



VETERANS EDUCATION SUCCESS

July 27, 2020

The Honorable Keith Boylan
Deputy Secretary Veterans Services
California Department of Veterans Affairs
California State Approving Agency for Veterans Education
1227 O Street, Suite 625
Sacramento, CA 95814

Patrick Dworakowski, Ph.D.
Oversight and Accountability
Education Services
Department of Veterans Affairs
Veterans Benefits Administration
810 Vermont Avenue NW
Washington, DC 20420

Re: Risk-Based Review of Ashford University

Dear Mr. Boylan and Dr. Dworakowski,

Veterans Education Success respectfully requests that the Department of Veterans Affairs (VA) and the California State Approving Agency for Veterans Education (CSAAVE) undertake a risk-based review, as provided in 38 USC § 3673, of Ashford University for violations of 38 USC § 3696, financial instability, and accreditor concerns.

We urge VA and CSAAVE to undertake a careful review of Ashford's practices. Below we provide a roadmap of the evidence available to VA and CSAAVE.

I. Ashford University and Zovio have likely engaged in misleading and deceptive acts and practices

As you know, 38 USC § 3696 states, "The Secretary shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation."¹ Ashford University and its owner, Zovio (formerly known as Bridgepoint Education, Inc.), have likely engaged in such advertising, sales, or enrollment practices.

Significant evidence about Ashford's misleading and deceptive practices has been unearthed by government agencies, whistleblowers, former students, and its accreditor.

¹ 38 USC § 3696, <https://www.law.cornell.edu/uscode/text/38/3696>.

Many government agencies have taken action against the university and its owner; whistleblowers have come forward to expose business practices; and more than 100 students have filed complaints with Veterans Education Success. Additionally, Ashford has likely engaged in deception with students, VA, and various SAAs while attempting to secure and maintain access to GI Bill benefits.

Ashford's history of deceptive recruiting and enrollment practices, in addition to its own internal audit showing rampant deceptions against students, is particularly relevant in light of the recent industry news that Zovio is hiring hundreds more "enrollment advisors" in the next four months, significantly ramping up its recruiting division.² Given its focus on military and GI Bill funds, Ashford is likely to deceive thousands more GI Bill students, and we urge VA and CSAAVE to immediately undertake a risk-based review of Ashford.

A. Government agencies have uncovered evidence of misleading and deceptive acts and practices

Several law enforcement agencies and other government entities have taken action against Ashford and Zovio, highlighting significant evidence of misleading and deceptive acts and practices. VA and CSAAVE should engage in a risk-based review of Ashford and should include careful review of the federal and state law enforcement evidence in that review.

In 2017, the California Attorney General filed a lawsuit against Ashford and Bridgepoint, saying, "No school should ever steal the American Dream from its students, but that is exactly what Ashford University did. Ashford University preyed on veterans and people of modest means."³ The California lawsuit alleges that sales representatives, under intense pressure, entice students to enroll at Ashford with false promises and faulty information, related to students' ability to get financial aid, the cost of attendance, the transferability of credits into and out of the school, and the ability of the school to prepare students for their desired careers.⁴ The lawsuit also alleges that Ashford misled investors and inflated the percentage of students who said that their degree prepared them for their career.⁵

Perhaps the most important piece of evidence revealed in the California lawsuit is Ashford's own internal audits, suggesting that its admissions counselors engage in tens of

² David Halperin, *Beware: For-Profit College Scammers Will Exploit the COVID-19 Crisis*, Republic Report (Mar. 29, 2020), <https://www.republicreport.org/2020/beware-for-profit-college-scammers-will-exploit-the-covid-19-crisis/>.

³ *Attorney General Xavier Becerra Sues For-Profit Ashford University for Defrauding and Deceiving Students*, State of California Department of Justice, Office of the Attorney General (Nov. 29, 2017), <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-sues-profit-ashford-university-defrauding-and>.

⁴ Complaint at 1, *People v. Ashford University*, No. RG17883963 (Cal. Super. Ct. Nov. 29, 2017), https://oag.ca.gov/system/files/attachments/press_releases/Complaint_8.pdf.

⁵ *Id.*

thousands of misrepresentations each year, and that no policy is in place to ensure that Ashford corrects misrepresentations.⁶

We strongly urge VA and CSAAVE to request from Ashford its internal audits and analyze them.

