



**STATEMENT FOR THE RECORD  
LEGISLATIVE PRIORITIES SUBMITTED TO THE  
SENATE AND HOUSE COMMITTEES ON VETERANS' AFFAIRS  
118TH CONGRESS, SECOND SESSION**

**March 13, 2024**

Chairmen Tester and Bost, Ranking Members Moran and Takano, and Members of the Committees on Veterans Affairs:

We thank you for the opportunity to share our legislative priorities for consideration in the second session of the 118th Congress. Veterans Education Success is a nonprofit organization that works 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.

This past year included several crucial successes, which can be credited to the strong bipartisan effort of your Committees. The strong focus on oversight of the U.S. Department of Veterans Affairs (VA) was particularly notable in light of VA's challenges in properly implementing risk-based surveys, and the abundance of "red tape" prohibiting veterans from accessing their earned benefits. We would also like to note several outstanding priorities that we hope to see completed by the 118th Congress, including the Student Veteran Benefit Restoration Act, the Guard and Reserve GI Bill Parity Act, and legislation enacting stronger standards of quality and value at schools seeking eligibility for GI Bill dollars.

Today, we offer our full testimony for consideration, outlining our top legislative priorities for this year. We propose the following topics and recommendations for consideration, which are discussed in detail in the pages that follow:

1. [Require minimum standards for GI Bill programs](#)
2. [Restore VA education benefits when there is evidence of fraud](#)
3. [Pass the Guard and Reserve parity act so every day of service counts](#)
4. [Mandate interagency data sharing as it relates to federal education benefits](#)
5. [Fix the definition of independent study at VBA without causing damaging repercussions](#)
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10. [Ensure orderly processes and restoration of benefits in cases of school closures](#)
11. [Support veterans utilizing the excess leave program while administratively on active duty](#)
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13. [Strengthen Veteran Readiness & Employment](#)
14. [Provide consumer education to prospective student veterans](#)
15. [Provide education benefits for General Discharges Under Honorable Conditions](#)

We look forward to working closely with you and your staff members on these issues, and we thank you for the invitation to provide our perspective on these pressing topics.

## **1. Require Minimum Standards for GI Bill Programs**

Veterans count on the GI Bill to facilitate a smooth transition from military service to a successful civilian career. Veterans actively rely on VA's program approval as a "stamp of approval" that identifies quality programs. Both veterans and taxpayers are entitled to a reasonable return on investment for the GI Bill.

Unfortunately, there are too many approved programs that fail to educate veterans effectively or prepare them for a lifetime of success. Worse yet, many of these school programs cause serious harm to the veterans they are meant to help, leaving veterans with worthless credits, burdensome debts, and wasted benefits. Despite providing poor results, many of these programs and schools continue to rake in millions of taxpayer dollars through the recruitment and exploitation of veterans and the abuse of their hard-earned GI Bill benefits.

Many veterans we serve commonly express anger that VA would approve schools known for producing poor outcomes or that are under a law enforcement cloud. Veterans should never have to wonder why obvious scams like FastTrain College and Retail Ready Career Center were approved in the first place.<sup>1,2</sup> Both of these schools proved to be a significant waste of taxpayer money, even before the FBI stepped in. As recently as this past year, the largest case of GI Bill fraud exposed the California Technical Academy, a scheme that involved over \$100 million in fraud.<sup>3,4</sup> Unfortunately, so many predatory actors continue to reap the benefits veterans earned.<sup>5</sup>

The GI Bill program approval process must be strengthened to protect student veterans from low quality and fraudulent schools. The statutes governing program approval are seriously outdated, even referencing classes taught "by radio," and they continue to allow a low standard

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<sup>1</sup> Carli Teproff, *Now defunct for-profit college must pay the government \$20 million, a court rules*, Miami Herald (Feb. 21, 2017), <https://www.miamiherald.com/news/local/education/article134161714.html>.

<sup>2</sup> Department of Justice Press Release, *For-Profit Trade School Owner Charged with Defrauding VA, Student Veterans* (Nov. 23, 2020), <https://www.justice.gov/usao-ndtx/pr/profit-trade-school-owner-charged-defrauding-va-student-veterans>.

<sup>3</sup> Veterans Education Success, *Our Press Release: Largest Post 9/11 GI Bill Fraud Case Yields Guilty Pleas*, (Jun. 28, 2023), <https://vetsedsuccess.org/our-press-release-largest-post-9-11-gi-bill-fraud-case-yields-guilty-pleas/>

<sup>4</sup> Department of Justice, *Justice Department Announces Enforcement Action Involving Over \$100 Million in Losses to Department of Veterans Affairs*, (Sept. 16, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-enforcement-action-involving-over-100-million-losses-department>

<sup>5</sup> 38 U.S.C. § 3672 has almost no requirements. It also incorporates, by reference, the program approval requirements of Chapters 34 and 35, but those are also minimal effectual; they only forbid, for example, bartending and personality development courses and restrict "radio" courses, which indicates an out-of-date statutory framework. 38 U.S.C. § 3675 (approval of accredited courses) relies heavily on the school's accreditation, but some accreditors offer no meaningful quality control, such as ACICS, which accredited ITT Tech and Corinthian Colleges. § 3675(b) also requires that the school meet the criteria in paragraphs (1), (2), (3), (14), and (15) of 38 U.S.C. § 3676(c). While 38 U.S.C. § 3676 (approval of nonaccredited courses) has more restrictions, many are undefined, including no definition of "quality" in (c)(1); no definition of teacher "qualifications" in (c)(4); no definition of "financially sound" in (c)(9) (which could easily be defined by reference to U.S. Department of Education standards); an inadequate ban on deceptive advertising in (c)(10) (which should be clarified to ban any school that has faced legal or regulatory concerns over its advertising in the prior 5 years); and no definition of "good character" in (c)(12) (which should be clarified to ban administrators and teachers who have faced legal or regulatory action or any action by a licensing board).

of entry.<sup>6</sup> It is time to update the statutes with minimum quality standards, so that veterans can count on the VA “stamp of approval” as the level of quality they – and taxpayers – expect.

While the *Veterans Auto and Education Improvement Act of 2022*, codified as 38 U.S.C. § 3672A, creates a uniform application with some improvements to the approval standards, we urge the Committees to consider the following commonsense improvements to the Act:

- Expand the definition of adverse government action in 38 U.S.C. § 3672A(b)(1)(B) to all types of fraud, not just those relating to education quality that result in a fine of 5 percent of Title IV (a rarity). We believe Congress does not want a school or CEO that engaged in any other type of fraud – such as stealing federal student aid from Title IV, as Argosy University was accused of doing, or robbing a bank – to be in charge of GI Bill funds, yet that is what the statute currently allows.
- Extend to all education programs the requirements for minimum faculty credentials in § 3672A.
- Require schools to have adequate administrative capability to administer veterans benefits.<sup>7</sup>
- Require screening of a school’s financial stability before its approval to avoid sudden school closures. VA and SAAs appear to recognize in the risk-based survey SOP that they are not receiving sufficient financial records as part of the program approval process for unaccredited institutions.<sup>8 9</sup>
- Ensure that programs are not overcharging VA and that VA tuition funds are spent on veterans’ education.
- Require a demonstrated track record of minimum student outcomes for a school to maintain Title 38 eligibility.
- Ensure school recruiters have the fiduciary responsibility to tell the truth.
- In the case of online classes, require actual teaching, not pre-recorded classes. Many veterans tell us their online education consists of nothing more than watching YouTube videos, with no instructor engagement. YouTube videos are an inadequate substitute for regular and substantive interactions with qualified faculty and should not be paid for with

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<sup>6</sup> 38 U.S.C. § 3523(c).

<sup>7</sup> Currently, there is no requirement in Title 38 that schools devote the necessary resources to competent administration of VA programs. Congress should mandate that institutions demonstrate to the Secretary that they are capable of adequately administering the programs and that they have committed adequate administrative resources. It should also require that schools pledge to fully cover the tuition and housing costs of VA-supported students if the school suddenly loses eligibility due to institutional error, including paperwork non-compliance. Committee members may recall the problems at Howard University, when 52 VA-supported students enrolled in 14 programs at Howard suddenly discovered their programs were not properly approved for GI Bill and VR&E. The DC State Approving Agency (SAA) said the issue boiled down to failure by Howard to submit the proper paperwork. The programs affected included Howard’s medical school, law school, and Master in Social Work program. It took eight months to get the approvals cleared up. During this time, students experienced immense uncertainty and undue anxiety. They faced the possibility of having to withdraw from school, pay out-of-pocket to cover housing and living costs, or seek loans from the school and external sources, and they experienced significant stress due to the uncertainty of the situation. This scenario highlighted the challenge associated with Title 38 benefits and the relationship between VA, the SAA, the institution, and the student. Unfortunately, we do not believe this to be an issue isolated to one school. In some cases, school certifying officials (SCOs) are expected to administer benefits for well over VA’s recommended ratio of support staff to students, 1 to 200. Even with this ratio, the duties of SCOs often go well beyond the responsibilities of certifying benefits, making the challenge increasingly difficult to handle.

<sup>8</sup> Veterans Benefits Administration, Office of Education Service - Oversight and Accountability Division, *Standard Operating Procedure, Risk Based Surveys* (Jan. 2, 2024).

<sup>9</sup> *Id.* In the Standard Operating Procedure, VBA includes material discussions regarding the process for requesting more documentation from unaccredited schools in program approval.

