



VETERANS EDUCATION SUCCESS

STATEMENT FOR THE RECORD

LEGISLATIVE PRIORITIES

SUBMITTED TO THE

SENATE AND HOUSE COMMITTEES ON VETERANS AFFAIRS

116th CONGRESS

MARCH 12, 2019

Chairmen Isakson and Takano; Ranking Members Tester and Roe; and Members of the Committees on Veterans Affairs,

Veterans Education Success (VES) appreciates the opportunity to share its legislative recommendations on veterans' issues for consideration in the first session of the 116th Congress.

VES is a nonprofit 501(c)(3) organization dedicated to advancing higher education success for veterans, service members, and military families, and to protecting the integrity and promise of the GI Bill and other federal education programs.

VES respectfully recommends the Committees give consideration to the following legislative priorities, which we believe support the nation's veterans using GI Bill benefits to successfully transition from the military to productive civilian careers.

OVERSEE CONTINUED IMPLEMENTATION OF HARRY W. COLMERY VETERANS EDUCATIONAL ASSISTANCE ACT

The Harry W. Colmery Veterans Educational Assistance Act, also known as the Forever GI Bill (FGIB) was passed into law in August 2017. VA began working on immediate implementation

of the law; however, in Fall 2018 the Department fell significantly short when its IT infrastructure was unable to support implementation of sections 107 and 501. This, unfortunately, created a significant backlog in processing certifications and thus students received their Monthly Housing Allowances (MHA) significantly late. Students using GI Bill benefits rely on their MHA to pay living expenses and were put in precarious financial positions, at best.

We appreciate Secretary Wilkie's and Dr. Lawrence's personal commitments to ensuring the rest of the implementation moves forward successfully and to make whole the housing allowances owed to students under section 107. That said, we remain concerned about next steps moving forward to include VA's antiquated IT infrastructure, clear and timely communication with key-stakeholders, and VA's ability to pay, in a timely manner, the Fall 2019 MHA and the money owed to students under section 107 back to August 1, 2018. What happened during the Fall 2018 semester must not happen again.

Oversight Recommendation: VES strongly believes continued oversight of VA by the Committees is of utmost necessity. We are cautiously optimistic about VA's current trajectory but are also aware of the potential pitfalls. It is imperative that specific milestones are met in a timely manner, feedback is solicited from key external stakeholders early in the process, clear and concise communication is maintained, and a contingency plan is put in place should the IT system fail, yet again.

OVERSEE VA'S IMPLEMENTATION OF SECTION 3696, 38 UNITED STATES CODE

On February 14, 2019, 36 VSOs and MSOs [wrote](#) to VA Secretary Wilkie requesting his attention to the Dec. 3, 2018, VA Inspector General audit report, "[VA's Oversight of State Approving Agency Program Monitoring for Post-9/11 GI Bill Students](#)," which concluded that VA will waste an estimated \$2.3 billion over the next 5 years in Post-9/11 GI Bill "improper payments to ineligible colleges," especially colleges with deceptive advertising and recruiting prohibited under 38 U.S.C. § 3696.

Section 3696 requires the Secretary of Veterans Affairs to withhold approval of enrollment of eligible veterans or other eligible persons under the GI Bill "*by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.*"

The Inspector General's concerns are not new. In 2016, Yale Law School published a report, "[VA's Failure to Protect Veterans from Deceptive College Recruiting Practices](#)," specifying VA's failure to abide by 38 U.S.C. § 3696. Also in 2016, VSOs and MSOs [wrote](#) to the VA Secretary, requesting VA quickly come into compliance with 38 USC § 3696.

It appears from the Inspector General's report that VA remains out of compliance with the statute, despite numerous federal and state law enforcement actions against colleges for deceiving veterans. This has resulted in significant ramifications to VA and student veterans.

In one recent example, 49 state attorneys general – representing nearly every state in the nation – sued Career Education Corporation (CEC), following a 5-year investigation, which, [according](#) to the Attorneys General, “*revealed evidence demonstrating that CEC deceived prospective students about the total costs of enrollment, the transferability of credits between CEC and other institutions, the potential to obtain employment in their field, and CEC graduates’ employment outcomes. As a result of these unfair and deceptive practices, students enrolled in CEC who would not have otherwise enrolled, could not obtain professional licensure, and were saddled with substantial debts that they could not repay nor discharge.*” CEC paid the highest fine to date, \$500 million, to settle the suit, without admitting guilt. CEC has the third highest number of veteran complaints brought to VA, and, in June of 2018, a CEC whistleblower flew to Washington to describe a litany of deceptive practices to VA staff. This is just one example of ineligible colleges receiving improper GI Bill payments that could be avoided with proper VA oversight.

Oversight Recommendation: VES urges the Committees to conduct oversight of VA to ensure the Inspector General’s concerns are addressed and that VA complies with the statute. VA also should comply with Executive Order 13607, including risk-based program reviews of the schools posing the greatest risk to students, based on law enforcement and other government agency actions against troubled schools. This may require sorting out the complex relationship between VA and the State Approving Agencies.

