

November 17, 2022

U.S. Department of Veterans Affairs
Veterans Benefits Administration
Education Service
810 Vermont Avenue NW
Washington, DC 20420
Via electronic submission to EDUSTAENG.VBAVACO@va.gov

Re: Advisory Committee on Education Meeting November 29-30, 2022

Dear Members of the Advisory Committee,

Veterans Education Success is a nonprofit research, policy, and student veteran advocacy organization. We work on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill® and other federal postsecondary education programs.

Pursuant to the notice published in the Federal Register, we offer the suggestions as follows for your consideration as you review policies impacting higher education at the U.S. Department of Veterans Affairs (VA).¹

VA Should Resolve Issues Associated with Its Changes to the 85/15 Rule

The enactment of Congress' "Ensuring the Best Schools for Veterans Act of 2022" on August 26th provided significant 85/15 compliance relief to institutions where student veterans constitute fewer than 35% of total enrollments. But schools that do not qualify for the 35% waiver could face additional challenges under proposed regulations published by VA in the October 12, 2022 *Federal Register*.²

Specifically, the proposed regulations would require institutions that do not qualify for the 35% waiver to count non-veteran students receiving any institutional aid as "supported students" and include them, along with veterans and Title 10 participants, on the 85% side of the 85/15 ratio. While the number of institutions affected by this proposal will be small, the impact of the proposed rule could be quite severe for them. VA has solicited comments on the proposal and must ensure that its final rule will accommodate reasonable institutional aid practices and that veterans do not lose access to quality programs as an unintended consequence of too-broad a definition of "supported student."

¹ Federal Register, "Veterans' Advisory Committee on Education, Notice of Meeting", October 14, 2022, <https://www.federalregister.gov/documents/2022/10/14/2022-22358/veterans-advisory-committee-on-education-notice-of-meeting>.

² Federal Register, "85/15 Rule Calculations, Waiver Criteria, and Reports", October 12, 2022, <https://www.federalregister.gov/documents/2022/10/12/2022-22107/8515-rule-calculations-waiver-criteria-and-reports>.

The challenging reaction to VA's proposed rule was largely due to VA's failure to engage stakeholders in advance of the release. It would have been more effective for the Department to first provide open forums and discussion on the underlying challenges that resulted in the formulation of this proposed rule. We encourage the Department to recognize this issue mainly as a communication challenge, and to apply these lessons on future policy changes moving forward.

VA Should Clarify and Modernize Approval Criteria for GI Bill Programs

Veterans actively rely on VA's acceptance of programs for benefits eligibility as a "stamp of approval" when selecting their academic future. Veterans place a premium on VA's implicit endorsement of schools through VA's approval of those programs. Veterans are often angry that VA put its stamp of approval on a school when they discover, through personal experience, their school is low-quality or fraudulent.

Unfortunately, there are too many programs like ITT Tech, Corinthian Colleges, and Retail Ready harming veterans — programs that should never have been approved at all. To date, there have been numerous recent actions for fraud by the U.S. Department of Justice against colleges receiving GI Bill benefits, and yet many of these schools continue to receive GI Bill resources.³

We believe there should be more robust standards in place before a program is approved. Currently, the initial approval requirements are weak and ambiguous. VA can take steps to remedy the problem. While only Congress can strengthen the program approval provisions in 38 USC § 3672 and 3675, VA has the authority to clarify the currently undefined terms in 38 USC § 3676 (approval of nonaccredited courses). We urge VA to clarify some of these terms through regulation, including:

- *Quality.* The definition of "quality" in (c)(1) should incorporate clear student outcome metrics that the U.S. Department of Education (ED) already requires schools to report, such as student graduation, debt, default, and licensure pass rates; the percent of tuition dedicated to instruction; and graduates' earnings after leaving school. If the majority of a school's graduates do not earn more than a high school graduate, the school did not provide sufficient return on investment;⁴

³ See Department of Justice Press Release, *Barber College Owner Pleads Guilty to Wire Fraud Scheme*, May 20, 2021, <https://www.justice.gov/usao-sdms/pr/jackson-man-pleads-guilty-wire-fraud-scheme-designed-fraudulently-obtain-gi-bill-funds>; Department of Justice Press Release, *Owner of Dog Training School Sentenced for Defrauding V.A. of over \$1.5 Million in GI Bill Benefits*, April 30, 2021, <https://www.justice.gov/usao-wdtx/pr/owner-dog-training-school-sentenced-defrauding-va-over-15-million-gi-bill-benefits>; Department of Justice Press Release, *For-Profit Trade School Owner Found of Defrauding VA, Student Veterans*, April 15, 2020, <https://www.justice.gov/usao-ndtx/pr/profit-trade-school-owner-found-guilty-defrauding-va-student-veterans>.