GI Bill dollars. The Committees should require “regular and substantive interaction” between virtual faculty and students, like that required by the Department of Education (ED).<sup>10</sup> Regular interaction with subject matter experts is essential to ensuring student veterans are receiving a worthwhile education.<sup>11</sup>

Complaints from student veterans attending GI-Bill approved programs continue to underscore the fact that subpar programs are failing to deliver:

- Veteran DT: “I graduated from DeVry after 5 years, and in all that time, I never had a real-time conversation or interaction with a single teacher, not in a group or one-on-one. The way the courses were taught was totally ineffective. We would be assigned a bunch of stuff to read, and we were required to provide just two comments on an online discussion board. Occasionally, we were given assignments to complete, but the teachers never gave us feedback on the assignments.”
- Veteran AY: “Much of the curriculum was so out-dated it might as well have been from the Stone Age. We were initially taught using the Unity and Visual Studios systems. Later, when the courses switched to modern programs ... they did nothing to teach us how to use them. ... I often was better off learning through tutoring, Google searches, and YouTube videos than I was following the actual instruction from its online courses. To make matters worse, the terminology and policies changed drastically from one class to another, creating confusion and hampering the learning experience. It was difficult to learn basic concepts and build upon them effectively.”
- Veteran AD: “I was accepted into the VRRAP program and set up to meet with Concorde Career Institute (Tampa FL) to enroll in their Dental Hygiene program... Instructors are incompetent and inexperienced, Labs and course material are not taught, and I have to pay for a book payment plan for books costing 750 dollars that I can get on Amazon for less than 250 dollars. .... I was on the president's list and dean's list for the terms I have completed, but I haven't even seen a dental dam or sterilized one piece of equipment. I am not learning any material and students are given answers to the quizzes and exams to keep them passing. Soon I have to let these students practice on me as part of the curriculum, but even our CPR AHA class was taught at a 22-student to 1-instructor ratio, so none of us are legally certified.”
- Veteran DD: “There are ... issues such as the school replaying free web seminars as their own training and using unqualified people to lead the classes. They literally go to Youtube, find the free course by someone else, then they play that during the ZOOM meeting and call it training. Everything they are doing could have been done by me for free... They have also attempted on two occasions to place me in classes before I ever had the pre-requisites to attend, they have me in classes that are not part of the program and do not serve a purpose except to show me in class...”

Lastly, we note that many schools are partnering with for-profit online program management (OPM) companies to offer numerous services, including delivery of academic instruction, even

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<sup>10</sup> David Whitman, *The Cautionary Tale of Correspondence Schools*, New America (Dec. 11, 2018), <https://www.newamerica.org/education-policy/reports/cautionary-tale-correspondence-schools/>.

<sup>11</sup> Veterans Education Success, *Congressional Testimony Submitted on the Topic of Congressional and Administration Priorities For the Next Congress*, Submitted to the Subcommittee on Economic Opportunity, Committee on Veterans Affairs, U.S. House of Representatives (Dec. 8, 2020), [https://vetsedsuccess.org/our-written-testimony-for-the-house-veterans-affairs-economic-opportunity-subcommittee-hearing-on-2021-legislative-priorities/#\\_ftn1](https://vetsedsuccess.org/our-written-testimony-for-the-house-veterans-affairs-economic-opportunity-subcommittee-hearing-on-2021-legislative-priorities/#_ftn1).

though reports expose poor outcomes for students.<sup>12</sup> We encourage the Committees to direct VA to conduct oversight of courses offered through OPM partnerships. Further, we encourage the Committees to pass legislation that would subject all such courses and their recruiting practices to more thorough approval and oversight requirements.

**Summary of Recommendations:**

- Strengthen the GI Bill program approval process to safeguard student veterans from ineffective and fraudulent schools, by updating outdated statutes with minimum quality standards.
- Extend requirements for minimum faculty credentials to all education programs, and mandate adequate administrative capability for schools administering veterans' benefits.
- Implement financial stability screening before approval to prevent sudden school closures and ensure responsible use of VA tuition funds.
- Require a demonstrated track record of meeting or exceeding defined student outcomes for Title 38 eligibility, require truthful recruiting practices, and prohibit overcharging VA.
- Address issues with online classes by requiring actual teaching, not pre-recorded sessions, and ensuring regular and substantive interaction between virtual faculty and students.

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<sup>12</sup> See, e.g., Lisa Bannon and Andrea Fuller, *USC Pushed a \$115,000 Online Degree. Graduates Got Low Salaries, Huge Debts*, Wall Street Journal (Nov. 9, 2021), <https://www.wsj.com/articles/usc-online-social-work-masters-11636435900>.

## **2. Restore VA Education Benefits When there is Evidence of Fraud**

Several years ago, the U.S. Department of Justice (DOJ) seized the bank accounts of the House of Prayer Christian Church – a purported “bible school” that we exposed and brought to VA’s attention, as veterans were being blatantly cheated out of their GI Bill and abused by an alleged cult leader.<sup>13, 14</sup>

In another example, the DOJ recouped more than \$150 million from Retail Ready Career Center and sent the owner, Jonathan Dean Davis, to jail for 19 years after he had swindled thousands of veterans, taking their GI Bill and their housing allowance but providing nothing of value in return.<sup>15</sup> But when the federal government recovered \$150 million, the veterans did not get their GI Bill benefits back.

Similarly, consider another example where others have been able to obtain financial relief but student veterans have not. Students with federal student loans from ITT Technical Institute have had their loans discharged due to the evidence of widespread fraud uncovered by the Department of Education (ED). Yet student veterans who used their GI Bill to attend ITT Technical Institute cannot get their GI Bill restored because the law currently only allows restoration for students enrolled at or near the time a school closes or loses program approval. It seems an absolute betrayal to student veterans that students have had their loans discharged, but veterans cannot get back their GI Bill benefits.

The idea that veterans are defrauded out of their hard-earned GI Bill is a blatant insult counter to Congress’ vision for the impact of the GI Bill. Student loans are forgiven if fraud is evident, but student veterans have no parity with regard to their VA education benefits. We call on Congress to pass H.R. 1767, the *Student Veteran Benefit Restoration Act* and S. 1309, the *Student Veterans Transparency and Protection Act of 2023*, to create parity with other students.

### **Summary of Recommendations:**

- Pass H.R. 1767, the Student Veteran Benefit Restoration Act.
- Pass S. 1309, the Student Veterans Transparency and Protection Act, for parity with traditional students.

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<sup>13</sup> *United States of America v. \$115,800.00 in U.S. Currency Funds*, available at <https://vetsedsuccess.org/us-attorney-action-against-house-of-prayer-bible-seminary-january-2023> .

<sup>14</sup> Veterans Education Success, *Our Letter to VA and Georgia SAA Regarding House of Prayer Christian Church* (Aug. 2020), <https://vetsedsuccess.org/letter-to-va-and-georgia-saa-regarding-house-of-prayer-christian-church/>.

<sup>15</sup> United States Attorney’s Office, Northern District of Texas Press Release, *For-Profit Trade School Sentenced to Nearly 20 Years for Defrauding VA, Student Veterans* (Sept. 22, 2021), <https://www.justice.gov/usao-ndtx/pr/profit-trade-school-sentenced-nearly-20-years-defrauding-va-student-veterans>.

### **3. Pass the Guard and Reserve Parity Act So Every Day of Service Counts**

We call on Congress to address a long overdue issue affecting the eligibility of reserve component members for the Post-9/11 GI Bill® by passing the *Guard and Reserve GI Bill Parity Act*. The current law mandates that Guard and Reserve Members must have served at least 90 cumulative or 30 continuous days on active duty to accrue "qualifying days," creating a disadvantage in accessing their deserved GI Bill educational benefits. Despite the obligation for reserve component members to "serve in uniform" and fulfill duty responsibilities for a minimum of 39 non-consecutive days each fiscal year, these periods of service do not contribute toward Post-9/11 GI Bill eligibility.

This discrepancy places reserve component members at a distinct disadvantage compared to their active component counterparts. While active duty members can receive Post-9/11 GI Bill credit for a training day, reservists currently cannot receive credit for the same service. The increased reliance on reserve capabilities has underscored the necessity for component interoperability. Unfortunately, the strides made in achieving interoperability have not been complemented by fair recognition and rewards for the skills and efforts required.

An Operational Assessment of Reserve Component Forces in Afghanistan, conducted by the Institute for Defense Analyses, revealed no discernible difference in performance between components in Operations Iraqi Freedom and Enduring Freedom.<sup>16</sup> The study emphasizes that reserve forces were fulfilling their assigned tasks without significant variations from their active duty counterparts. The shared burden and risk between both components highlight the importance of acknowledging the contributions of Guard and Reserve members.

To address this disparity, we strongly urge Congress to count all paid points days of Reserve and National Guard service members towards receiving the Post-9/11 GI Bill.<sup>17</sup> This encompasses days for training, active military service, inactive training, and general duty. This adjustment aims to ensure equitable treatment, recognizing the crucial contributions of reserve component members to military readiness. It is essential to promote fairness and acknowledge their vital role without compromising the integrity of the GI Bill system.

#### **Summary of Recommendations:**

- Pass the Guard and Reserve GI Bill Parity Act so that a day in uniform truly counts as such.

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<sup>16</sup> Joseph Adams, et al, Institute for Defense Analyses, *Sharing Burden and Risk in another Theater: An Operational Assessment of Reserve Component Forces in Afghanistan*, Paper P-8177 (Sep. 2018), <https://www.ida.org/research-and-publications/publications/all/s/sh/sharing-burden-and-risk-in-another-theater-an-operational-assessment-of-reserve-component-forces-in-afghanistan>.

<sup>17</sup> The term "paid points days" refers to days in which a service member receives credit in both retirement points as well as monetary compensation for that day of service. This is to differentiate between time served for merely for points, such as off-duty education, versus time served for points and pay, such as a regular duty day.

#### **4. Mandate Interagency Data Sharing As It Relates to Federal Education Benefits**

In 2015, our team embarked on a data-sharing project to seek a comprehensive understanding of the economic outcomes for enlisted veterans who use the Post-9/11 GI Bill. These critical education benefits represent a significant federal investment: Between 2009 and 2019, 2.7 million enlisted veterans were eligible for the Post-9/11 GI Bill, and the investment in participants reached nearly \$100 billion. Yet, despite the program's size and implications for broader discussions of college access and tuition-free college, there had been no definitive assessment of the program's economic outcomes. This is largely because the data has remained siloed in separate federal departments.