Additionally, the California lawsuit alleges that Ashford engages in aggressive and illegal practices to collect student debts, which result from its own employees' misrepresentations.⁷ This is not the first time Ashford has engaged in potentially deceptive loan practices. In 2016, the Consumer Financial Protection Bureau (CFPB) found that Ashford and Bridgepoint deceived students into taking out private loans that cost more than advertised. Bridgepoint was required to discharge all outstanding private loans and refund loan payments made by students in a settlement with the CFPB that totaled \$31.5 million.⁸ The CFPB should readily share its findings and evidence with VA and CSAAVE. CFPB uncovered significant evidence of Ashford's deceiving students on student loans.

In addition, in 2014, the Iowa Attorney General settled with Ashford and Bridgepoint over violations of Iowa's consumer protection laws for misleading prospective students, using "unconscionable sales practices," failing to disclose material facts to students, misrepresenting that students could achieve teaching licensure by completing Ashford's education degree, and charging significant upfront fees that were not refunded when they should have been. Ashford and Bridgepoint paid \$7.25 million to Ashford students in Iowa and agreed to change admission practices, but the deception continues.⁹ The Iowa Attorney General would readily share evidence with VA and CSAAVE about Ashford's unconscionable sales practices.

In 2016, the Department of Justice began investigating Ashford and Bridgepoint over allegations that the school misstated Title IV refund revenue or overstated revenue associated with private secondary loan programs, misrepresenting its compliance with the 90/10 rule of the Higher Education Act.¹⁰

In 2014, the Securities and Exchange Commission opened an investigation into Ashford and Bridgepoint. Also in 2014, the Massachusetts, North Carolina, and New York

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices*, Consumer Financial Protection Bureau (Sept. 12, 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/>.

⁹ Press Release, Iowa Attorney General, Ashford University and Parent Company Bridgepoint Education Agree to \$7.25 Million Payment and Major Changes after Miller Alleges Consumer Fraud (May 16, 2014), *available at* <https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-majo/>.

¹⁰ Bridgepoint Education, Inc., Form 8-K (Jul. 7, 2016), <https://www.sec.gov/Archives/edgar/data/1305323/000130532316000114/form8-kxitem801.htm>.

Attorneys General investigated Ashford for possible violations of consumer protection laws but have not taken any legal action against them.¹¹

The Department of Education (ED) has taken a number of actions against Ashford and Zovio over the last few years. In 2015, ED requested information to aid in an investigation into representations made to potential and enrolled students to determine if Ashford was in compliance with the prohibition on substantial misrepresentations.¹² Also in 2015, ED informed Ashford that it had not fully responded to disclosures required under ED's gainful employment rules and that failure to do so could result in further administrative action.¹³ In 2017, an audit determination by ED found that Ashford owed ED \$300,000 for incorrect refund calculations and refunds that were not made or were made late.¹⁴ Finally, in October 2019, ED required Zovio to post a \$103 million, irrevocable letter of credit in response to the plan to spin Ashford off into a nonprofit institution (the requirement was later dropped).¹⁵

Additionally, in February 2020, VA (acting as the SAA for the state of California) disapproved 20 Ashford University programs from receiving GI Bill benefits. Sixteen of those programs violated the Career Ready Student Veterans Act of 2016, which makes ineligible programs in licensed occupations that do not leave the student eligible for the license. Nineteen of the programs were not "consistent in quality, content and length with similar courses in the California public university systems, with recognized accepted standards."¹⁶

All of the government action outlined above indicates that Ashford and Zovio have been engaging in misleading and deceptive acts and practices. Many of these practices have not been penalized, and students in many states have not received any restitution. Moreover, even in the face of federal and state law enforcement actions, Ashford continues to get caught for misleading and deceptive acts and practices. Ashford is a repeat offender.

¹¹ *Veteran and Servicemember Complaints about Misconduct and Illegal Practices at Ashford University*, Veterans Education Success (Dec. 2017), <https://vetsedsuccess.org/veteran-servicemember-complaints-about-misconduct-illegal-practices-ashford-university/>.

¹² Bridgepoint Education, Inc., Form 8-K (Dec. 10, 2015), <https://www.sec.gov/Archives/edgar/data/1305323/000130532315000073/form8-kxdoedecember2015.htm>.

¹³ Bridgepoint Education, Inc., Form 10-Q (Sep. 30, 2015), 45, <https://www.sec.gov/Archives/edgar/data/1305323/000130532315000066/bpi093015form10-q.htm>.

¹⁴ Bridgepoint Education, Inc., Form 10-K (Dec. 31, 2016), 96, <https://www.sec.gov/Archives/edgar/data/1305323/000130532317000016/bpi201610k.htm>.

