the FTC as an investigative resource for VA. The Ashworth settlement predates the November 2015 MOU. Neither settlement resulted in action by VA under § 3696.

- *Ashworth*. The May 2015 FTC [settlement](#) alleged that the school had misled students about the training they received and their ability to transfer credits to another school. The FTC found that many of Ashworth's programs did not meet state requirements for those careers, including teachers and massage therapists, and that the claims made about credit transfers were often not true. The FTC complaint also noted that (1) Ashworth's marketing efforts targeted military service members and their families; (2) Ashworth advertised that it employed "Military Advisors" to speak with potential applicants who were eligible for military payment benefits; and (3) Ashworth trained its admissions advisors to be aggressive during sales calls.
- *DeVry*. In December 2016, the FTC reached a \$100 million [settlement](#) with the chain over allegations that it had used misleading job placement rates and post-graduation salaries to recruit students. The [complaint](#) (1) included images of the ads as well as an explanation of why the ads were deceptive, and (2) noted that one of DeVry's target audiences was former and current members of the military.

In addition to these schools for which legal action was concluded, several other predatory chains faced ongoing federal and state lawsuits for misleading advertising and recruiting, with no action taken by VA. Two such chains were Corinthian and ITT. Though neither Corinthian nor ITT settled lawsuits about deceptive advertising, their collapse was in part related to their use of misrepresentation as a recruiting tool. Both companies had been in the crosshairs of law enforcement and [regulators](#) for years before they closed with no action being taken by VA.

Corinthian. Between 2010 and 2014, 22 state Attorneys General were investigating Corinthian for misrepresentation

involving job placement, accreditation, financial aid, recruiting, and other issues. For example, the California Attorney General filed a [lawsuit](#) in 2013 alleging false and predatory advertising, intentional misrepresentations to students, securities fraud, and unlawful use in its recruiting of military seals of the Army, Navy, Air Force, Marine Corps, and Coast Guards.

In addition, the Education Department (ED), the Consumer Financial Protection Bureau (CFPB), the Securities and Exchange Commission (SEC), and the Justice Department were investigating or had filed lawsuits against Corinthian.⁵ In 2014, ED required Corinthian to sell or close all of its campuses because of concerns about the school's financial stability and its refusal to cooperate with an investigation of its job placement rates. The California and Virginia SAAs did cut off enrollment of GI Bill beneficiaries in their states, but neither VA nor other SAAs did so. After ED fined [Corinthian](#) \$30 million in April 2015 for using fabricated job placement rates as a recruitment tool, the chain shut down abruptly.

- *ITT*. By 2016, decades after the 1974 *Boston Globe* series on predatory schools, ITT was under [investigation](#) and facing civil complaints for deceptive marketing and enrollment practices by 14 state Attorneys General and a CFPB lawsuit alleging predatory lending and misrepresentation about job prospects and transfer of credits; ITT closed precipitously in September 2016. Five months earlier, its [accreditor](#), the Accrediting Commission for Independent Colleges and Schools (ACICS), notified ITT that allegations from various state and federal agencies "call into question" the institution's "administrative capacity, organizational integrity, financial viability and ability to serve students in a manner that complies with ACICS standards...."⁶

None of these predatory schools ever lost their eligibility to enroll GI Bill beneficiaries despite numerous settlements, legal judgments, and investigations about misleading advertising and recruiting. In fact, ITT retained its eligibility from the enactment of § 3696 through September 2016. Although VA posts notices, known as caution flags, on its GI Bill Comparison Tool website about settlements with federal law enforcement organizations, there is no caution flag warning beneficiaries about the Ashworth settlement.⁷

As of September 2019, numerous predatory schools remain under [investigation](#) by federal and state authorities, which could lead to additional settlements and judgments.

Two SAAs Alerted VA to Potential § 3696 Violations

In recent years, at least two SAAs have alerted VA to potential violations of § 3696.

- *ECPI*. The only formal finding of a violation of § 3696 was based on a complaint investigation conducted by the [Virginia SAA](#), which resulted in the withdrawal of ECPI's

Medical Career Institute from participation in the GI Bill from December 2015 through April 2016. After enrolling beneficiaries in its nursing program, the Institute had changed its policy on graduation by requiring students to pass an additional exam.⁸ VA declined to release the SAA's findings, which allowed ECPI to put its spin on the investigation's results.

- *Ashford*. In [February](#) and [December](#) 2018, the California SAA notified Ashford that it did not intend to act on its application for GI Bill eligibility in California.⁹ The SAA cited a November 2017 [lawsuit](#) filed by the California Attorney General against Ashford for using deceptive advertising to recruit veterans. In its correspondence with Ashford, the SAA notes that § 3696 requires VA to make a referral to the FTC and that VA has the authority to act on the school's application.¹⁰

VA Has an Obligation to Protect Veterans

In July 2015, eight U.S. Senators [wrote](#) to VA asking the Department to increase its enforcement of “protections for veterans’ education benefits” in partnership with SAAs. The letter was prompted by an investigation that found [questionable schools](#) were eligible to enroll GI Bill beneficiaries. VA’s September 2015 response stated that it lacked the authority to disapprove a school and that only SAAs could do so.