However, unprecedented interagency sharing of individual-level data has allowed the first in-depth assessment on the use and outcomes of the Post-9/11 GI Bill across all military branches, covering every enlisted service member who was eligible for the benefits and who separated from the military between September 1, 2009, and June 30, 2018, and was age 65 or younger as of December 31, 2019.

An interagency research team from VA's National Center for Veterans Analysis and Statistics (NCVAS), the U.S. Census Bureau, and the American Institutes for Research (operating as special-sworn-status employees under the control of the Census Bureau and abiding by the laws governing the handling of sensitive federal data) were able to combine data from VA, the Veterans Benefits Administration (VBA), the Department of Defense (DOD), Internal Revenue Service (IRS), U.S. Census Bureau, and National Student Clearinghouse (NSC) to explore the number and characteristics of veterans who used their GI Bill, the degrees that were obtained by those using the benefits, and their labor market outcomes.

The interagency research team was able to draw clear conclusions about student outcomes by accounting for sociodemographic data from VA and other agencies, as well as information about military rank, military occupation, service in hostile war zones, and academic preparation at enlistment by linking data from DOD.

Some of the key findings include:

- More than half (**54%**) of **eligible enlisted military veterans used** Post-9/11 GI Bill benefits to pay for their higher education between 2009 and 2019. That increases to 62% when counting veterans who transferred their GI Bill to their spouse or dependent and those who used the benefit outside of higher education, such as an apprenticeship. Additionally, more of these veterans may use the GI Bill at a later date, due to a provision in the Forever GI Bill which removed the 15-year delimiting window for veterans to use the benefit.
- Veterans' **college completion rate was double** that of other financially independent students nationally. Of those veterans who used the benefits after leaving the military, about 47 percent completed an associate, bachelor's, or graduate degree within six years. That rate is more than double the 23 percent 6-year associate or bachelor's degree completion rate of postsecondary students who, like veterans, are financially independent from their parents.
- **Female veterans** were **significantly more likely** than male veterans to use Post-9/11 GI Bill benefits to **enroll in higher education and to earn a degree**, but they **earned significantly less** in the labor market than male veterans with the same degree. However, the earnings gap by sex was smaller for veterans than for the general population.
- Veterans from **racial and ethnic groups** that have been historically underrepresented in higher education were more likely to use Post-9/11 GI Bill benefits to enroll in

postsecondary education but were **less likely to earn a degree** within six years than veterans overall. **Black veterans' earnings were significantly lower** than other veterans, and American Indian/Alaska Native earnings were also lower, but the earnings gaps for these racial subgroups were smaller for veterans than for the general population.

- The research showed a **clear association between veterans' Armed Forces Qualification Test (AFQT) scores** (representing academic preparation at time of enlistment) **and their use of GI Bill benefits, degree completion, and earnings**, with clear increases for each quintile of AFQT score.

This project demonstrates the type of information and insights that can be gleaned when agencies collaborate and share data. Based on the richness of the project findings, and the broad policy implications therein, we strongly advocate for legislative measures that promote continued data-sharing efforts to achieve these data on an annual basis. We propose a mandate for comprehensive data-sharing between the Commissioner for Education Statistics, Office of Federal Student Aid, Department of the Treasury (TREAS), DOD's Defense Manpower Data Center (DMDC), VA, VBA, IRS, Social Security Administration (SSA), and Census Bureau on veterans' outcomes and GI Bill expenditures. This collaborative effort would enable ongoing data-sharing to present a continued and holistic understanding of veterans' educational experiences and outcomes.

To enhance coordination across federal agencies, we recommend the establishment of an interagency task force focused on data collaboration efforts. This task force should be tasked with implementing a standard federal data dictionary associated with veterans, service members, and their families. It should define common data elements, following models such as the one proposed by the Bush Institute, and execute an annual crosswalk of Office of Postsecondary Education Identifiers (OPEID) and VA facility codes.<sup>18</sup> This standardized approach will streamline data collection and analysis, allowing for more effective collaboration and informed decision-making.

### **Summary of Recommendations:**

- Mandate comprehensive data-sharing between VA, DOD, ED, TREAS, IRS, SSA, and the Census Bureau, and enact a requirement for the VA to annually collaborate on GI Bill data with the Census Bureau, Department of Education, and National Student Clearinghouse.<sup>19</sup>
- Establish an interagency task force focused on data collaboration efforts, including the implementation of a standard federal data dictionary associated with veterans, service members, and their families to define common data elements as well as a crosswalk of OPEIDs and VA facility codes.

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<sup>18</sup> Kacie Kelly and Dr. Caroline Angel, George W. Bush Presidential Center, *Common Questions to Better Serve Our Vets* (Apr. 2020), <https://www.bushcenter.org/publications/common-questions-to-better-serve-our-vets>.

<sup>19</sup> The U.S. Department of Education is broadly prohibited by law from sending data out, however they would be able to accept data and run analyses to produce findings for publication.

## **5. Fix the Definition of Independent Study at VBA Without Causing Damaging Repercussions**

Late in 2023, we learned that VBA is planning to make a major change that would open the GI Bill to online programs that are unaccredited and/or do not lead to a degree or a certificate (non-college degrees) (see Appendix). The proposed change revises the definition of “independent study” and “distance education.” The effect of VA’s changes will remove online programs from the requirements of 38 U.S.C. § 3680A, which requires accreditation and that programs lead to a degree or certificate.

VBA’s proposed change will eliminate the only existing protection for student veterans from being subjected to aggressive recruiters and wasting their benefits on unaccredited online programs that do not lead to a degree. Further, State approving agencies’ (SAA) leadership has vociferously told VBA staff that this change will open the floodgates to low-quality online programs. For example, a program offering a monthly e-book on “the secrets to getting rich,” and resulting in no certificate or degree and no real learning, would become eligible to receive GI Bill benefits.

More importantly, Congress is the appropriate authority to define which programs are eligible for the GI Bill. The statute currently states that programs “pursued by radio” fall under the rubric of independent study and require accreditation and lead to a degree. This has historically been interpreted to include all modern online methods. VBA is proposing now to make a dramatic change in the status quo.

We strongly urge Congress to stop VBA from usurping Congress’ authority.

### **Summary of Recommendations:**

- Amend 38 U.S.C. § 3680A to make clear that the existing practice of requiring online programs to be accredited and lead to a degree should be maintained. This could be accomplished by updating the words “pursued by radio” in the statute to “internet or other electronic means.”
- Amend the statute to include provisions specifying the criteria for program approval, such as adherence to recognized educational standards, demonstration of meaningful student-instructor interaction, and alignment with the needs of employers.

## **6. Ensure Proper Implementation of Isakson-Roe’s Risk-Based Surveys of Colleges**

Under the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*, Section 1013, VA is required to implement a risk-based approach to identify schools that require additional scrutiny and potential corrections.<sup>20, 21</sup>

We continue to urge the Committees to ensure this law is implemented at VA, given the large number of schools that suddenly close each year – particularly low-quality schools that engage in illegal practices and/or are put on probation by their accreditors.

In our testimony last year, we raised concerns regarding the VBA Education Service's Standard Operating Procedure for Risk Based Surveys and Standard Operating Procedures for Targeted Risk Based Reviews (SOPs).<sup>22, 23</sup> We appreciate VBA's responsiveness to our feedback, and we commend them for taking steps to address the critiques.

Specifically, our concerns had highlighted the SOPs' confusion between the "scope" of a risk-based survey and triggering events under Section 1014 of Isakson-Roe, codified as 38 U.S.C. § 3673. This confusion resulted in the risk-based survey SOP failing to inform SAAs that, when they receive notice or become aware of the events in § 3673(e), they are required to complete a risk based survey within 60 days. We are pleased to acknowledge that following our outreach, VBA has taken some steps to align the SOP more closely with statutory requirements. We commend VBA for their commitment to improvement and responsiveness to stakeholder feedback.<sup>24</sup> Nevertheless, the SOP needs additional revisions to correctly address VA and SAA responsibilities.

We urge the Committees to ensure proper implementation of the risk-based methodology and to seek indications of the successful application of this new approach. In particular, SAAs and The American Legion conducted a very successful six-state pilot, and we recommend VA follow the model that was developed as a result.<sup>25</sup>

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<sup>20</sup> Public Law No: 116-315, *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* (Jan. 5, 2021), <https://www.congress.gov/bill/116th-congress/house-bill/7105>.

<sup>21</sup> Section 1013 of the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* required the Secretary of Veteran Affairs to work with State Approving Agencies to develop a comprehensive program to conduct risk-based surveys with an effective date of October 1, 2022.

<sup>22</sup> Veterans Education Success, *Statement for the Record: Legislative Priorities Submitted to the Senate and House Committees on Veterans Affairs*, Joint Committee on Veterans' Affairs Annual Legislative Hearing (Mar. 7, 2023), <https://vetsedsuccess.org/statement-for-the-record-legislative-priorities-submitted-to-the-senate-and-house-committees-on-veterans-affairs/>.

<sup>23</sup> In our 2023 annual legislative written testimony, our detailed concerns highlighted: 1. VBA appeared to have confused the “scope” of a risk-based survey, codified at 38 U.S.C. § 3673A(b)(2), with the triggering events, codified at 38 U.S.C. § 3673(e)(3), leading the SOP to incorrectly instruct SAAs to conduct risk-based surveys at an inappropriately high rate; 2. The SOP incorrectly instructed SAAs certain statutory triggers were merely “additional factors worth considering”; 3. The SOPs failed to embrace the statutorily required time limits for VA and SAAs to act, as codified at 38 U.S.C. § 3673(e)(1), and also failed to embrace Isakson-Roe’s methodology of assigning risk-based reviews to SAAs to complete, codified at 38 U.S.C. § 3673(e)(1).

<sup>24</sup> Veterans Benefits Administration, Office of Education Service - Oversight and Accountability Division, *Standard Operating Procedure, Risk Based Surveys* (Jan. 2, 2024).