⁴ See Veterans Education Success, *Should College Spend the GI Bill on Veterans' Education or Late Night TV Ads?* April 2019, <https://vetsedsuccess.org/should-colleges-spend-the-gi-bill-on-veterans-education-or-late-night-tv-ads-and-which-colleges-offer-the-best-instructional-bang-for-the-gi-bill-buck/>.

- *Teacher Qualifications.* The definition of teacher qualifications in (c)(4) should be clarified to ensure that programs employ teachers who have the appropriate advanced degree in the area they are teaching (such as a law degree if teaching law or a PhD or MA if teaching the humanities). Teachers of certificate programs should have relevant field experience and licensure. Teachers in licensed occupations (such as nursing) must have that license and experience;
- *Financially Sound.* The definition of “financially sound” in (c)(9) should be defined in reference to ED regulations on financial stability;
- *Deceptive Advertising.* The ban on deceptive advertising in (c)(10) should be clarified to prohibit the participation of any school that has faced legal or regulatory concerns over its advertising in the prior 5 years; and
- *Good Character.* The definition of “good character” in (c)(12) should be clarified to ban administrators and teachers who have faced legal or regulatory action or any action from a licensing board.

These requirements could be implemented without burdening the SAAs by simply requiring schools to report, and attest, to SAAs that they meet these metrics and standards, with some risk-based reviews and sampling to verify compliance. Overall, the current approval process must be strengthened, and the approval authority of VA and SAAs should be clarified to adequately protect GI Bill beneficiaries.⁵

Implementation of the *Protect the GI Bill Act*

We urge the Committee to ensure VA carefully implements the *Protect the GI Bill Act* in the [*Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*](#). There are several notable areas in which VA’s implementation is insufficient. In particular, we draw the Committee’s attention to the following key requirements:

- *Stop Deceptive Recruiting.* The law strengthens the existing ban on deceptive college recruiting and imposes a strict timeline for VA to act against the school. It also requires VA to assess whether potential violators have repudiated deceptive practices, taken steps to remove pressure on recruiters, and secured a third-party auditor. Moreover, the law requires VA’s action to be strong enough to send a deterrent message. Finally, the law empowers SAAs to investigate and make preliminary findings of violations and to automatically suspend repeat offenders and disapprove third-time offenders. However, law enforcement continues to report deceptive practices at schools approved by VA. VA seems not to be active

⁵ See Walter Ochinko, *VA and SAA Approval and Disapproval Authority Should Be Clarified*, Veterans Education Success (Sept. 2019), available at: <https://vetsedsuccess.org/va-and-saa-approval-and-disapproval-authority-should-be-clarified/>.

in rooting out and shutting down deceptive practices. We urge the Committee to emphasize to VA the importance of fully embracing and implementing this law.

- *Deceptive Lead Generator Websites and Contract Call Centers.* Sections 1018 and 1020 of the law specifically ban colleges that employ third-party contractors (such as deceptive lead generator websites and third-party call centers) that engage in substantial misrepresentations. VA should communicate to schools their liability for their use of deceptive third-party call centers and lead generator websites. We urge the Committee to press VA to clarify to schools their liability for deceptive third-party contractors.
- *Restore Education Benefits for Military-Connected Students at Closed or Disapproved Schools.* The law reinstates all VA education benefits for students whose school has closed or whose program has been disapproved, as long as they were enrolled 120 days before closure and didn't transfer more than 12 credits to a comparable program or graduate. Both advocates and Congressional staff have brought a problem to VA's attention: The current [VA Benefits Restoration page](#) indicates students must transfer to a new school as a prerequisite for applying for restoration of benefits. This is unsupported in the statute and recklessly incentivizes students to make hasty educational decisions.⁶ The VA page also is not user-friendly as it might confuse students.
- *Ensure Informed School Choice.* The law requires schools to honor deployments and provide military-connected students a point of contact and clear information about key facts about the program, including cost, graduation and job placement rates, etc. It also stops same-day recruiting and more than three unsolicited recruiting attempts. The Committee may need to work with VBA on methods VBA can use to ensure schools are complying with this requirement.

Improve Distance Education Requirements

To continue academic and programmatic delivery during nationwide shutdowns due to COVID, many colleges elected to move their classes to virtual or hybrid formats. This change necessitates stronger rules about quality in online education to ensure student veterans, and taxpayers, get an appropriate return on their investment.