¹⁵ Hallie Busta, *Zovio: \$103M Letter of Credit Required to Spin Off Ashford U*, Education Dive (Oct. 8, 2019), <https://www.educationdive.com/news/zovio-103m-letter-of-credit-required-to-spin-off-ashford-u/564549/>; Hallie Busta, *Ed Dept Drops \$103M Letter of Credit for Ashford U Spinoff*, Education Dive (Jul. 8, 2020), <https://www.educationdive.com/news/ed-dept-drops-103m-letter-of-credit-for-ashford-u-spinoff/581264/>.

¹⁶ Letter to Stephanie Cowsert, AVP Financial Aid Policy and Compliance, Ashford University, from Bill Spruce, Acting Director, VA-California State Approving Agency (Feb. 14, 2020), <https://vetsedsuccess.org/vas-approval-of-ashford-for-gi-bill-feb-2020/>.

These state and federal agencies have important evidence to share with CSAAVE and VA. If the agencies are not willing to share evidence with CSAAVE and VA, then at the least the agencies have given clear indication of the facts VA and CSAAVE should request of Ashford directly – starting with Ashford’s own internal audits about its own findings of rampant deceptions of students, and including student complaints, accreditor actions, and evidence of financial instability. We believe that VA and CSAAVE can stop further damage from being done to GI Bill students in the future.

B. Students have also alleged misleading and deceptive acts and practices

In addition to governmental concerns, many Ashford students have alleged they were deceived or misled by the institution. One Ashford student veteran who came to us for free help was promised by Ashford that she could become a nurse with a Health and Human Services degree from the school. However, she could not sit for an exam to receive a license with this degree because Ashford did not have the proper accreditation. Under the Career Ready Student Veterans Act, this program should not have been approved for GI Bill benefits. Separately and importantly, this student’s complaint also shows deceptive and misleading recruiting by Ashford, which triggers 38 USC § 3696.

Our study of more than 100 student complaints made to Veterans Education Success showed that the most common student complaint was about false promises regarding accreditation and the transfer of credits, with a number of student complaints also touching on the quality of education, student loans, recruiting/marketing, program costs, job opportunities, veteran-specific problems, the release of transcripts, and changes to degree requirements.¹⁷ A sample of these complaints is as follows:

- “I was promised and assured that my credits would transfer but when I switched schools, none of them transferred.” -K.H.
- “During my time at Ashford, I kept noticing that the numbers were different for credits taken and credits needed and how they did not line up. I spoke to academic advisor after academic advisor concerning the discrepancy asking them if they could explain it to me. They all kept telling me that everything is fine and I will graduate on time. Nope.” -K.M.
- “I was signed up for loans I did not know about when my GI Bill ran out.” -D.S.
- “I was promised a military grant that would pay over 25% of my tuition and fees. Now I’m overwhelmed with loan debt because that grant was only 5%.” -N.G.
- “I was told that with their tuition break and my gi bill I would have no out of pocket expenses and each time a new semester came around I needed more money and was told a student loan was the best way to do it.” -M.C.

All complaints received by Veterans Education Success are inputted into VA’s GI Bill School Feedback Tool.

¹⁷ *Supra* note 11.

Misrepresentations by schools in the enrollment process cause GI Bill students to frequently exhaust their education benefits, with the expectation that the promises that were made to them will be kept. Students also commonly take out loans, based on false promises that they will receive a quality education and graduate with the ability to get a high-paying job. By making misrepresentations that make Ashford seem more desirable than other schools, and more desirable than it really is, Ashford and Zovio deceive students.

C. Whistleblowers have alleged misleading and deceptive acts and practices

Several former employees of Ashford University have spoken out about Ashford's misconduct and deception. VA and CSAAVE should review the accounts of these whistleblowers – one of whom spoke on national TV. We can help VA and CSAAVE connect with all of the whistleblowers listed here.

Two whistleblowers who recently worked as recruiters (known as “enrollment advisors”) at Ashford have come forward.¹⁸ Both worked in the military recruiting division. Both can attest to the deception employed by sales representatives to get students, called “leads,” to enroll, as well as the unwillingness of the school to help those students once enrolled.¹⁹ They have explained that enrollment advisors would “lie about and twist the information about...facts,” saying “whatever that agent needs to say to close that deal.” Ashford offered a military discount to get potential students to commit, but “what we'd find out is they never filed the right paperwork for the student to get the military discount. University doesn't care after enrollment. University would not go back and honor it retroactively because they said it was the student's responsibility.”

One of these employees, Eric Dean, told NBC News that Ashford pressured him to enroll veterans “no matter what” and to keep them enrolled for at least three weeks, at which point they would become ineligible for a refund.²⁰ The employees felt as though they were “throwing fellow veterans under the bus” by “relating to them, gaining their trust, and taking advantage of their trust.”²¹

Additionally, a six-year corporate director of Ashford's compliance department states that, during his years at Ashford, he documented “a voluminous record of

¹⁸ Interview notes on file at Veterans Education Success.