The Veterans Legal Clinic at Yale Law School released a [Memorandum](#) in February 2016 titled “VA’s Failure to Protect Veterans from Deceptive Recruiting Practices.” Yale concluded that both SAAs and VA have the authority to approve and disapprove courses at participating institutions, and that § 3696 *obligates* VA to disapprove and suspend the use of GI Bill funds at schools that engage in deceptive advertising, sales, or enrollment practices.¹¹ Although VA relies on SAAs to determine if schools engage in deceptive advertising and recruiting, the Department has other avenues to detect noncompliance with § 3696, including beneficiary complaints and the investigations/settlements of other federal and state agencies.

The Yale report led veterans groups to write a [letter](#) to VA in May 2016 urging it to crack down on deceptive schools, which was covered in a [New York Times](#) article. In August 2016, veteran and military service organizations met with VA officials, urging them to enforce § 3696. Following the December 2019 VA OIG report, 36 veterans and military service organizations [wrote](#) to VA and again urged the Department to enforce § 3696. The Washington Post [reported](#) on the letter.

VA OIG Findings Underscore Inadequate Oversight of Deceptive Advertising

Based on a representative sample of schools, the VA OIG’s 2018 [report](#) found that advertisements and claims made in catalogs, websites, and brochures at 10 schools with a total of 21 approved programs used what appeared to be deceptive advertisements.¹² Eight of the 10 schools were for-profit institutions and 2 were nonprofit.¹³ Overall, deceptive advertising was the most common oversight weakness identified by the OIG, involving 5 of the 7 SAAs included in the sample and about 57% of the examples of inadequate oversight; the remaining 43% involved unsupported or improper program approvals and missing or delayed program modification reporting and reviews.¹⁴

Overall, the OIG found that SAAs’ enforcement of § 3696 was weak both during the approval process and during compliance surveys. At five schools, the advertisements were being used by the schools at the time they were approved to participate in the GI Bill. Another five schools that had a compliance survey during fiscal years 2014 to 2016 accounted for 14 of the 21 programs utilizing inaccurate advertisements. In response to these audit findings, both VA and the SAAs claimed they did not need to check for deceptive advertising after the initial approval, except during compliance surveys, because the statute did not specifically require it. The OIG concluded that compliance surveys were not “an effective control to detect and prevent inappropriate advertising practices.”¹⁵

What neither VA nor SAAs pointed out to the OIG is that only a small proportion of GI Bill-participating schools receive compliance surveys and that many schools have not been visited by an SAA since their initial approval. According to 2016 [testimony](#) on SAAs by the Legislative Director of the National Association of State Approving Agencies, only roughly 15 percent of active facilities (those who currently enrolled GI Bill beneficiaries) receive compliance surveys annually.

In 2011, VA was authorized by Congress to assign compliance surveys (payment audits) to SAA’s. At the same time, VA rescinded a contract requirement for SAAs to make supervisory visits to a least 80% of participating institutions each year. The purpose of supervisory visits is to help ensure that schools maintain compliance with statutory requirements after they are approved to enroll veterans. Given their strenuous compliance survey workload, which VA prioritizes over all other tasks, SAAs indicate that they lack the time or resources to conduct routine supervisory visits. The demise of supervisory visits means that no one is checking advertising materials at the majority of GI eligible schools because compliance with § 3696 is supposed to take place during payment audits.¹⁶

Conclusions

VA's inadequate implementation of § 3696 (1) prevents GI Bill beneficiaries from making an informed choice when deciding where to use their hard-earned benefits, and (2) undermines the integrity of the GI Bill by allowing schools that engage in fraud to receive taxpayer support. Even more troubling, schools including Alta (Westwood College), Corinthian, ITT, and former EDMC brands (Argosy, Art Institutes, South University) which engaged in deceptive advertising and enrollment tactics have closed precipitously, leaving beneficiaries without a degree after having wasted some of their benefits.¹⁷

In addition to closing the 90/10 loophole in the Higher Education Act, Congress could strengthen the enforcement of the prohibition on deceptive advertising and enrollment practices by amending § 3696 to establish automatic triggers for VA, improve SAA oversight, and ensure coordination among VA and other law enforcement entities.

To improve VA enforcement of § 3696, Congress should:

- give SAAs concurrent authority to implement § 3696 because they may have more local awareness of allegations related to deceptive advertising;
- give VA intermediate authority to suspend new enrollment, in addition to its current authority to suspend all enrollments, as a way to ease concerns about disrupting students;¹⁸
- give VA and SAAs strict timelines to act, as the current statute has no timelines. For example, require an investigation to be launched within 30 days of receiving

credible information of erroneous, deceptive, or misleading advertisements and completed within 60 days;

- define clear triggers for action, including legal settlements and judgments; penalties imposed by local, state, or federal government entities; SAA findings; and complaints from more than 50 student veterans;
- alert beneficiaries about credible allegations, post a caution flag on the GI Bill Comparison Tool, and refer the matter to the FTC for further investigation;
- require VA to remove the "Principles of Excellence" designation for any school that is the subject of a federal, state, or local government lawsuit, or punitive action; and
- specify that loss of eligibility is for a minimum of 2 years and establish a process for a school to regain eligibility, such as third-party verification that advertising and recruiting is no longer deceptive.