<sup>25</sup> Nathan Arnold et al, *Lessons from a Risk-Based Oversight Model Designed to Protect Students and Taxpayers* (Jan. 2022), <https://educationcounsel.com/wp-content/uploads/2022/01/RiskBasedReviewReportFinal012822.pdf>.

We also urge two technical corrections to Isakson-Roe to ensure its proper execution.

**First**, VA and SAAs are not receiving some of the notifications of adverse actions against schools, listed in 38 U.S.C. § 3673(e)(3). In particular, the National Association of State Approving Agencies reports that SAAs get very little data about unaccredited schools. We urge the Committees to improve the statute in two ways:

- Require schools to self-report to VA and the relevant SAA(s) any adverse actions outlined in 38 U.S.C. § 3673(e)(3), by adding a new section (g) to 38 U.S.C. § 3679: *“Institutions shall disclose to the Secretary and the relevant State approving agency or agencies any action or event described in 38 U.S.C. § 3673(e)(3) within thirty days of the institution’s first knowledge of the action or investigation. Failure to provide such disclosures or any additional materials requested by the Secretary or a State approving agency may result in a withdrawal of the institution’s eligibility to receive VA education funds.”*
- Require VA to request from other agencies information about adverse actions outlined in 38 U.S.C. § 3673(e)(3), with language such as: *“(1) Every 90 days, the Secretary shall request from relevant agencies and departments, including the U.S. Department of Education, U.S. Department of Labor, U.S. Department of Defense, and U.S. Federal Trade Commission, information regarding any action or event described in 38 U.S.C. § 3673(e)(3) as well as any other adverse information about postsecondary institutions. (2) Every 90 days, each State approving agency shall request from relevant state departments and agencies, including the state higher education authorizing entity and state licensing boards, information regarding any action or event described in 38 U.S.C. § 3673(e)(3) as well as any other adverse information about postsecondary institutions.”*

We encourage Congress to pass H.R. 3981, the *Isakson-Roe Education Oversight Expansion Act*, to make these necessary changes bulleted above.

**Second**, VBA has reportedly still not yet established the fully functioning database required for risk-based surveys, codified at 38 U.S.C. § 3637A(c). Notably, the statute requires VBA to develop the database **“in partnership with the State approving agencies”** and that it *shall* be **“a searchable database.”** These requirements necessitate a database accessible to SAAs, not one that is exclusively available to VA employees. We recommend the Committees add to § 3637A(c) the words **“within 120 days”** to ensure VBA compliance in a timely fashion.

#### **Summary of Recommendations:**

- Pass H.R. 3981, the *Isakson-Roe Education Oversight Expansion Act*, to require schools to self-report to VA and the relevant SAA(s) any adverse actions outlined in 38 U.S.C. § 3673(e)(3).
- Mandate VA to request from other agencies information about adverse actions outlined in 38 U.S.C. § 3673(e)(3).
- Mandate VA act within 120 days to fulfill its prior statutory obligation to establish a fully functional and bidirectional database as required for risk-based reviews by the statute.

## **7. Improve the GI Bill Comparison Tool – and Oppose “Yelp”-Style Reviews**

We urge the Committees to improve VA’s GI Bill Comparison Tool. Veterans need and deserve a modern college search tool when they use the GI Bill Comparison Tool. We appreciate the Committees’ prior work to require the GI Bill Comparison tool include side-by-side comparisons of schools and to search by geographic area. We recommend the Committees strengthen the GI Bill Comparison Tool by requiring VA to:

- Enable searches by major or degree sought by geographic area. The Comparison Tool is decidedly not user-friendly or modern.
- Provide student outcome metrics from ED, especially graduates’ earnings (as reported by the IRS to ED) and the comparison of an institution’s tuition and graduation rates to the national medians for that type of school (e.g., 2 year vs. 4 year), debt levels, and default rates. This information is readily available at ED and could be accomplished simply by pulling data from ED’s College Navigator and College Scorecard.<sup>26, 27, 28</sup>
- Establish a “Risk Index” to enable veterans to be aware of the riskiest schools.
- Improve “Caution Flags” by posting these warnings in a timely manner so that prospective students have the information as soon as possible. Currently, VA fails to update and accurately maintain Caution Flags.
- Display student veteran complaints in a timely manner, as it can sometimes take several months, even after the complaint is closed, for complaint information to show up in the Comparison Tool.
- Show all student complaints received about a school on the Comparison Tool. In 2019, reportedly at the behest of for-profit college lobbyists, VBA adopted a policy to show only the complaints received in the most recent 24 months. This is not a veteran-centric policy and clearly benefits schools with a history of complaints. This is especially true in comparison to how the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) operate, with the goal of not limiting consumer information available to individuals. The Comparison Tool should show the full history of complaints. The history, volume, and nature of complaints is relevant information, and veterans should be allowed to decide for themselves whether a school’s history of complaints matters in their decision making. SAAs, accreditors, other federal agencies, and academic researchers also would benefit from knowing a school’s history of student complaints.
- Include whether the school responded to a complaint and whether the complaint was resolved to the satisfaction of the veteran, as is the practice of the [Better Business Bureau](#) and the [CFPB](#). It is important for student veterans to know whether a school failed to respond to complaints received through the Feedback Tool. Disclosing information about school response rates and student satisfaction with the schools’ responses adds context to complaints and helps students make informed choices.

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<sup>26</sup> 38 U.S.C. 3698 requires VA to maintain various metrics on the GI Bill Comparison tool, such as (i) its public, private nonprofit, or proprietary for-profit status; (ii) the accrediting agency’s name and contact details for student complaints; (iii) details on the State approving agency and its complaint contact information; (iv) participation in title IV programs under the Higher Education Act; (v) tuition and fees; (vi) median federal student loan debt upon program completion; (vii) cohort default rate; (viii) total enrollment, graduation rate, and retention rate; (ix) provision of technical, academic, and other support services; (x) policies on credit transfer from other institutions; (xi) administration of priority enrollment for student veterans; (xii) requirements for covered individuals under section 3679(e)(4); (xiii) affiliation with a religion and its denomination; (xiv) designation as a minority serving institution by the Secretary of Education or federal agency; and (xv) whether the institution is gender-specific.

<sup>27</sup> U.S. Department of Education, College Navigator, <https://nces.ed.gov/collegenavigator/>.

<sup>28</sup> U.S. Department of Education, College Scorecard, <https://collegescorecard.ed.gov/>.

- Maintain information about schools that close and/or lose GI Bill approval on the historical data section (“data download”) of the Comparison Tool for reference and research. For instance, student veterans who may be entitled to restoration of their GI Bill when a school closes or a program loses approval have difficulty locating information about their school when it disappears from WEAMS and the historical data section (“data download”) of the Comparison Tool.
- Allow student veterans who submit a complaint in the Feedback Tool to upload attachments and have the option to make the narrative portion of their complaint public on the Comparison Tool.
- Automate the ED/VA data-crosswalk as it is labor intensive for VA employees to update it manually and they fail to do so. This is a simple process of aligning VA’s facility codes with ED’s OPEID numbers for each school, but it is an essential alignment.

Separately, VA has previously considered inviting veterans to post “Yelp”-style star ratings and reviews about schools. However, such consumer rating reviews are susceptible to unfair and deceptive manipulation by businesses. The FTC is undertaking a rulemaking<sup>29</sup> to address the well-documented and persistent problem of paid positive reviews and fake reviews because “[d]eceptive and manipulated reviews and endorsements cheat consumers looking for real feedback on a product or service and undercut honest businesses.”<sup>30</sup> According to the FTC:

*“Research shows that many consumers rely on reviews when they’re shopping for a product or service, and that fake reviews drive sales and tend to be associated with low-quality products. The rapid growth of online marketplaces and platforms has made it easier than ever for some companies to create and use fake reviews or endorsements to make themselves look better or their competitors look worse.”<sup>31</sup>*

The FTC observed, **“It can be difficult for anyone—including consumers, competitors, platforms, and researchers—to distinguish real from fake, giving bad actors big incentives to break the law.”<sup>32</sup>**

It is not hard to imagine the worst predatory schools giving gift cards or other advantages to VA beneficiaries in exchange for posting positive reviews about the schools. Therefore, we strongly **urge the Committees to require VA to officially abandon its idea of “Yelp”-style reviews and heed the FTC’s guidance.** If, however, VA is determined to move forward with “Yelp”-style reviews, the Committees should forbid schools from paying veterans to post positive reviews, by enacting language that says:

*“An institution shall become ineligible to enroll eligible veterans or eligible beneficiaries in courses or programs if the institution, course, or program offers, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, gifts, scholarship, tuition reduction, tuition payment or reimbursement, or other inducements to veterans or beneficiaries related to any feedback the veterans or*

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<sup>29</sup> Federal Trade Commission Press Release, *FTC to Explore Rulemaking to Combat Fake Reviews and Other Deceptive Endorsements* (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-explore-rulemaking-combat-fake-reviews-other-deceptive-endorsements>; see also, Federal Trade Commission Press Release, *Federal Trade Commission Announces Proposed Rule Banning Fake Reviews and Testimonials* (Jun. 30, 2023), and Federal Trade Commission Press Release, *FTC to Hold Informal Hearing on Proposed Rule Banning Fake Reviews and Testimonials* (Jan. 9, 2024).

<sup>30</sup> Federal Trade Commission Press Release (Oct. 20, 2022)

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

*beneficiaries post on the GI Bill Feedback Tool*” (borrowing from 20 U.S.C. § 1078(b)(3)).

**Summary of Recommendations:**

- Direct VA to modernize the GI Bill Comparison tool by enabling searches by major or degree sought by geographic area, providing student and institutional outcome metrics from ED, establishing a “Risk Index” to enable students to avoid risky schools, and improving “Caution Flags” and the presentation of information about student veteran complaints .
- Prohibit VA from publishing “Yelp”-style ratings, which the FTC notes are historically abused.

