



June 14, 2023

Joseph L. Garcia, Executive Director  
Education Service  
Veterans Benefits Administration  
*Via email*

Re: School closings and GI Bill Restoration information

Dear Director Garcia,

As you requested in our meeting on May 24, I am sending this letter to more fully explain how we believe the Veterans Eligible to Transfer Schools (VETS) Credit Act<sup>1</sup> should be implemented to restore education benefits to student veterans after a school closes.

We were contacted by a Living Arts College student veteran who is interested in obtaining restoration of GI Bill benefits due to the school's sudden closure. Living Arts College appears to have [closed](#) as of December 13, 2022,<sup>2</sup> just two weeks prior to the enactment of the [VETS Credit Act](#).<sup>3</sup> As we understand from the Veterans Benefits Administration (VBA) webpage, if a school closed prior to the enactment of the VETS Credit Act, VBA is still requiring those student veterans to enroll in a new school before applying to have their benefits restored. We believe this interpretation is contrary to the law and harmful to student veterans. Further, the application form for restoration of benefits still includes incorrect information and should be revised so that veterans are not deterred from applying for restoration.

### **History and background of the VETS Credit Act**

Prior to the enactment of the VETS Credit Act in December 2022, pursuant to 38 USC §3699(c) student veterans whose schools closed and also met other eligibility requirements were entitled to a certificate of eligibility for their fully restored GI Bill benefits so long as the students transfer fewer than 12 credits to another school. VBA, however, imposed an additional requirement on student veterans to first enroll in a new school before receiving a determination that their education benefits would be restored. This interpretation of 38 USC §3699(c) was incorrect in our view and that of professional staff of the Veterans Affairs Committees. Such an interpretation pressured student veterans to rush to enroll in a new school. Many low-quality or predatory schools are eager to recruit students who are unsure what to do when their school closes suddenly, and that interpretation of the law would incentivize students to make hasty decisions.

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<sup>1</sup> Public Law No. 117-297

<sup>2</sup> Federal Student Aid, Closed School Weekly/Monthly Reports, January 2023, Section I <https://www2.ed.gov/offices/OSFAP/PEPS/closedschools.html> and see Closed School Search File

<sup>3</sup> We sent a [letter](#) to VBA Education Service and the SAA about the sudden closure of Living Arts College on January 10, 2023 and urged VBA to update its website with information about the VETS Credit Act so that student veterans would have the information they need about entitlement to restoration and not feel pressured into enrolling in another school. Letter available at: <https://vetsedsuccess.org/our-letter-to-va-regarding-living-arts-college-closure/>

In response to VBA's interpretation, the VETS Credit Act was passed to clarify that student veterans do not need to enroll in another school to obtain their certificate of eligibility for their education benefits. Rather, the Secretary is directed to issue a certificate of eligibility to individuals who certify that they have transferred fewer than 12 credits to another school and acknowledge that if they transfer 12 or more credits their certificate of eligibility will be rescinded.<sup>4</sup>

## **VBA's implementation of the VETS Credit Act**

Unfortunately, VBA has taken the view that the process in the VETS Credit Act applies only to those student veterans whose schools close after December 27, 2022, the date the VETS Credit Act became law. Specifically, the VBA [restoration webpage](#) states: "Public Law 117-297, Veterans Eligible to Transfer Schools (VETS) Credit Act, has also made it easier to apply for restoration of entitlement. For any covered closure or disapproval *after December 27, 2022*, you do not need to enroll in a new school prior to applying for restoration of benefits"<sup>5</sup> (emphasis added). I believe you confirmed in our meeting that, as the statement implies, for school closures occurring before December 27, 2022, VBA still requires student veterans to enroll in a new school before obtaining their certificate of eligibility.

## **Student veterans whose schools closed before December 27, 2022 are entitled to the certificate of eligibility for fully restored benefits without first having to enroll in a new school**

The VETS Credit Act amended 38 USC §3699(c) to add new subparagraph [§3699\(c\)\(2\)\(A\)\(ii\)](#), which requires issuance of the certificate of eligibility when individuals certify that they have transferred fewer than 12 credits and acknowledge that if they transfer 12 or more credits their certificate of eligibility will be rescinded. When Congress added the certification and acknowledgement provisions in subparagraph (c)(2)(A), it left untouched existing 38 USC §3699(c)(2)(C), which expressly states: "This **paragraph** shall apply with respect to a course or program of education closed or discontinued **before September 30, 2023**" (emphasis added). We believe VA staff are failing to heed this express language, perhaps because they are not noticing the original language of §3699(c)(2)(C). In short, because the VETS Credit Act amended §3699(c) and did not alter the date of application in §3699(c), the provisions of the VETS Credit Act apply with respect to a course or program of education **closed before September 30, 2023**. Therefore, VBA is disregarding the law when it requires student veterans whose schools closed prior to December 27, 2022, to first enroll in a new school to receive the certificate of eligibility.