¹⁹ *Wyatt Cenac's Problem Areas: The Cost of College*, HBO (May 29, 2019), <https://www.youtube.com/watch?v=xylTVXjMSOc>.

²⁰ Heidi Przybyla and Laura Strickler, *Veterans Could Be First to Pay as DeVos Rolls Back For-Profit College Oversight*, NBC News (Apr. 14, 2019), <https://www.nbcnews.com/politics/politics-news/veterans-could-be-first-pay-devos-rolls-back-profit-college-n985891>.

²¹ *Supra* notes 18 and 19.

compliance infractions” involving “misrepresentations” by enrollment advisors.²² His department was specifically tasked with reviewing enrollment advisors’ audio and documentation to see if students were misled, and his department documented significant and ongoing misrepresentations. This executive started at Ashford as an enrollment advisor, which he says was “a sales job” with “scoreboards for how many enrollments you had visible to the whole team” and “public tallies for quarterly and monthly senior leadership” including “quotas” and “explicit pressure.”

Another Ashford executive, who directed all paid media for the school, said, “From what I’ve been hearing, now the marketing strategy is to get as [many] leads and quick enrollments as possible. I’ve just heard it from a high level.”²³

Regarding the quality of education at Ashford, a former professor recently released a video in which he described various problems at Ashford.²⁴ First, Dr. Brewer spoke about how academic freedom is stifled by an onerous process that “restricts creativity, inhibits innovation, and demoralizes otherwise talented, motivated, and forward-thinking educators,” discouraging any changes to course content and standardizing guidance given to students. He also described how, after he made informal and formal complaints to management, he was assigned to teach courses “outside his scope of competence,” which he informed leadership was “an unethical practice for him to engage in and could risk his license as a clinical and forensic psychologist in California.” He later received poor performance reviews for these classes, which he should not have been teaching. Moreover, Dr. Brewer stated that faculty were pressured to inflate grades and to retain students who were lacking the basic competence to succeed. One month after speaking out, Dr. Brewer was laid off by Ashford.²⁵

A recent professor and program chair shared that the directive from administrators is to “do whatever it took to let students pass,” even “at the expense of their growth.”²⁶ She felt that they were doing a “disservice to students” and “not really teaching.” She witnessed an associate faculty member be “deactivated because she was doing what was right ... reporting a student for plagiarizing.” The professor “used to also have to approve students to graduate even if they were 2 courses shy of fulfilling their program. It was so unethical.” Students were allowed to waive an important introductory course, which was designed to give them the tools to succeed in the program going forward, simply because “students will stay enrolled if they can waive it.” Even the professors at Ashford are aware that enrollment numbers matter above all else.

Ashford and Zovio’s practices are likely deceptive. Whistleblowers report that their goal during enrollment is to sign up as many people as possible, by whatever means

²² Interview notes on file at Veterans Education Success.

²³ Interview notes on file at Veterans Education Success.

²⁴ *An Open Letter to Ashford University from Dr. Stephen Brewer* (Oct. 31, 2019), https://www.youtube.com/watch?time_continue=139&v=gNe9RvWLYIg.

²⁵ *Ashford University Suspends Faculty Senate, Dismisses Senate Chair* (Nov. 5, 2019), <https://www.youtube.com/watch?v=9au2O18D-gs>.

²⁶ Interview notes on file at Veterans Education Success.

necessary. Whistleblower accounts match what students report about their experiences at Ashford. These practices are, in fact, designed to mislead potential students. When prospective students contact colleges and speak with admissions counselors, they expect that the information they will be told is accurate, and they would not expect to have to do detailed independent research to verify an institution's claims. School quality often determines a student's ability to find gainful employment. A student's education and gainful employment represent important material interests to that student.

VA and CSAAVE should interview these whistleblowers, who are eager to assist the government and can attest to Ashford's practices designed to lure students into enrolling and then providing a poor-quality education, keeping them enrolled at all costs.

D. Ashford University has misled its students in official communications

Another way Ashford engages in deception is by sending misleading emails to students. Ashford has, at various times, reached out to its student body in emails or on the school's online portal to share information that is misleading.

One example involves communication about the status of GI Bill benefits for Ashford students after the Iowa SAA informed the school that Iowa would no longer approve it. On July 20, 2017, VA reached out to students at Ashford University who were using the GI Bill. VA's email informed the students that Ashford classes would no longer be qualified for VA education benefits if Ashford did not appeal an Iowa court decision within 30 days.²⁷ Ashford responded by sending an email to its students on July 26, 2017.²⁸ The email stated,

"If you are concerned about the misinformation provided to you by the VA regarding certification of your benefits for attendance at Ashford University, or the threat to your educational benefits that has been spread by these miscommunications, the White House has established a hotline, available at 855-948-2311, to give veterans an outlet to voice concerns about the Federal VA and other federal programs."