## **8. Forbid Transcript Withholding**

Colleges frequently withhold their students' academic transcripts for balances due, even when the debt is disputed. Indeed, transcript withholding is one of the most common debt collection tactics used by colleges across all sectors. Many colleges withhold transcripts for various kinds of institutional debt, ranging from big dollar amounts like tuition and room and board to small sums like library fines, parking tickets, and the like. The frequency of the practice has been estimated by the Ithaca S+R research group, which found that roughly 6.6 million students may be having their transcripts withheld for up to \$15 billion in unpaid balances to colleges.<sup>33</sup>

In March 2022, we published a report providing a deep analysis of this issue and how it affects the veteran and military community.<sup>34</sup> Many student veterans, service members, and their families have brought complaints to Veterans Education Success about unfair transcript withholding and its negative impact on their lives. Of the 85 student veteran complaints related to transcript withholding that we presented in that report:

- 35% are related to disputed debts, often having to do with inaccurate billing or students' believing their GI Bill or other educational benefits covered the cost of attendance.
- 34% are general complaints about transcript withholding.
- 20% are related to debt arising from deceptive or predatory institutional practices.
- 7% are related to closed school issues.
- 4% are related to complaints over loans the veterans did not authorize.

ED's new regulations banning transcript withholding for periods paid with Title IV funds will take effect soon. If Congress and VA do not act to also update Title 38 protections, this will be yet another example of student veterans and their families being deprived the same protections as other students in higher education.

Stranded credits represent an often insurmountable barrier for students who are under-served and low-income or who were misled and defrauded; their educational journey comes to a halt as a result of an inability to transfer and complete their programs. The practice also imposes a heavy cost on the nation's productivity and its efforts to facilitate socio-economic mobility through education and training, as transcript withholding can prevent students from obtaining stable employment.

This practice is especially problematic given that the practice of transcript withholding disproportionately impacts those with the fewest means. If students are literally unable to afford the debt they owe, denying them the transcript they need to obtain a job or complete their education is counterproductive.

This is compounded by the many ways in which the institutions themselves may have been culpable or complicit in causing students to drop out or leave with unpaid balances. These range from the extreme of unfair, deceptive, or abusive acts or practices to the questionable practice of "gapping" students in need – admitting and enrolling students despite enormous amounts of unmet need, typically filled in with sizable amounts of unsubsidized, parental, or

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<sup>33</sup> Julie Karon, James Dean Ward, Catherine Bond Hill, Martin Kurzweil, *Solving Stranded Credits: Assessing the Scope and Effects of Transcript Withholding on Students, States, and Institutions*, Ithaca S+R (Oct. 5, 2020), <https://sr.ithaca.org/wp-content/uploads/2020/10/SR-Report-Solving-Stranded-Credits-100520.pdf>.

<sup>34</sup> Veterans Education Success, *The Student Veteran Experience with Transcript Withholding* (Mar. 2022), <https://vetsedsuccess.org/the-student-veteran-experience-with-transcript-withholding/>.

private label debt – which often indicates that lesser cost institutions might be more appropriate venues.

The negative consequences of transcript withholding on student veterans are myriad, as student veterans who lack a transcript are often precluded from transferring to another school, re-enrolling, or – if they've already completed college – beginning an advanced degree. It can also impinge on a student's eligibility for a job interview and even some military promotions. Consider this quote from one student veteran, and how they have seen the destructive nature of this practice on their own life:

*"I was hired for a job and I requested my school transcripts to be sent to my employer. The school sent me a letter saying they won't release my transcripts because I owe money for that one class. I told the employer the school won't release them to me, and the employer hired someone else. It cost me a \$35,000 a year job. I had to do an internship and wait a few years to get a job. Because I couldn't produce transcripts, it took me five years to find a job that would hire me. I'm a disabled vet that has a handicap in the workplace. Now I'm in default on student loans. I won't be able to pay it back. Screwed for life. The school said I would be able to find a job around \$60,000."<sup>35</sup>*

We offer the below recommendations to the Committees on how to best structure a precondition for schools to be eligible for receipt of Title 38 education benefits. The Committees should generally prohibit the practice as a tool for collecting outstanding debt from former students, irrespective of the periods covered by the use of VA benefits.

Finally, we call on Congress to require all at-risk institutions, particularly schools without adequate capitalization (as defined by ED's Heightened Cash Monitoring), to implement satisfactory record retention plans with qualified third parties to ensure permanent or long-term availability of transcript and degree verification services if the entity ceases to operate.

### **Summary of Recommendations:**

- Establish as a condition of GI Bill eligibility for programs and institutions that the institution maintains a policy prohibiting the practice of transcript withholding for students receiving Title 38 education benefits.
- Require all at-risk institutions, particularly entities without adequate capitalization as defined by ED's Heightened Cash Monitoring, to implement satisfactory record retention plans with qualified third parties to ensure permanent or long-term availability of transcript and degree verification services if the entity ceases to operate.

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<sup>35</sup> Quotes come from the more than 4,000 student veterans who have brought complaints to Veterans Education Success. For privacy protection, the students' names are withheld.

## **9. Change VA's Debt Collection Practices**

We urge the Committees to rein in VA's debt collection practices, as we testified previously.<sup>36</sup> Of special concern is VA's debt collection for "retroactive readjustments" of GI Bill benefits awarded to a veteran, and we urge the Committees to halt this practice. A "retroactive readjustment" means that VA adjusts a veteran's GI Bill eligibility after the veteran has used the benefit. If the problem was VA error, and a veteran honorably relied on VA's procedures, then it is not fair to subject the veteran to debt collection.

In our previous testimony, we noted, "VA's aggressive debt collection methods are particularly unfair, given that VA relies on outdated methods of notifying veterans. VA's letters alerting veterans of a debt are often confusing, and sent to outdated addresses."<sup>37</sup> While Section 1019 of the *Isakson-Roe Act* has addressed some of the underlying factors associated with GI Bill overpayments, the issue of VA debt collection practices has not been comprehensively addressed.

We support the prohibition of VA from executing clawbacks based "solely on administrative error" or "error in judgment" consistent with [38 U.S.C. § 5112\(b\)\(10\)](#). However, it is our firm belief that VA defines administrative error quite narrowly based on the number of clawbacks that still occur.<sup>38</sup> For instance, VA takes the position that if the beneficiary "should have known" they were not entitled to the benefit then the overpayment was not due solely to administrative error.<sup>39</sup> VA's assessment, however, of whether a beneficiary should have known they were not entitled to the benefit may disregard the realistic and practical limits of a student veteran's understanding about the payment when it was received and that the student's misunderstanding may have originated with the information VA provided.

We urge congress to ban VA's authority to claw back overpayments in situations where the overpayment is the error of VA, and establish a limitations period after which clawbacks are prohibited, with the exception of cases of fraud or malfeasance.

### **Summary of Recommendations:**

- Ban VA's authority to claw back GI Bill overpayments in situations where the overpayment is the error of VA.
- Establish a limitations period after which GI Bill clawbacks are prohibited, with the exception of cases of fraud or malfeasance.

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<sup>36</sup> Veterans Education Success, Written Testimony, House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations Legislative Hearing (Sept. 19, 2019), <https://vetsedsuccess.org/our-written-testimony-for-house-veterans-affairs-hearing-on-va-debt-collection-practices/>.

<sup>37</sup> *Id.*

<sup>38</sup> VA regulations associated with debt collection are [38 C.F.R. § 21.9695\(b\)](#) and [38 C.F.R. § 21.9635\(r\)](#).

<sup>39</sup> A review of VA guidance on debt collection underscores how narrow the VA interpretations are, especially in the case of administrative error. For reference, [https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va\\_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000179474/M21-1-Part-VI-Subpart-i-Chapter-2-Section-B-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary#3](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000179474/M21-1-Part-VI-Subpart-i-Chapter-2-Section-B-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary#3).

## **10. Ensure Orderly Processes and Restoration of Benefits in Cases of School Closures**

Sudden school closures leave students in the lurch, with no end in sight to this alarming trend. Committee members recall the closures of ITT Tech, Corinthian Colleges, Argosy University, and, more recently, three brands owned by the Center for Excellence in Higher Education (CollegeAmerica, Stevens-Henager, and Independence University), plus many others.

Once a school has closed suddenly, student veterans are left trying to figure out their next step. We recommend the Committees require VA to protect student veterans by allowing only financially sound providers, as defined by ED's Heightened Cash Monitoring model or similar, to participate in VA education programs.

In addition, the Department should mandate that all VA-approved programs put in place and document safeguards against sudden shut-downs and pre-approved contingency plans ensuring orderly closure processes in which students are properly notified with advanced warning. Students should also be provided viable transfer options, and guaranteed the continued and permanent access to their transcripts and records. We believe a 2020 Maryland law provides a useful model of this approach.<sup>40</sup>

Additionally, S. 2795, the *Fiscal Year 2024 VA Extenders Legislation*, established the most recent authority for VA to restore GI Bill benefits to students who were pushed out of their programs due to a closure or disapproval before September 30, 2025.<sup>41</sup> VA needs to be able to continue to restore benefits when a school closes or a program is disapproved beyond this date, and we call on Congress to increase the period of coverage to a minimum of five additional years to reflect a date of September 30, 2030 or later.

Separately, VA continues to incorrectly apply the provisions of the VETS Credit Act beginning on the date of enactment of the legislation.<sup>4243</sup> Despite being a process change and not a change in rights or substance, this issue has been a persistent challenge with VBA staff to apply the law consistent with Congressional intent. To make it more explicit, language such as the following would clarify this issue for VA: "(b) EFFECTIVE DATE: The amendments made by section 2 of the Veterans Eligible to Transfer School (VETS) Credit Act (136 Stat 4375; Public Law 117-297) shall apply to any closure or disapproval on or after August 1, 2021." This would make it abundantly clear that veterans can have their GI Bill benefits properly restored, and would put to rest any further misunderstanding on the issue.