It is suggested that VBA has concerns about an impermissible retroactive application of the Act for student veterans whose schools closed before the law was passed in December 2022. Those concerns are unfounded, not only because the law expressly extends to students meeting other eligibility parameters whose schools closed before September 30, 2023, but also because the VETS Credit Act is a change in process (i.e., the certificate of eligibility and student acknowledgment) – not a change in substantive rights. Under established case law, any such procedural change should be applied even in matters arising from conduct that occurred prior to

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<sup>4</sup> 38 U.S.C. §3699(c)(2)(A)(ii)

<sup>5</sup> US Department of Veterans Affairs, Veteran Benefits Administration, Education and Training webpage, Restoration of Benefits After School Closure or if a School is Disapproved for GI Bill Benefits <https://www.benefits.va.gov/GIBILL/Restoration.asp>

the statute being adopted. *See Landgraf v. USI Film*, 511 U.S. 244 (1994)<sup>6</sup> and *Legal Assistance For Vietnamese Asylum Seekers v. Dep't. of State*, 104 F.3d 1349 (D.C. Cir. 1997).<sup>7</sup> Prior to the enactment of the VETS Credit Act, these student veterans were entitled to full restoration if they transferred fewer than 12 credits, and after the VETS Credit Act, the student veterans are entitled to full restoration if they transfer fewer than 12 credits. The VETS Credit Act only made the process easier for them to obtain the certificate of eligibility. It did not change the date of application of §3699(c), which expressly states that it covers schools that close prior to September 30, 2023. Therefore, there can be no retroactivity concerns about honoring students' rights under §3699(c), with its new process for obtaining a certificate of eligibility.

Student veterans are entitled to the benefits of the new, easier process in effect. Imposing any other process or requirement is contrary to the law and patently unfair. Indeed, as the Supreme Court observed in *Langraf* about the principle of applying a new procedural rule to pending matters, “[T]he government should accord grace to private parties disadvantaged by an old rule when it adopts a new and more generous one.”<sup>8</sup>

### **The VA Form 22-0989 needs to be corrected**

VA [Form 22-0989](#) directs that claims for restoration can be submitted only after enrollment in another school.<sup>9</sup> (It does not even have exceptions for students whose schools closed after December 27, 2022.) While the GI Bill Restoration webpage provides instructions about how to complete the form if the student has not transferred to another school, the contradictory information is altogether too confusing and could deter student veterans from applying for restoration and moving forward with their education. Moreover, the form continues to incorrectly state that student veterans must apply for restoration on or before September 30, 2023, which you have previously acknowledged is incorrect because there is no requirement that student veterans apply for restoration by September 30, 2023.

We urge VBA to revise its form and to reconsider its interpretation of the VETS Credit Act not only so that it is consistent with the plain language of the law, but also to make the process for restoration easier and less confusing to student veterans.

Respectfully,

*Della M. Justice*

Della M. Justice  
Vice President for Legal Affairs

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<sup>6</sup> *Landgraf v. USI Film*, 511 U.S. 244, 275-79 (1994) (favorably discussing the history of cases concluding that new procedural rules adopted after the conduct giving rise to the matter are applied in pending cases because application of a procedural rule does not alter substantive rights)

<sup>7</sup> *Legal Assistance For Vietnamese Asylum Seekers v. Dep't. of State*, 104 F.3d 1349, 1351-52 (D.C. Cir. 1997) (citing *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (holding that applying a change in the process for handling visa applications “does not raise retroactivity concerns,” stating that the “challenged State Department action merely enacts a change in the procedure by which plaintiffs' visa applications are considered. This policy does not upset any substantive right.... The Supreme Court has stated that such procedural claims do not raise retroactivity concerns.”))

<sup>8</sup> *Id.* at 276, fn 30.

<sup>9</sup> Available at <https://www.vba.va.gov/pubs/forms/VBA-22-0989-ARE.pdf>.