⁶ [38 USC 3699](#)(a) states "Closure or Disapproval.—Any payment of educational assistance described in subsection (b) shall not—(1) be charged against any entitlement to educational assistance of the individual concerned; or (2) be counted against the aggregate period for which [section 3695 of this title](#) limits the receipt of educational assistance by such individual." In response to VA's denying school restoration to any veteran who had transferred any credits to a new program, Section 1021 of [Public Law 116-315](#) specifies that veterans are eligible for restoration if they have transferred fewer than 12 credits: ""(2)(A) An individual described in subparagraph (B) who transfers fewer than 12 credits from a program of education that is closed or disapproved as described in subsection (b)(1) shall be deemed to be an individual who did not receive such credits, as described in subsection (b)(2), except that the period for which such individual's entitlement is not charged shall be the entire period of the individual's enrollment in the program of education. In carrying out this subparagraph, the Secretary, in consultation with the Secretary of Education, shall establish procedures to determine whether the individual transferred credits to a comparable course or program of education;" a person who has not transferred credits is eligible to apply for restoration, as they meet the statutory standard as someone "who transfers fewer than 12 credits."

We've received regular complaints from student veterans about the quality of education they received during the pandemic, noting educational caliber in an online format has dropped significantly. Students have shared the need to withdraw from classes because they were unhappy with costly programs in which instruction consisted of watching YouTube or other videos. We encourage VA to develop rules to ensure quality in online learning, including the following:

- Mandate “regular and substantive interaction” between virtual faculty and students, as ED requires. ED’s requirement was [established](#) in response to predatory correspondence courses targeting veterans after the creation of the GI Bill in 1944.⁷ Regular interaction with subject matter experts is essential to ensure that student veterans are receiving a worthwhile education, and we encourage the Committee to recommend that VA implement a similar requirement and monitor colleges’ compliance to best promote success for student veterans.
- Mandate that “clock hours” used by virtual career and vocational training programs that offer hands-on training are live and not asynchronous (prerecorded) classes. Career and vocational training programs often use “clock hours” instead of credit hours to measure the students' amount of time in class. It is vital for programs that rely on hands-on experience to use live instruction and to ensure the students have completed the necessary hours of training. Additionally, further reporting and transparency are needed regarding these programs and how they are accomplishing their hands-on training in an online format.
- Increase oversight of for-profit online program management (OPM) companies. Many schools are partnering with OPMs to offer numerous services. Given the history of the 90/10 loophole and the incentive for low-quality for-profit colleges—and likely for-profit OPMs—to target student veterans for their GI Bill benefits, VA should conduct oversight of OPMs and their recruiting practices.
- Ensure students have access to adequate technology and connectivity to engage in online coursework, an especially important consideration for areas generally known to lack broadband access.

Fully Implement the *Career Ready Student Veterans Act*

Despite a 2016 statute, some programs that are approved for GI Bill benefits lack the proper programmatic accreditation or state recognition, such that they leave students ineligible for the job for which they trained. Congress enacted the *Career Ready Student*

⁷ David Whitman, *The Cautionary Tale of Correspondence Schools*, New America (Dec. 11, 2018), available at: <https://www.newamerica.org/education-policy/reports/cautionary-tale-correspondence-schools/>.

Veterans Act (Section 409 of [Public Law 114-315](#)) in 2016 to address this problem, but programs failing to meet these criteria are still being approved for the GI Bill.⁸

Fifty-nine degree programs identified as approved for the GI Bill in our 2015 research report, "[The GI Bill Pays for Degrees that Do Not Lead to a Job](#)," failed to prepare graduates for state licensure or certification. According to our follow up report, "[Despite a 2016 Statute, The GI Bill Still Pays for Degrees that Do Not Lead to a Job](#)," thirty-two of those programs were still enrolling GI Bill beneficiaries, despite Congress' passage of the 2016 statute.^{9, 10} We urge the Committee to prod VA to enforce the law.