Finally, we believe a minor technical adjustment related to school closure issues would have a highly consequential impact for student veterans. At present, 38 U.S.C. §3699 affords veterans to have their benefits restored under limited circumstances, such as a change to "a provision of law enacted after the date on which the individual enrolls at such institution affecting the approval or disapproval of courses under this chapter" or, if "the Secretary prescribing or modifying regulations or policies of the Department affecting such approval or disapproval." We believe the addition of a section iii that states "or for any other reason" would be an appropriate and much-needed change to §3699(b)(1)(B) because school closure due to a provision of law is

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<sup>40</sup> Maryland orderly school closure law: SB 446 (enacted May 7, 2020), <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0446?ys=2020RS>.

<sup>41</sup> Public Law No. 118-19, *Continuing Appropriations, Fiscal Year 2024 Act*, 118th Congress, First Session, (Oct. 6, 2023), <https://www.congress.gov/118/plaws/publ19/PLAW-118publ19.pdf>.

<sup>42</sup> Public Law No. 117-297, *Veterans Eligible to Transfer School (VETS) Credit Act*, 117th Congress, Second Session, (Dec. 27, 2022), <https://www.congress.gov/117/plaws/publ297/PLAW-117publ297.pdf>.

<sup>43</sup> Veterans Education Success. *Our Letter to VA regarding the VETS Credit Act*. (Jun. 14, 2023), <https://vetsedsuccess.org/our-letter-to-va-regarding-the-vets-credit-act/>.

a very narrow circumstance, and does not help the tens of thousands of veterans who are affected every year by school closures..

These substantive and technical improvements would significantly enhance the ability of GI Bill students to continue on their educational journey. This is the least they deserve after experiencing the devastating events associated with a precipitous school closure scenario.

### **Summary of Recommendations:**

- Require VA to protect student veterans by allowing only financially sound providers to participate in VA education programs.
- Mandate that all VA-approved programs put in place and document safeguards against sudden shut-downs and pre-approved contingency plans ensuring orderly closure processes in which students are properly notified with advanced warning, are provided viable transfer options, and are guaranteed continued and permanent access to their transcripts and records.
- Extend VA's expired authority to restore GI Bill entitlement in cases of school closure or disapproval for an additional minimum period of five years.
- Direct VA to allow veterans to apply for GI Bill restoration when their school closes or their program loses approval without having to transfer to another school, including students attending schools closed/disapproved before the date of enactment of the VETS Credit Act.
- Amend 38 U.S.C. §3699(b)(1)(B) by adding a new section (iii) that states "or for any other reason."

## **11. Support Veterans Utilizing the Excess Leave Program While Administratively on Active Duty**

VA created an issue stemming from their abrupt policy shift concerning service members enrolled in the Marine Corps Excess Leave Program (ELP). This policy change, initiated by VA's Office of General Counsel, reclassifies ELP participants as being on "active duty," thereby stripping them of their MHA under their GI Bill benefits. This is due to not being entitled to concurrently receive GI Bill MHA and DOD housing benefits, despite being eligible for little to no housing support from DOD while administratively on ELP.

Effective August 1, 2023, this new policy from VA imposes severe financial hardships on seven service members who embarked on law school studies with the assurance of MHA support. VA has refused to exempt currently enrolled students from this new interpretation. There are currently seven students who enrolled in law school based on the longstanding policy that ELP participants are entitled to MHA. Despite starting their program under one set of rules, these student veterans now face substantial housing expenses and the likely need to take out loans, with limited options to withdraw from school due to career repercussions and extended service obligations.

The situation underscores the need for immediate action to exempt current ELP participants from the new interpretation and explore legislative remedies in collaboration with the VA Committees. We have called on VA to make the commonsense and fair decision to not implement this new policy for these seven service members, to prevent harm to these individuals and to afford them to use their full GI Bill benefits they rightfully earned.<sup>44</sup> However, VA refuses to exempt the current class from the implementation of this change and to "grandfather" these students under the previous interpretation, despite the change occurring in the middle of their program.

Therefore, we urge Congress to amend 38 U.S.C. § 3313(e) to explicitly authorize a monthly housing allowance for Excess Leave Program participants notwithstanding their active-duty service status.

### **Summary of Recommendations:**

- Amend 38 U.S.C. § 3313(e) to explicitly authorize a monthly housing allowance for Excess Leave Program participants notwithstanding their active-duty service status.

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<sup>44</sup> Veterans Education Success, *Our Letter to the Department of Veterans Affairs on the Marine Corps Excess Leave Program* (Jun. 21, 2023), <https://vetsedsuccess.org/our-letter-to-the-department-of-veterans-affairs-on-the-marine-corps-excess-leave-program/>.

## **12. Oppose Full Housing Allowance for Online-Only Students**

We believe the significant federal costs of increasing the monthly housing allowance (MHA) for online-only students should not be the top spending priority for the Veterans' Affairs Committees, given existing and more compelling unmet needs of veterans. Based on estimates from the VA, an annualized cost for increasing MHA for online-only students can be reasonably expected to cost **more than \$15 billion over 10 years**.<sup>45</sup> We have urged Congress to set aside this idea and instead prioritize issues such as GI Bill Parity for Guard and Reserve service, Survivors and Dependents Chapter 35 improvements, and restoring the GI Bill for defrauded student veterans.

Furthermore, a recent working paper from the Annenberg Institute at Brown University found "enrolling in an exclusively online degree program had a negative influence on students' likelihood of completing their bachelor's degree or any degree when compared to their otherwise-similar peers who enrolled in at least some face-to-face courses."<sup>46</sup> In particular, military-connected students are 11.4% less likely to graduate from online-only programs, a significant concern to consider when discussing online learning in general.<sup>47</sup>

We believe that a common principle is the desire to support veterans and their families. In doing so, we further believe it is important to consider the second and third order effects of these policies, and to anticipate their adverse unintended consequences. In the instance of this proposal, we strongly caution Congress about such a shift in policy, and recommend considering the following associated impacts:

- **Incentivizing Students to Leave Flagship Public Universities.** Such a policy change would incentivize veterans to leave high-quality, flagship public universities in low-housing cost states – such as Arizona, Indiana, Kentucky, South Carolina, and Wisconsin – to attend lower-quality online-only college chains due to the housing allowance being higher. Current housing allowance rates for in-person and hybrid learners are based on DOD housing allowance rates (BAH) for an "E-5 with dependents."<sup>48</sup> DOD recognizes 339 different housing allowance zones. Over sixty percent of these DOD BAH zones have housing costs less than the national average. In some of the least expensive zones, the housing allowance is one-half the national average.<sup>49</sup> Student veterans in 206 zones would receive more housing allowance by attending an online-only school.

Even if a proposal were to limit the timeframe to the summer term, a potential increase of \$3,000 or more would be a powerful economic factor to incentivize students to switch to a solely online college. Furthermore, veterans switching from

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<sup>45</sup> U.S. Department of Veterans Affairs, *Statement of Joseph Garcia, Executive Director, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (VA), before the Committee on Veterans' Affairs Subcommittee on Economic Opportunity, U.S. House of Representatives*, (Oct. 18, 2023), <https://docs.house.gov/meetings/VR/VR10/20231102/116445/HHRG-118-VR10-Wstate-GarciaJ-20231102.pdf>.

<sup>46</sup> Justin C. Ortagus, Rodney Hughes, and Hope Allchin, *The Role and Influence of Exclusively Online Degree Programs in Higher Education*, EdWorkingPaper: 23-879, Annenberg Institute at Brown University (2023), <https://doi.org/10.26300/xksc-2v33>.

<sup>47</sup> *Id.*

<sup>48</sup> U.S. Department of Veterans Affairs, *Post-9/11 GI Bill (Chapter 33): How does VA determine my monthly housing allowance (MHA)?* (2023), [www.va.gov/education/about-gi-bill-benefits/post-9-11/#how-does-va-determine-my-month](http://www.va.gov/education/about-gi-bill-benefits/post-9-11/#how-does-va-determine-my-month).

<sup>49</sup> Defense Travel Management Office, *Basic Allowance for Housing Rate Lookup* (2023) <https://www.travel.dod.mil/allowances/basic-allowance-for-housing/bah-rate-lookup/>.

public colleges and universities to online-only college chains would receive a lower-quality education. The existing unbiased research regarding distance learning has documented better outcomes for in-person education when compared to online education.<sup>50</sup> Certainly, more investigation is needed before Congress acts to prioritize online programs and incentivize student veterans to attend online colleges.

- **Marketing Tool for Bad Actors.** Low-quality and predatory schools would use the availability of an increased housing allowance as a selling point to target veterans to attend predatory and exploitative programs. In the aftermath of having finally closed the 90/10 loophole, a shift to a full housing allowance for solely online colleges would re-establish veterans as a target for unscrupulous schools; many of these schools have been sued by law enforcement and fined by federal agencies for defrauding students, and can reasonably be expected to abuse this change.<sup>51</sup>
- **Increasing Overall Costs.** We believe that much of the potential enrollment shift incentivized by the higher housing allowance would be from low-tuition public institutions to high-tuition private ones, driving up costs not only for VA, but also for the very student veterans that the bill seeks to help. Much of our work with veterans seeking our support involves speaking with former students who were recruited through high-pressure sales tactics. These students were often led to believe that their GI Bill benefits would cover all costs, only to find themselves heavily in debt as the schools exhausted their benefits and forced them to borrow.
- **Undermining the Rationale for Online Education.** Such a change would also undermine the original intent of Congress that established a lower housing allowance for solely online study as being meant to accommodate the additional employment flexibility and convenience that distance education is intended to provide non-traditional students.<sup>52</sup> Entirely online courses are typically designed to allow students to continue working while enrolled. The lower housing allowance provided to solely online students therefore reflects this central distinction from in-person students; setting it at the same or greater rate as for in-person students would overlook meaningful differences in expenses and opportunity costs incurred by students enrolled in the two distinct modes of delivery.

At the onset of the COVID public health emergency, when many institutions had to move their classes online, we supported the Veterans' Affairs Committees' work to change the housing policy to allow students enrolled in online courses to continue to receive 100 percent of their residential monthly housing allowance.<sup>53</sup> This temporary policy was intended to accommodate the significant additional housing costs that in-person students had already incurred when the pandemic forced them to go online.