By using the word "*misinformation*," Ashford conveyed to its students that VA was misleading them and providing inaccurate information. Further, Ashford provided students with a White House hotline, conveying to students that VA had engaged in behavior that should be reported for oversight.

²⁷ Email to Ashford students from Curtis Coy, Deputy Under Secretary for Economic Opportunity, Department of Veterans Affairs (Jul.20, 2019), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59733025bf629a8e3df731db/1500721190598/VA+Notice+to+Ashford+Students.July2017.pdf>.

²⁸ Email to Ashford students from Craig Swenson, President and CEO, Ashford University (Jul. 26, 2017), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59fb520f27ef2df8c343720e/1509642767749/Ashford+Email+to+Students+July+26+2017.pdf>.

In addition, Ashford represented in this email that it would soon have approval from the Arizona SAA. However, just a few days later, VA informed the Arizona SAA that it could not accept its notice of approval for Ashford because of insufficient information. Uncertainty regarding Ashford's approval status continued for years.

Then, on August 16, 2017, VA again emailed Ashford students who were using the GI Bill to inform them that they could continue to receive benefits because Ashford had appealed the earlier determination. Ashford responded on its online portal by again accusing VA of providing misleading information to veterans regarding the certification of GI Bill benefits at the school.²⁹

In 2020, Ashford again sent a misleading email to its GI Bill students. On February 14, 2020, VA, acting as the California SAA, approved 71 programs at Ashford for GI Bill eligibility. In the same letter, VA determined that 20 programs of study at Ashford were not approved for GI Bill eligibility. As mentioned above, sixteen of the programs were education programs that do not meet licensure or certification requirements in California, and 19 of the programs were found not comparable to programs in public universities in California with recognized accepted standards.³⁰

Ashford sent an email on March 20, 2020, telling students that "*some... programs previously approved for VA education benefits are not currently eligible under the new California facility code.*"³¹ The email mentioned only 17 of the 20 programs and did not mention why the programs were not eligible for benefits or how Ashford planned to improve the programs. Instead, the email encouraged students to either change their primary payment option or switch to another program at Ashford that did have VA approval. In a second, similar email sent on March 31, 2020, Ashford included, "*If you do speak with a representative from VA who provides conflicting information, please let your VA Coordinator know as soon as possible and we will work with the VA directly.*"³² Ashford again seemed to convey to its students that they should distrust information that comes from VA, while withholding important details about their programs' status.

These communications are concerning as they characterize VA as a misleading party not to be trusted when it comes to information about education benefits. Ashford's emails may be misleading students into incurring debt they did not expect to take on when they enrolled, since Ashford is not forthcoming about its status with regard to VA education benefits. As you know, 38 USC § 3696 covers "enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation," and these efforts by Ashford to keep GI Bill students enrolled by misleading them about VA's actions falls within VA's and CSAAVE's jurisdiction under 38 USC § 3696.

²⁹ *Ashford's Fight to Maintain GI Bill Access Raises Questions about the Enforcement and the Adequacy of Statutory Requirements*, Veterans Education Success (Nov. 2017), <https://vetsedsuccess.org/report-ashfords-fight-to-maintain-gi-bill-access-raises-questions/>.

³⁰ *Supra* note 16.

³¹ Email on file at Veterans Education Success.

³² Email on file at Veterans Education Success.

E. Zovio is hiring hundreds of new recruiters during the COVID-19 crisis

On March 26, 2020, Zovio announced that it plans to hire more than 200 “enrollment advisors” in the next four months.³³ The announcement stated that “these services meet an especially critical need during this time of social distancing and self-quarantine.”³⁴ Since the school has recorded such poor student outcomes, it is a concern that Ashford is intending to capitalize on mass unemployment and ramp up recruitment while people are spending more time at home this year than they had planned. Ashford can potentially defraud and deceive countless other students.

II. Ashford and Zovio have given rise to additional concerns that deserve scrutiny

We urge CSAAVE and VA to undertake a risk-based review of Ashford beyond concerns that fall under 38 USC § 3696. Specifically, there are significant financial and academic concerns about whether Ashford should remain eligible to enroll GI Bill students.