Update the GI Bill Comparison Tool to Give Veterans an Informed College Choice

Countering the aggressive marketing by predatory colleges necessitates that VA provide warnings and dramatically improve the GI Bill Comparison Tool to preserve the integrity of this valuable educational benefit. The GI Bill Comparison Tool contains important information for both prospective students and researchers, but it omits key data while lacking user-friendliness. An improved Comparison Tool should enable the following:

- Side-by-side comparisons of schools.
- Searches for major or degree sought sorted by geographic area.
- Updated student outcome metrics from ED.
- A "Risk Index" to enable students to avoid risky schools.
- Improved "Caution Flags." There are many schools that lack caution flags but should have them. The Committee may need to urge VA to attend to caution flags.
- All student complaints received by VA, not just complaints closed in the past 2 years. During the Trump Administration, VBA started hiding complaints that are older than 2 years. This should be reversed. Veterans, Congressional staff, veterans advocates, and researchers all have a right to know about schools' long histories of veteran complaints.
- Restoration of data on the data dashboard for schools that closed, including ITT Tech, Corinthian, Education Corporation of America, and others.
- The option for students to make the narrative portion of their complaint public.

⁸ Section 409 of P.L. 114-315, the Jeff Miller and Richard Blumenthal Veterans Healthcare and Benefits Improvement Act of 2016, available at: <https://www.congress.gov/114/plaws/publ315/PLAW-114publ315.htm>.

⁹ Walter Ochinko, *The GI Bill Pays for Degrees that Do Not Lead to a Job*, Veterans Education Success (Sept. 2015), available at: <https://vetsedsuccess.org/the-gi-bill-pays-for-degrees-that-do-not-lead-to-job/>.

¹⁰ Walter Ochinko, *Despite a 2016 Statute, The GI Bill Still Pays for Degrees that Do Not Lead to a Job*, Veterans Education Success (April 2018), available at: <https://vetsedsuccess.org/ves-report-despite-a-2016-statute-the-gi-bill-still-paysfor-degrees-that-do-not-lead-to-a-job/>.

Automate the Existing Restoration of GI Bill Benefits

VA experienced a [low uptake](#) on applications for restoration of GI Bill benefits for veterans who attended schools that closed between January 1, 2015, and August 16, 2017—including ITT Tech and Corinthian, which had a high enrollment of GI Bill students. The long-term effects persist for many veterans who were defrauded by such low-quality schools and who did not earn a degree. These veterans are still struggling to meet financial obligations, remain out of work, and continue to be in need of training leading to viable long-term career options.

Given VBA's careful record-keeping to document student attendance at schools, and thus eligibility for benefits restoration (e.g., were enrolled within 120 days of the school's closure), VA should be proactive in restoring their GI Bill without requiring veterans to demonstrate eligibility via redundant measures.

Grant Equitable Relief for GI Bill “Retroactive Readjustments”

Veterans who seek our help when VA is pursuing collections for GI Bill overpayments largely fall into two categories: overpayments for enrollment changes, and “retroactive readjustments” of GI Bill benefits awarded to a veteran. A “retroactive readjustment” means that VA adjusts a veteran's GI Bill eligibility after the veteran has used the benefit.

We have helped beneficiaries whose GI Bill entitlement has been retroactively lowered, sometimes years after the individual has completed their degree. We have helped many veterans with retroactive readjustments in the tens of thousands of dollars, and some as high as \$100,000. If the veteran lied to VA, or misled VA in some way, then VA should require reimbursement. Absent such fraud, it is unfair to retroactively change a veteran's GI Bill eligibility after he or she has already finished the classes.

Retroactive adjustment of GI Bill benefits can also take place when a school moves from a higher-cost housing allowance “code” to a lower-cost one. A defect in the Long-Term Solution (LTS) system, which pays GI Bill benefits, is that, if a school moves, it will trigger an overpayment notice for any student who has ever attended that school, even if they attended it when it was in the higher-cost area. It is incumbent on VA employees to identify and manually correct errors that place an unfair burden on the veteran.

VA has the authority under 38 USC § 503 to grant equitable relief in these situations and should do so. We urge the Committee to work with VBA to enhance equitable relief, and we would be pleased to assist the Committee by sharing additional research and historical information.

Continue Productive Interagency Collaboration

We also request the Committee encourage VA's interagency cooperation with other Departments, as this collaboration is vital for the proper functioning of VA education programs. Other agencies report less than satisfactory participation by VBA on the Principles of Excellence Task Force. In addition, VA has an important role to play in delivering a complete set of data to ED for implementation of the recent closure of the 90-10 loophole in the budget reconciliation act (codified at [20 U.S.C. 1094\(a\)\(24\)](#)). We urge the Committee to encourage VA to undertake close communication with ED to make sure the law is implemented effectively.

Sincerely,

A handwritten signature in blue ink that reads "Will Hubbard". The signature is written in a cursive, flowing style.

William Hubbard
Vice President of Veterans & Military Policy