GIVE VETERANS THE SAME RIGHTS AS STUDENTS AT THE DEPARTMENTS OF DEFENSE AND EDUCATION

1. GI Bill Reinstatement and Letter of Credit Authority

Problem: VA lacks money to pay for full restoration for veterans whose schools close, and defrauded veterans have no rights at VA. Veterans at closed schools/disapproved schools get [only 1 semester back](#) (except for schools that closed prior to 2017, such as ITT Tech and Corinthian, for whom the *Forever GI Bill* gave special compensation).

- At the US Department of Education (ED), students are entitled to:
 - Reinstatement of their Pell Grants;
 - Forgiveness of their student loans if their school [closed](#) while they attended or within 120 days of attendance;
 - Forgiveness of their student loans if their school [took out loans](#) in their name without their permission or signed their name without their knowledge, or wrongly enrolled students in a program they [could not benefit from](#) (“Ability to Benefit”); and
 - Forgiveness of their student loans if the school [deceived](#) them (“Borrower Defense”).
- ED pays for student restoration, in part, through “[Letters of Credit](#)” (guaranteed by a bank or financial institution) from colleges for assorted reasons, including financial stability, and range in amount from 10% of the federal student aid received by the school to a higher percent. The letters protect students and taxpayers if institutions are unable to cover federal student aid liabilities. If the school closes, ED may draw funds from the

letter of credit to cover expenses, such as student refund reimbursement and loan cancellation costs.

Legislative Suggestion: VA should mirror ED's rules to ensure veterans get their GI Bill reinstated if their school improperly took out loans, deceived or defrauded them, closed, or enrolled them for a program they could not benefit from.

Pay-For: Align VA with ED on letter of credit authority. VA should be authorized, and automatically triggered, to require a letter of credit to protect VA funds if, and in the same percent as, ED requires. There would be no burden on VA. Instead, VA would simply be triggered to follow ED's lead. For example, if ED determines a school is a financial risk and requires the school to secure a letter of credit worth 10% of the Title IV funds the school receives, then VA should be triggered to require that school to secure a letter of credit worth 10% of VA funds the school receives. If ED requires a letter of credit worth 25% of Title IV, then VA should require a letter of credit worth 25% of VA funds. This would give VA cash-on-hand in case of a school closure or case of fraud, which would enable VA to reinstate the veterans' GI Bill funds.

Alternative Pay-For: Create a VA "student tuition recovery fund" as in [21 states](#). Like Unemployment Insurance, all schools (or only "risky" schools, defined by law enforcement action or ED Heightened Cash Monitoring status) would pay in a tiny percent of their GI Bill funds into an insurance pool controlled by VA, available for pay-out to students.

1. GI Bill Overpayments and Clawbacks

Problem: GAO [reported](#) that GI Bill overpayments cost \$416 million in FY 2014, affecting 1 in 4 GI Bill students. VA claws back GI Bill tuition overpayments directly from students (see [38 USC 3680\(e\)](#)), even though the school received the money. This places the student in the position of having to beg the school for a refund. To recoup GI Bill from the student, VA will garnish tax returns and even withhold a veteran's disability money, as well as report debts to credit rating agencies. A major cause of the GI Bill overpayment is the way VA differs from ED on how much tuition a school can keep. VA disburses the entire semester of Post-9/11 GI Bill benefits directly to the school after a veteran (or his/her designated beneficiary) sits for just one day of class. This "Just 1 Day" mentality incentivizes colleges to deceive veterans to get them to enroll for "just 1 day," and denies veterans the opportunity to experience and evaluate the product being provided without being on the financial hook. Historically, Congress [carefully avoided direct payments to schools](#) because of such fraud.

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

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

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

Alternative Legislative Suggestion: Alternatively, VA could require schools to place GI Bill funds into an escrow account that the institution may not tap into until the GI Bill beneficiary successfully completes the semester.

1. Schools’ Contractual Terms of Participation

Problem: VA enforces statutory rules requiring schools to handle GI Bill funds properly, but, when it comes to program integrity, VA has only *voluntary* “Principles of Excellence” for schools, which are *unenforceable*.

- ED requires institutions seeking Title IV to enter a [“Program Participation Agreement.”](#) Signing the agreement means a school certifies it will comply with statutes, regulations, and policies, including financial responsibility standards and program integrity rules, including no “substantial misrepresentations.” These agreements empower the Secretary of Education to revoke a school’s eligibility or impose limitations on a school’s participation in Title IV.
- DoD requires institutions wanting to participate in Tuition Assistance to sign a [“Memorandum of Understanding”](#) that specifies rules and prohibitions related to deceptive recruiting and other practices, and explicitly incorporates ED’s program integrity requirements. These requirements apply to the school itself, as well as to agents like third party lead generators, marketing firms, and companies that own or operate the school. DoD also prohibits aggressive recruiting, including making three or more unsolicited contacts (phone, email, in-person) to a veteran and engaging in same-day recruitment and registration.

Legislative Solution: Align VA with DoD and ED by codifying VA’s Principles of Excellence in a contractual framework schools must sign, which empowers VA to limit or end participation in VA education funds. This new VA MOU should incorporate the elements in DoD’s MOU, where appropriate, and should explicitly incorporate ED’s program integrity requirements – just as DoD has done in its MOU for schools.