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<sup>50</sup> See, e.g., Stephanie Riegg Cellini, Brookings Institution, *How Does Virtual Learning Impact Students in Higher Education* (Aug. 13, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/08/13/how-does-virtual-learning-impact-students-in-higher-education/>.

<sup>51</sup> *People of the State of California v. Ashford University, et.al.*, 37-2018-00046134-CU-MC-CTL, Statement of Decision (hereinafter, "Order"), filed Mar. 3, 2022, available at [https://oag.ca.gov/system/files/attachments/press-docs/37-2018-00046134-CU-MC-CTL\\_ROA-696\\_03-03-22\\_Statement\\_of\\_Decision\\_1646669688827.pdf](https://oag.ca.gov/system/files/attachments/press-docs/37-2018-00046134-CU-MC-CTL_ROA-696_03-03-22_Statement_of_Decision_1646669688827.pdf).

<sup>52</sup> U.S. Senate Report 111-346, *POST-9/11 VETERANS EDUCATIONAL ASSISTANCE IMPROVEMENTS ACT OF 2010* (2010), <https://www.congress.gov/congressional-report/111th-congress/senate-report/346/1>.

<sup>53</sup> Public Law 116-140, *Student Veteran Coronavirus Response Act of 2020*, 116th Congress, 2nd Session (2020), <https://www.congress.gov/116/plaws/publ140/PLAW-116publ140.pdf>.

Today, colleges are back in-person, and proper policy should revert to status quo ante by acknowledging the higher housing costs incurred by students attending in-person. We urge the Committees not to move forward with any proposals increasing the MHA rate for online-only students. Instead, we believe a near-term solution would be for Congress to direct the execution of an unbiased study of online learning outcomes as it pertains to Title 38 veterans education benefits.

**Summary of Recommendations:**

- Oppose full housing allowance for online-only students

### **13. Strengthen Veteran Readiness & Employment**

We applaud both Committees' commitment to the Veteran Readiness & Employment (VR&E) program and VA's continued efforts to improve it. As we testified previously, we recommend the Committees further decrease the number of clients per counselor and increase training for VR&E counselors to ensure consistency in counseling. Veterans have described their experiences to us as follows, demonstrating the need for more counselors who are better trained:

- Veteran DC: "I recently went through the gauntlet with VR&E and I am still denied services! I cannot do ANYTHING with my nursing degree or a four year degree in Health and Human Services per my disabilities yet the VR&E counselors refuse to assist me."
- Veteran AJ: "I have been [battling] with VR&E SINCE 2019. Despite working toward a successful career in the equine industry VR&E forced me in to truck driving [which] landed me homeless in 2019. I am currently approved for 28 months of benefit but they consistently try to push me to college career paths that will not lead to a successful career. I have provided dept of labor proof of 30% growth in the equine industry, active [job] postings and still they refuse my request for a AAS in equine studies. Is there any help available?"
- DB: "I am sending a message because I am about to move across country ... because my husband is still Active Duty. I have been trying to get ahold of my VR&E representative but I cannot."
- Veteran TA: "I'm 100% total and permanent. I was denied VR&E education benefits due to me already having a degree. I can no longer work in that particular field of work for various reasons."

We also recommend the Committees establish a similar Monthly Housing Allowance for VR&E students as for Post-9/11 GI Bill students.<sup>54</sup> Continued disparities only serve to exacerbate the typical challenges non-traditional students face in maintaining a heavy course load, while often working full or part-time.

Finally, we would like to commend the e-VA Document Repository and Automation Initiative, which will significantly reduce an otherwise time- and effort-intensive process for VR&E counselors. This digitization and automation will allow student veterans to provide critical information in a greatly more efficient and effective manner.

#### **Summary of Recommendations:**

- Decrease the number of clients per counselor ratio and increase training for VR&E counselors to ensure consistency in counseling.
- Establish Monthly Housing Allowance parity between VR&E students and Post-9/11 GI Bill students.

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<sup>54</sup> Veterans Education Success, Statement for the Record, House Committee on Veterans' Affairs Economic Opportunity Subcommittee Hearing, *Getting Veterans to Work after COVID-19* (Jul. 21, 2020), <https://vetsedsuccess.org/our-sfr-for-july-21-hvac-economic-opportunity-subcommittee-hearing-getting-veterans-to-work-after-covid-19/>.

## **14. Provide Consumer Education to Prospective Student Veterans**

Beyond the imperative of doing the utmost to ensure that only quality providers are allowed to access VA funds, Congress can also mandate specific data reporting and consumer education practices that would enable prospective student veterans to make well-informed choices, improve educational and labor-market outcomes for them, and produce significant savings to the federal government by rendering the programs more efficient:

- Provide student veterans with substantive pre-enrollment counseling services to assist veterans in identifying the best programs for their needs. This could provide more objective, evidence-based advice to prospective students, many of whom are subject to wildly exaggerated and sometimes deceptive advertising and recruitment pitches that place them in low-quality programs and leave them with low-value or mismatched credentials while exhausting their GI Bill benefits.
- Educate veterans about student loans – including what a “Master Promissory Note” (MPN) is – a sorely needed improvement because too many veterans wind up with student loans they did not want or need. To make the obligations of the Master Promissory Note much more explicit, we also encourage the Committees to work with members of the Education Committees to rename the Master Promissory Note as “Student Loan Contract.”<sup>55</sup>

### **Summary of Recommendations:**

- Mandate student veterans to receive substantive pre-enrollment consumer education to assist in identifying the best programs for their needs.
- Establish opportunities for veterans to learn about student loans – including what a “Master Promissory Note” is – in advance of applying for Federal loans.

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<sup>55</sup> Veterans Education Success, *Veterans with Student Loans They Never Authorized or Wanted* (Mar. 2022), <https://vetsedsuccess.org/veterans-with-student-loans-they-never-authorized-or-wanted/>.

## **15. Provide Education Benefits for General Discharges Under Honorable Conditions**

Eligibility for most veterans' benefits, including compensation, pension, home loan, and insurance, requires that a veteran's character of discharge or service be under other-than-dishonorable conditions (e.g., honorable, under honorable conditions, general). Yet, even if a veteran's character of service is "general under honorable conditions," the Post-9/11 GI Bill is unfairly denied.

During debate of the historic World War II Servicemembers' Readjustment Act of 1944, the key Senate Committee voted unanimously to uphold GI Bill entitlement for all discharges other than dishonorable, and a 1946 Senate Report declared, "It is the opinion of the committee that such discharge [less than Honorable] should not bar entitlement to benefits otherwise bestowed unless the offense was such... as to constitute dishonorable conditions."<sup>56</sup> Forty years later, a requirement was added to the Montgomery GI Bill that excluded education benefits for veterans issued general discharges under honorable conditions. This latter-day limitation was not imposed on other veterans' benefits.

According to The American Legion, between 2019 and 2021, 36,000 veterans were separated from the service with a general discharge under honorable conditions and thereby denied access to the Post 9/11 GI Bill. Thus, they were denied a critical transition benefit to assist them in adjusting to civilian life.

We urge the Committees to correct this historical inequity by granting these service members the same education benefits as were provided for our nation's World War II veterans and those who served before enactment of the Montgomery GI Bill.

### **Summary of Recommendations:**

- Grant Title 38 education benefits eligibility for veterans with a General Discharge Under Honorable Conditions.

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<sup>56</sup> U.S. Senate Report, Report 755, 78th Congress, Second Session, *Providing Federal Government Aid for the Readjustment in Civilian Life of Returning World War II Veterans*, p. 15 (Mar. 18, 1944), <https://www.finance.senate.gov/imo/media/doc/SRpt78-7551.pdf>.

## **Conclusion**

Veterans Education Success sincerely appreciates the opportunity to express our legislative priorities before the Committees. As the higher education industry continues to evolve in these very dynamic times, we emphasize the importance of maintaining high standards of quality. Student veterans, taxpayers, and Congress must expect the best outcomes from the use of hard-earned GI Bill benefits. We look forward to the enactment of these priorities, and we are grateful for the continued opportunities to collaborate on these initiatives.

**Information Required by Rule XI2(g)(4) of the House of Representatives**

Pursuant to Rule XI2(g)(4) of the House of Representatives, Veterans Education Success has not received any federal grants in Fiscal Year 2024, nor has it received any federal grants in the two previous Fiscal Years.

# APPENDIX

## MEMORANDUM

TO: The Honorable Joshua Jacobs, U.S. Department of Veterans Affairs

CC: The Honorable James Kvaal, U.S. Department of Education  
The Honorable Terri Tanielian, White House Domestic Policy Council  
Mr. Joe Garcia, Education Service, Veterans Benefits Administration  
Ms. Faye Fernandes, Senate Committee on Veterans' Affairs  
Ms. Kesley Baron, Senate Committee on Veterans' Affairs  
Ms. Katy Flynn, House Committee on Veterans' Affairs  
Mr. Justin Vogt, House Committee on Veterans' Affairs

FROM: Veterans Education Success

DATE: February 6, 2024

RE: Proposed Regulatory Changes Opening up GI Bill to Unaccredited Online Programs

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The U.S. Department of Veterans Affairs (VA) has proposed a major change that would open the GI Bill to unaccredited online programs and online programs that do not lead to a college degree or certificate meeting certain criteria (hereinafter non-college degrees, or “NCDs”). The proposed rule change is currently being done *without public comment*, and would revise the definition of “independent study” and “distance education.” The effect of this will be to remove online programs from the requirements of [38 U.S.C. § 3680A](#), a statutory authority which requires accreditation and that programs lead to a degree/certificate.

VA should abandon its efforts to extend GI Bill approval to unaccredited online programs and online programs that do not lead to a degree/certificate, and open up any substantive regulatory changes to public comment in accordance with the Administrative Procedures Act.