A. Ashford has been accused of deception in its attempt to secure and maintain access to GI Bill benefits

In addition to providing misinformation to students in email notices, Ashford has also continually provided misinformation to VA and SAAs in attempts to keep receiving students’ GI Bill funds. Ashford’s behavior towards VA should alone trigger a serious risk-based review. It also, arguably, implicates CSAAVE’s and VA’s jurisdiction under 38 USC § 3696 for erroneous, deceptive, or misleading statements designed to keep GI Bill students enrolled. During Ashford’s fight to seek approval to remain eligible to receive GI Bill benefits (following its loss of approval from Iowa’s SAA in 2015), Ashford misled VA and several SAAs, and it failed to provide adequate information to the relevant parties.³⁵

First, Ashford misled the California SAA by providing inadequate information for approval. Since Ashford’s administrative headquarters is in San Diego, California, Ashford must seek approval from the California SAA. The application Ashford submitted in June 2016 was incomplete, lacking information regarding the suitability of the San Diego campus for educating students.³⁶ Despite frequent correspondence and in-person meetings with the California SAA, Ashford withdrew its application by the end of the month and did not refile a complete application.³⁷ Then, in 2018, Ashford again sought approval from the

³³ *Supra* note 2.

³⁴ *Id.*

³⁵ A full timeline and description of the relevant events can be found in the following report: *Ashford’s Fight to Maintain GI Bill Access Raises Questions about the Enforcement and the Adequacy of Statutory Requirements*, Veterans Education Success (Nov. 2017), <https://vetsedsuccess.org/report-ashfords-fight-to-maintain-gi-bill-access-raises-questions/>.

³⁶ *Id.*

³⁷ *Id.*

California SAA, which determined twice that it could not act on Ashford's application because of Ashford's failure to comply with standards and requirements for approval and because of concerns about Ashford's advertising practices.³⁸

Second, Ashford misled VA and the SAAs by attempting to claim Arizona as the site of its main campus³⁹ through "legal maneuvering and political lobbying."⁴⁰ In June 2017, Ashford applied for approval from the Arizona SAA after opening a small office in Phoenix, "roughly the size of a Chipotle restaurant."⁴¹ Multiple checks on the facility by VA showed that the lights were off in the office and it was not being regularly staffed.⁴² A small, unused office space does not meet any recognized definition of a "main campus."

Ashford's communications with the Arizona State Board for Private Postsecondary Education also demonstrate "political maneuvering" meant to deceive the SAAs and VA about where Ashford's main campus is. The state board's guidelines call for a 90-day administrative review and a 90-day substantive review of license applications. Nevertheless, the board approved Ashford's license in just three weeks. The board held a special conference call to discuss only the Ashford license, and during that meeting the board stated that it planned to hold California responsible for any serious problems that might arise with the school, as California was still Ashford's "home state." One official said:

"To us, that basically means that student complaints will be referred to California unless it's an Arizona resident. If, by unfortunate circumstance, the institution would close, we would not be the one responsible for taking the student educational records."⁴³

Arizona was willing to license the school, but only because the state of California would retain responsibility as the site of Ashford's main campus. This shows that even Arizona doubted the validity of Ashford's claims that California was no longer its main campus.

³⁸ Letter to Stephanie Cowser, AVP Financial Aid Policy and Compliance, Ashford University, from Shane Ferrebee, Senior Education Specialist, California State Approving Agency for Veterans Education (Feb. 21, 2018), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5a8e2580419202db3237db9b/1519265152485/CA+SAA+Denial+Ashford.21Feb2018.pdf>; Letter to Stephanie Cowser, AVP Financial Aid Policy and Compliance, Ashford University, from Shane Ferrebee, Senior Education Specialist, California State Approving Agency for Veterans Education (Dec. 14, 2018), https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5c34e8c61ae6cfc3bbde242/1546971338376/12_2018+CSAAVE+rejection.pdf.

³⁹ The Department of Education defines a main campus as the primary entity holding the program participation agreement. Ashford's is the San Diego location. The Department of Veterans Affairs (38 CFR 21.4266) defines a main campus as the location where the primary teaching facilities of an educational institution are located, or, if unclear, the location of the primary office of the CEO. Ashford is primarily an online school, and its CEO is located at the headquarters in San Diego. *Supra* note 29.

⁴⁰ Michael Vasquez, *Inside the Scramble to Save Ashford U.*, *The Chronicle of Higher Education* (Nov. 10, 2017), <https://vetsedsuccess.org/wp-content/uploads/2018/11/inside-scramble-to-save-ashford-university-for-profit-school-scam.pdf>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Supra* note 40.