To improve SAA enforcement of § 3696, Congress should:

- require VA to develop training for SAAs on best practices for examining school materials in order to ensure consistency in their reviews of advertising and enrollment materials; and
- require SAAs to review an institution's advertising and enrollment material at regular intervals, and other than during compliance surveys.

To improve VA coordination with other federal agencies and law enforcement entities, Congress should:

- require the establishment of an interagency committee on oversight of schools in order to ensure that VA is aware of investigations and enforcement actions undertaken by other federal agencies and coordinates with those agencies.

¹According to the *Globe*, only 22% of graduates who had enrolled in dental assisting programs in the past 2 years had found jobs, compared to 85% who graduated from Northeastern University's course, which is accredited by the American Dental Association, making its graduates eligible to take a certification exam, a credential that employers expect job applicants to have.

²Healthcare certificates represented almost half of certificates awarded in 2010 and 57% of those who graduated from for-profit schools. See pp. 21 and 28 of this [hyperlink](#). A 2011 [report](#) questioned the value of some "health profession" certificates, such as medical assisting, because most of the promised jobs required no more than a high school degree.

³See VA's response to question 14 in the hyperlinked document.

⁴In 2011, Holly Petraeus was the Assistant Director for Service Member Affairs at the Consumer Financial Protection Bureau.

⁵The CFPB lawsuit resulted in a \$531 million [judgment](#) in October 2015, several months after Corinthian's collapse.

⁶The accreditor cited ED's decision to place ITT on heightened cash monitoring, lawsuits by the CFPB and the SEC, and investigations by several state Attorneys General. The show-cause order required a hearing where ITT could provide evidence as to why its accreditation should not be withdrawn or conditioned.

⁷The GI Bill Comparison Tool lists Ashworth as a [Principles of Excellence](#) (POE) school even though schools so designated under the 2012 Executive Order promise to forgo such practices.

⁸The new requirement was instituted to help increase the pass rate of graduates on the state licensing exam. A low pass rate could have put at risk ECPI's ability to offer a nursing program. Several months later, ECPI negotiated a settlement with the SAA, and the Institute's ability to enroll beneficiaries was restored.

⁹VA required Ashford to apply for approval to enroll veterans in California because it believes that Arizona's 2017 approval of Ashford is contrary to the statutory requirement that schools can be approved by the SAA only in the state where their main campus is located, which is California. Because Ashford is GI Bill approved in Arizona, it is still enrolling veterans and eligible family members.

Our November 2017 [report](#) provides additional details on the dispute between VA and the Arizona SAA. In April 2019, [Bridgepoint](#) announced it was moving its headquarters to Arizona, which would give the Arizona SAA jurisdiction.

¹⁰ Thereafter, the California SAA and VA disagreed over statutory authorities and obligations. VA [informed](#) the California SAA that its contract with VA was at risk unless it either approved or disapproved Ashford's application. The California SAA's [response](#) to VA explained the rationale for its decision not to act on Ashford's application: "Title 38 limits 'disapproval' to those courses previously approved and where the requirements for approval are not being met.... Since Ashford submitted an initial application for approval, CSAAVE is unable to disapprove courses not previously approved. More so, CSAAVE finds no authority within Title 38 to 'deny' approval." In September 2019, VA [informed](#) the California SAA that it would not be offered a contract for Fiscal Year 2020. Among the reasons VA cited in its letter was the SAA's notice of intent not to act on Ashford's application. For more details, see our report, [VA and SAAs Should Act on Early Warning Signs When Risks to GI Bill Beneficiaries and Taxpayers Emerge at Participating Schools](#).

¹¹The statutory changes made after the Yale report was released reasserted the primacy of the SAA's role in approvals but retained the language assigning VA a role in disapprovals. A VES [report](#) on VA and SAA authorities identified inconsistencies and ambiguity.

¹²A summary of the OIG's findings with respect to deceptive advertising can be found on page 19 of the hyperlinked report.

¹³Appendix D of the OIG report (pp. 62-65) identifies the schools, the number of programs affected by potentially deceptive advertising, the deceptive practices, and the SAAs responsible for reviewing programs at these schools.

¹⁴See p. 3 of hyperlinked OIG report.

¹⁵See p. 20 of hyperlinked OIG report.

¹⁶See our [report](#) on how the compliance survey workload has crowded out other SAA oversight activities. Compliance surveys occur at only about 15% of GI Bill schools, annually.

¹⁷With the exception of schools that closed between January 2015 and August 2017, beneficiaries are currently entitled to the restoration of benefits only for the term during which the school closed.

¹⁸With this suggested legislative change, new enrollment could be suspended by VA. By statute, when an SAA suspends new enrollment, payments for currently enrolled beneficiaries must be cut off if the underlying cause of the suspension is not addressed by the school within 60 days.