1. Ensure Quality in *Academic Programs*

Problem: VA approves *academic* programs (e.g., BA in Philosophy) that ED won't approve. In contrast, DoD limits approval for Tuition Assistance for *academic* programs to programs approved by ED for Title IV. (See [10 USC 2006a](#)). Of course, VA approves many training programs that are *not academic*, like truck driving, that aren't at issue here. But if the program is a *traditional academic* program, but not good enough for ED or DoD, why is VA approving it?

Legislative Suggestion: Align VA with DoD by requiring programs that award associate, bachelor's or graduate degrees to be certified by ED with an active Title IV program participation agreement. If an *academic* program isn't good enough for ED or DoD, it's not good enough for veterans.

Also consider requiring the schools to be regionally-accredited, so that credits can transfer, to solve the "moral hazard" of students being left with worthless credits.

PROTECT DISABLED VETERANS FROM LOSING THEIR DISABILITY LIVING ALLOWANCE DUE TO WRONGFUL STUDENT LOAN DEFAULTS

100% disabled veterans have the right to student loan forgiveness, but only 1 in 5 eligible veterans is actually filling out the paperwork. Worse, according to the US Education Department's [answer](#) to a FOIA request, half of the eligible veterans are already in default on their loans. This means the Education Department is wrongly allowing disabled veterans to go into default on student loans that should rightfully have already been erased. Even worse, once a disabled veteran is in default, VA can withhold the veteran's monthly disability living allowance.

Legislative Suggestion: We recommend the Committees enact legislation to forbid VA from reporting to Treasury for offset any 100% disabled veteran who has a disability living allowance from VA as well as student loan defaults from the Education Department.

ENSURE IMPLEMENTATION OF THE CAREER READY STUDENT VETERANS ACT

In the [Miller-Blumenthal Veterans Health Care and Benefits Improvement Act of 2016](#) omnibus legislation signed at the end of 2016, Congress enacted the "Career Ready Student Veterans Act," which directs VA to ensure that GI Bill is not approved for education programs that leave graduates ineligible to work in licensed occupations, due to inadequate educational quality or accreditation, following VES' 2015 research report, "[The GI Bill Pays for Degrees That Do Not Lead To a Job.](#)"

VES' April 2018 research report concluded the statute is not being implemented correctly: "[Despite a 2016 Statute, the GI Bill Still Pays for Degrees That Do Not Lead to a Job.](#)"

Suggestion: We urge the Committees to ensure VA implements the statute.

SUNSET THE MONTGOMERY GI BILL

The *Military Compensation and Retirement Modernization Commission* (2015) included two recommendations on GI Bill programs: "Montgomery GI Bill – Active Duty (Chap. 30, 38 U.S.C) should be sunset on 1 October 2015. The Reserve Educational Assistance Program (REAP) (Chap. 1607, 10 U.S.C.) should be sunset restricting any further enrollment and allowing those currently pursuing an education program with REAP to complete their studies. Service members who switch to the Post-9/11 GI Bill should receive a full or partial refund of the \$1,200 they paid to become eligible for MGIB benefits. The refund should be proportional to the amount of the Post-9/11 GI Bill benefit used." The MCRMC based the recommendation on its finding to "safeguard education benefits for Service members by reducing redundancy and ensuring fiscal sustainability of education programs."

DoD endorsed the MCRMC's recommendation to sunset the MGIB and REAP in its initial response to Congress on the Commission's Report.

Subsequently, Congress repealed REAP but left the MGIB in place because of the mandatory funding offset that is required to terminate that program.

VES notes that usage of the MGIB continues to decline in favor of the Post 9/11 GI Bill (Chap. 33, 38 USC). Between fiscal years 2011 and 2017, the number of MGIB recipients declined by 81 percent from 180,000 to about 35,000.

Informally, DoD officials have indicated that the co-existence of duplicative GI Bill benefit programs is costly to administer, inefficient from a Service recruitment and marketing perspective, and confusing to new entrants to military service.

The purposes of the MGIB set out in statute include support for recruitment, retention and readjustment outcomes (Section 3001, 38 USC). The Post 9/11 GI Bill's purposes are similar. Statute requires the Secretary [of Defense] to submit an annual report indicating the extent to which "benefit levels provided under this chapter [Chap. 33, 38 USC] are adequate to achieve the purposes of inducing individuals to enter and remain in the Armed Forces. . ." (Section 3325, 38 USC).

VES agrees with DoD's support for sunsetting the MGIB-Active Duty and recommends a practical, cost-effective path to reduce reliance on the MGIB with the goal of phasing it out.

Legislative Suggestion: VES recommends the Committees work with the Armed Services Committees to require the DoD to report on options for terminating the MGIB in a cost-effective, expeditious manner. For example, to further reduce MGIB enrollments, DoD could alter the enlistment contract to require new recruits to "opt in" to the MGIB from the present "opt out" choice.

Veterans Education Success is grateful for the commitment of the Members of the Veterans Affairs Committees in supporting our nation's veterans and we look forward to the enactment of the priorities set out above, which we believe are in their best interests.