Following a news report⁴⁴ that exposed Ashford and the Arizona SAA's misleading claims to VA about its main campus and the "campus" in Arizona, in August 2017, VA informed the Arizona SAA that it could not accept its approval of Ashford. Ashford was asked to provide additional information, including whether the Phoenix location offered a course of education, whether it contained adequate resources, whether a certifying official was onsite, and whether the Phoenix location met the definition of a main campus.⁴⁵ The director of the Arizona SAA allowed Bridgepoint's top lobbyist to rewrite Arizona's response to VA.⁴⁶ Ashford again failed to provide adequate information in the approval process, and VA ruled that Ashford's definition of a main campus did not follow VA regulation.⁴⁷

Ashford repeatedly failed to act in good faith during its attempt to retain GI Bill eligibility. Ashford has withheld information from VA and SAAs, and Ashford has attempted to circumvent seeking approval in California, the state of Ashford's main campus. This deceptive behavior should be considered by CSAAVE and VA in its review of Ashford.

B. Ashford's accreditor has questioned the school's student outcomes

Ashford is accredited by the Western Association of Schools and Colleges (WASC). In July 2019, the WASC Senior College and University Commission (WSCUC) issued a Formal Notice of Concern to Ashford in response to WSCUC's Accreditation Visit earlier that year.⁴⁸ This notice reflected "longstanding concerns regarding Ashford University's student persistence and completion rates and performance on other student metrics."⁴⁹ WSCUC told Ashford it is in danger of being out of compliance with its terms if it does not make significant improvements in the near future.⁵⁰

Only 25% of full-time, first-time undergraduates return to Ashford University after their first year at the school. Among full-time and part-time students, and including transfers, only 25% of students graduate within eight years of entering Ashford University, while 44% of students withdraw and 30% transfer. Ten years after entering Ashford University, the median earnings of students who had received federal financial aid is between \$20,300 and \$53,700 with median total debt between \$27,308 and \$48,125.⁵¹

⁴⁴ *Id.*

⁴⁵ Letter to Leanna DeKing, Program Director, Arizona State Approving Agency, from Suzanne Swafford, Education Liaison Representative, Department of Veterans Affairs (Aug. 3, 2017), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59a0b98dccc5c5e77ddfe027/1503705486484/AZ+SAA+Ashford+%26+VA+response.Aug2017.pdf>.

⁴⁶ *Supra* note 40.

⁴⁷ *Id.*

⁴⁸ Commission Action Letter, Accreditation Visit, to Craig Swenson, President, Ashford University, from Jamieenne S. Studley, President, WSCUC (Jul. 12, 2019), <https://www.wscuc.org/institutions/ashford-university>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ All of this data is provided by the US Department of Education (July 23, 2020), <https://collegescorecard.ed.gov/school/?154022-Ashford-University>.

These outcomes shed light on the likelihood that promises made in the enrollment process are deceptive.

C. Ashford's attempted conversion into a non-profit institution has created uncertainty for students

Ashford's financial stability and accreditation status have been uncertain in the last year, as a result of Zovio's plan to convert Ashford into a non-profit institution. WSCUC initially approved Zovio's plan to convert Ashford into a nonprofit university, subject to certain conditions.⁵² However, ED required Zovio to post a \$103 million letter of credit in order to proceed with the conversion.⁵³ Zovio only "had \$104.6 million in cash at the end of its most recent financial quarter," so Zovio pursued the option of selling Ashford to another university instead.⁵⁴ Upon hearing of ED's letter of credit decision, WSCUC sought new information from Ashford and informed the school that it would have to approve any transaction that would change ownership of Ashford.⁵⁵

In January 2020, Zovio stopped pursuing a sale and moved forward with the attempted non-profit conversion.⁵⁶ Zovio then decided that, instead of merging with AU NFP (the new non-profit entity that would run the school), it would transfer Ashford to AU NFP. As a result, ED dropped the letter of credit requirement.⁵⁷ Even still, uncertainty remains with regard to the conversion. Ashford had hoped the conversion would be complete by June 2020, and it is still ongoing.⁵⁸ In addition, it is not yet clear how Zovio will separate itself from AU NFP. ED has rejected a past conversion when the for-profit and non-profit entities were too intertwined and the school was still operating primarily for the benefit of shareholders.⁵⁹

⁵² Structural Change Commission Action Letter, Change of Control and Legal Status, to Craig Swenson, President, Ashford University, from Jamiene S. Studley, President, WSCUC (Jul. 12, 2019), <https://www.wscuc.org/institutions/ashford-university>.

⁵³ Hallie Busta, *Zovio: \$103M Letter of Credit Required to Spin Off Ashford U*, Education Dive (Oct. 8, 2019), <https://www.educationdive.com/news/zovio-103m-letter-of-credit-required-to-spin-off-ashford-u/564549/>.