### Background

Congress set forth the requirements for an Independent Study program in 38 U.S.C. 3680A(a), which has long been understood to include online programs.<sup>57</sup> [38 U.S.C. § 3680A\(a\)](#) provides:

“The Secretary shall not approve the enrollment of an eligible veteran in any of the following:

...

(4) Any independent study program except an independent study program (including such a program taken over open circuit television) that—

(A) is accredited by an accrediting agency or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 ([20 U.S.C. 1099b](#));

(B) leads to—

(i) a standard college degree;

(ii) a certificate that reflects educational attainment offered by an institution of higher learning;

or

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<sup>57</sup> See also 38 U.S.C. § 3523(a)(4)(Dependents' Educational Assistance funds may not be used for an independent study program (including open circuit television) unless it is an accredited program leading to a standard college degree) and 38 U.S.C. § 3676(e)(prohibiting unaccredited course of education in whole or in part by independent study).

- (iii) a certificate that reflects completion of a course of study offered by [an area career and technical school or a postsecondary vocational institution]...; and
- (C) in the case of a program described in subparagraph (B)(iii)--provides training aligned with the requirements of employers....

The statute expressly provides that programs offered over open circuit television fall under the definition of independent study and must be accredited and lead to a degree/certificate in order to receive GI Bill funds. Open circuit television was the technological precursor to programs offered online.

In 2021, VA published a proposed rule to address the confusion of some SAAs about which state has jurisdiction over online programs.<sup>58</sup> VA reported that stakeholders had erroneously concluded that the regulation governing SAA jurisdiction for independent study programs does not address which state has jurisdiction for online programs. In the [2021 notice of proposed rulemaking](#) (“NPRM”), VA explained the longstanding status quo of interpreting independent study to also include online programs:

"VA views online distance learning as a subset of courses offered through independent study and, therefore, views current § 21.4250(a)(3) as controlling which SAA has jurisdiction to approve a course offered via online distance learning...

The relationship between independent study and online distance learning is further clarified in [38 CFR 21.4267\(b\)](#). VA defines independent study in that section for the purposes of educational assistance programs as a program that ‘consists of a prescribed program of study with provision for interaction between the student and [instructor] . . . through use of communications technology, including . . . videoconferencing, computer technology (to include electronic mail), and other electronic means’ and is ‘offered without any regularly scheduled, conventional classroom or laboratory sessions.’ [38 CFR 21.4267\(b\)\(1\)\(i\)](#) and [\(ii\)](#). The definition provided for independent study encompasses distance learning in VA’s view, which includes courses offered online. Therefore, online distance learning is currently classified as independent study for the purposes of VA educational assistance programs. Consequently, when current § 21.4250(a)(3) states that the SAA for the State where the educational institution's main campus is located is the SAA of jurisdiction for the approval of independent study program, it is likewise stating that such SAA is the SAA of jurisdiction for the approval of online distance learning programs.<sup>59</sup>

VA determined that “even though” the appropriate SAA jurisdiction for online programs is addressed under the rules for independent study, it proposed to explicitly include the term “online distance learning” in the jurisdictional regulation, stating, “Such an amendment would not substantively change the current definitions. Rather it is proposed to curtail confusion among some SAAs and educational institutions while maintaining the status quo.”

Today, rather than adopting the clarifying rule proposed in 2021, VBA seeks to use that NPRM as the basis for adopting radical and substantive changes to the regulatory definitions of independent study and distance education so as to remove online programs as a subset of independent study.

While Congressional staff have posited suspicions about what is motivating VBA’s change, we cannot comment on the possible motivations. VBA staff explained to us that the impetus for the rule change is that VBA staff have to answer unaccredited online schools that want GI Bill access. In their answer, they have to say that online schools fall within the definition of “independent study” and

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<sup>58</sup> State Approving Agency Jurisdiction Rule, 86 FR 57904 (Oct. 14, 2021) <https://www.federalregister.gov/documents/2021/10/14/2021-21496/state-approving-agency-jurisdiction-rule>

<sup>59</sup> Id. at 57095.

therefore cannot be approved if they are not accredited and lead to a degree. The schools respond that they are not independent studies and then the VBA staff feel embarrassed that VA's definitions do not meet common-sense definitions and the schools' expectations.

### **Impact**

Sometimes even well-intentioned policies have egregious unintended effects, as this change would. While there may be logic in clarifying the definitions of independent study and online education, it is essential to look at the impact of definitionally removing the protections of 38 USC 3680A from online programs: Opening the GI Bill to unaccredited online programs and online programs that do not lead to a degree.

VBA's proposed change will eliminate the only existing barrier to unaccredited online programs to get GI Bill. VBA intends to leave it up to the State approving agencies (SAA) to approve or disapprove these programs, but SAA leadership has vociferously told VBA staff that this change will open the floodgates to low-quality online programs. VBA further confirmed it would not provide support to the SAAs when they get sued by a school over being denied over "low quality."

This is a highly consequential change, and the end result will be a massive influx of embarrassing low-quality programs eligible for GI Bill. VA has been embarrassed by past news stories about ridiculous programs approved for GI Bill (see, e.g., "[The GI Bill Pays for Unaccredited Sex, Bible, and Massage Schools](#)"<sup>60</sup>), and this new change will open the floodgates to more embarrassments for VA.

### **Process Concerns**

It is our understanding based on discussions with Education Service Staff that VBA intends to publish these final rules without providing an opportunity for public comment. This intention directly contradicts the Administrative Procedures Act. VBA claims that VA OGC alleges they can publish the definitions as a final rule without a public comment period because the rules are a "logical outgrowth" of VBA's 2021 proposed rule. This is definitely not a logical outgrowth of the proposed rule. A final rule is considered a logical outgrowth of a proposed rule only if interested parties should have anticipated that the change was possible, and thus "reasonably should have filed their comments on the subject during the notice-and-comment period," see [Veterans Justice Grp. v. Sec'y of Veteran Affairs](#), 818 F.3d 1336,1344 (Fed. Cir. 2016).

The 2021 proposed rule did not propose the changes contemplated today. Instead, it addressed clarification of SAA jurisdiction to approve online programs, proposing that the correct SAA would be in the state where a "main campus" was located. The proposed rule did not contemplate changes to the definitions of "independent study" and "online" education. Further, VBA's 2021 proposed rule **explicitly** and at length **reaffirmed** that online programs fall within the "independent study" requirements and **expressly assured** the public that the status quo would be maintained and that definitions were not being changed: "Such an amendment would **not substantively change the current definitions**. Rather, it is proposed to curtail confusion among some SAAs and educational institutions while **maintaining the status quo**."<sup>61</sup> The proposed rule sought only to address the question of which SAA has jurisdiction.

Today, VBA proposes a new rule that is not even on the topic of the NPRM. Rather than addressing the question of which state's SAA should control an online college, VBA today proposes to change the definitions, which is the opposite of the NPRM's reassurance that VBA "would not substantively change the current definitions," but would "maintain the status quo." What VBA is proposing today

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<sup>60</sup> Aaron Glantz, [The GI Bill Pays for Unaccredited Sex, Bible, and Massage Schools, Reveal](https://revealnews.org/article/gi-bill-pays-for-unaccredited-sex-bible-and-massage-schools/) (July 15, 2015) <https://revealnews.org/article/gi-bill-pays-for-unaccredited-sex-bible-and-massage-schools/>

<sup>61</sup> State Approving Agency Jurisdiction Rule, 86 FR 57904, 57905 (emphasis added).

represents a significant substantive change in the definitions and dramatically upends the status quo for unaccredited online programs. There was no reasonable notice to the public and no way the public “should have anticipated this change was possible and reasonably should have filed their comments on the subject.”

### **Alternative Solution**

Instead of this proposed radical change, VBA should simply reiterate what they wrote in the 2021 notice of proposed rulemaking. Maintaining the status quo and longstanding definitions – as VBA pledged to do in the 2021 NPRM – is good for veterans and taxpayers because it ensures that online programs must meet the minimal standards required for independent study:

“VA views online distance learning as a subset of courses offered through independent study... Even though § 21.4250(a)(3) already addresses the appropriate SAA jurisdictional rules for independent study in VA's view, and § 21.4267(b)(1)(i) and (ii) appropriately classifies online distance learning as independent study for the purposes of VA educational assistance, VA proposes to amend § 21.4250(a)(3) to explicitly include the term ‘online distance learning.’ Such an amendment would not substantively change the current definitions. Rather, it is proposed to curtail confusion among some SAAs and educational institutions while maintaining the status quo.”<sup>62</sup>

VBA should stick to this pledge in the 2021 NPRM not to disrupt the status quo. The rule change should go forward as proposed, addressing which state's SAA has jurisdiction over online programs.

Any change from the status quo must be properly noticed and the public must be provided the opportunity for public comment.

Separately, if VBA wants to do something to improve GI Bill quality, it could undertake rulemaking – with public notice and comment – to improve GI Bill program approval by defining the terms in title 38 U.S.C. § 3676 (approval of nonaccredited courses). This statute has key terms that remain undefined, rendering them basically meaningless and the SAAs don't enforce them. Specifically, VBA could define “quality” in 38 U.S.C. § 3676(c)(1); teacher “qualifications” in (c)(4); “financially sound” in (c)(9) (which could easily be defined by reference to ED standards); deceptive advertising in (c)(10); and “good character” in (c)(12) (which could be clarified to ban administrators and teachers who have faced legal or regulatory action or any action by a licensing board). The Department of Education could assist with all of these definitions.

### **Conclusion**

VBA must abandon the plan to remove online programs from the existing barriers set forth in § 3680A requiring accreditation and leading to a degree. VBA should instead stick to its 2021 pledge not to disrupt the definitions of “independent study” and “online” programs and to instead maintain the “status quo” on those definitions and to simply clarify which state's SAA has jurisdiction – as pledged in 2021. Furthermore, VBA should undertake rulemaking to improve GI Bill approval criteria to define the terms in § 3676, and should properly abide by the Administrative Procedures Act in seeking public comment on any proposed regulatory changes.

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<sup>62</sup> State Approving Agency Jurisdiction Rule, 86 FR 57904, 57905