⁵⁴ Mike Freeman, *Owner of San Diego's Ashford University Explores Sale to Another Higher Education Institution*, San Diego Union-Tribune (Oct. 8, 2019), <https://www.sandiegouniontribune.com/business/technology/story/2019-10-08/owner-of-san-diegos-ashford-university-explores-sale-to-another-higher-education-institution>.

⁵⁵ Lindsay McKenzie, *The Next Purdue-Kaplan Deal?*, Inside Higher Ed (Oct. 9, 2019), <https://www.insidehighered.com/digital-learning/article/2019/10/09/ashford-university-could-be-sold-nonprofit-university>.

⁵⁶ Mike Freeman, *Ashford University is No Longer For Sale, Preferring Instead Conversion Into a Not-For-Profit College*, San Diego Union-Tribune (Jan. 8, 2020), <https://www.sandiegouniontribune.com/business/technology/story/2020-01-08/ashford-university-is-no-longer-for-sale-preferring-instead-conversion-into-a-not-for-profit-college>.

⁵⁷ Hallie Busta, *Ed Dept Drops \$103M Letter of Credit for Ashford U Spinoff*, Education Dive (Jul. 8, 2020), <https://www.educationdive.com/news/ed-dept-drops-103m-letter-of-credit-for-ashford-u-spinoff/581264/>.

⁵⁸ *Id.*

⁵⁹ Letter to Brian Mueller, President, Grand Canyon University, from Michael J. Frola, Director, Multi-Regional and Foreign Schools Participation Division, Department of Education (Nov. 6, 2019), <https://www.documentcloud.org/documents/6548639-GCUDecision.html>.

Moreover, the school's conversion has implications for its accreditation and financial standing. The accreditor still maintains conditions that Ashford must meet, and accreditation is not certain. We urge CSAAVE and VA to communicate with the accreditor to learn of its concerns and conditions for Ashford. We also urge VA and CSAAVE to assess the school's financial stability.

D. Ashford employs VA employees as adjunct professors in violation of federal law

As 38 USC § 3683(c) states, "A State approving agency shall not approve any course offered by an educational institution operated for profit... if it finds that any officer or employee of the Department [of Veterans Affairs] or the State approving agency owns an interest in, or receives any wage, salary, dividend, profit, or gift from, such institution."⁶⁰

As of April 4, 2018, nine VA employees were listed by Ashford as adjunct faculty.⁶¹ Under 38 USC § 3683(c), the SAA may not approve Ashford, given this conflict of interest, absent evidence that they do not receive any wages or other compensation in exchange for their teaching, or absent a waiver by VA. Currently, there is no indication that either of these exceptions apply to Ashford's VA employees.

III. Conclusion

Ashford University and Zovio are likely engaged in erroneous, deceptive, or misleading advertising, sales, or enrollment practices, in violation of 38 USC § 3696. A number of government agencies have already determined that Ashford and Zovio did not keep promises to students and that students were entitled to financial compensation as a result. Students and whistleblowers have alleged that Ashford provides a variety of inaccurate information during the enrollment process, including about the price of the school and the performance of students. One whistleblower who was in charge of Ashford's compliance documented "a voluminous record of compliance infractions" involving "misrepresentations" by enrollment advisors.⁶² Most importantly, Ashford's own internal audits document that its admissions counselors engage in tens of thousands of misrepresentations each year, and that no policy is in place to ensure that Ashford corrects misrepresentations. Additionally, Ashford and Zovio have sent out misleading communications to students, VA, and SAAs over the last few years. Taken all together, it is likely that Ashford and Zovio are engaging in erroneous, deceptive, or misleading practices.

In addition, other concerns, such as accreditation and financial instability, put students at risk. We respectfully request that VA and CSAAVE undertake a risk-based

⁶⁰ 38 USC § 3683, <https://www.law.cornell.edu/uscode/text/38/3683>.

⁶¹ Response to Public Records Act Request, to Walter Ochinko, Research Director, Veterans Education Success, from John Ruocco, Senior Staff Counsel, California Department of Veterans Affairs (Apr. 4, 2018), <https://vetsedsuccess.org/wp-content/uploads/2019/01/calvet-foia-ashford.pdf>.

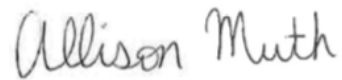
⁶² Interview notes on file at Veterans Education Success.

review of Ashford. You may contact Aniela Szymanski at (702) 234-5956 or aniela@vetsedsuccess.org with any questions.

Respectfully Submitted,
VETERANS EDUCATION SUCCESS



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