



August 13, 2024

Mr. John Boerstler  
Chief Veterans Experience Officer  
Veterans Experience Office  
U.S. Department of Veterans Affairs  
810 Vermont Ave. NW, Washington, DC 20420

Mr. Joseph Garcia  
Director, Education Service  
Veterans Benefits Administration  
U.S. Department of Veterans Affairs  
1800 G St. NW, Washington, DC 20006

Re: Recommendations Following June Meeting

Dear Mr. Boerstler and Mr. Garcia,

Thank you again for meeting with us in June. We appreciate how much time you took to listen to each veteran's story and for asking important questions about how the Department of Veterans Affairs (VA) can help student veterans now. Although fraud by a school is not at this time a basis for restoring VA educational benefits, there are measures, discussed in detail below, that VA could take without delay to help student veterans, including (1) Disclosing a school's full history of complaints and enforcement actions in the GI Bill Comparison Tool; (2) Making simple fixes to the application process for restoring benefits when a school closes or loses approval; and (3) Exercising the oversight and enforcement authority provided by statute to remove bad actors.

## **1. GI Bill Comparison Tool**

Understandably, after hearing the veterans' stories of being deceived by their schools and wasting their GI Bill benefits on shockingly low quality programs, you were interested in how the Veterans Benefits Administration (VBA) can use the Comparison Tool to warn students about predatory schools. Previously, we have made comprehensive recommendations for improving the GI Bill Comparison Tool,<sup>1</sup> but, here we provide easy changes you could make to the Comparison Tool with minimal effort and delay, to the immediate benefit of student veterans.

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<sup>1</sup> Based on our decade of working with student veterans, we have comprehensive recommendations for the GI Bill Comparison Tool, which can be found in our letters to VA and submissions to other policymakers. See Our Letter to VA on the Principles of Excellence Complaint Feedback Tool (February 18, 2022) (also discussing recommendations for the GI Bill Comparison Tool), available at <https://vetsedsuccess.org/our-letter-to-va-on-the-principles-of-excellence-complaint-feedback-tool/>, and our Letter to VA Regarding January 12, 2023 Meeting and Feedback Tool (February 15, 2023), available at <https://vetsedsuccess.org/our-letter-to-va-regarding-january-12-2023-meeting-and-feedback-tool/>. A full list of our recommendations for the GI Bill Comparison Tool may also be found in item 7 of Our Statement for the Record: Legislative Priorities Submitted to the Senate and House Committees on Veterans Affairs 2024, available at <https://vetsedsuccess.org/statement-for-the-record-legislative-priorities-submitted-to-the-senate-and-house-committees-on-veterans-affairs-2024/>

**a. Show the full history of complaints.** In 2019, reportedly at the behest of for-profit college lobbyists, VBA adopted a policy to show in the Comparison Tool only the complaints received in the most recent 24 months. This is not a veteran-centric policy and only serves to benefit schools with a history of complaints. The history, volume, and nature of complaints is relevant information and should not be hidden from veterans. Student veterans should be allowed to decide for themselves whether and how much a school’s history of complaints matters in their decision making. State Approving Agencies (SAAs), accreditors, other federal agencies, and academic researchers also would benefit from knowing a school’s history of student complaints. VBA should return to its original practice of including a school’s full history of complaints in the GI Bill Comparison Tool.

The Comparison Tool also should show whether the school responded to the complaint and whether the veteran was satisfied with the response. Disclosing information about school response rates and student satisfaction with the responses adds context to older complaints and helps students make informed choices based on historical complaint data. Indicating whether a company responded to a complaint and whether the complainant disputed and/or was satisfied with the response is a common consumer protection practice, as is the practice of the [Better Business Bureau](#)<sup>2</sup> and the [CFPB](#).<sup>3</sup> VBA, likewise, needs to include this information in the GI Bill Comparison Tool.

**b. Ensure that caution flags are displayed when a school has experienced any “increased legal or regulatory scrutiny.”**<sup>4</sup> To warn students about potential predatory programs, it is imperative for the Comparison Tool to include information about oversight and enforcement actions against a school. The Comparison Tool’s caution flags are an exceptional consumer disclosure tool in terms of capturing attention, but VBA does not always post a caution flag when an action has occurred. Of specific concern is that VBA does not appear to post caution flags when an SAA determines that a school failed to comply with the law and imposes a consequence, even a temporary suspension of a program. See, for example, our [letter](#) regarding Wheeling University.<sup>5</sup> Prospective students comparing schools should know whether a school has been the subject of an oversight action by the SAA.

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<sup>2</sup> Better Business Bureau, Complaints <https://www.bbb.org/process-of-complaints-and-reviews/complaints>

<sup>3</sup> Consumer Financial Protection Bureau, How We Share Complaint Data, <https://www.consumerfinance.gov/complaint/data-use/>

<sup>4</sup> VA’s “GI Bill ® Comparison Tool: About this Tool” page, explains about the Caution Flags, “These are indicators VA has determined potential students should pay attention to and consider before enrolling in a program of education. A caution flag means VA or other federal agencies like the Department of Education or Department of Defense have applied increased regulatory or legal scrutiny to a program of education.” The page is available at [https://www.benefits.va.gov/gibill/comparison\\_tool/about\\_this\\_tool.asp#CF](https://www.benefits.va.gov/gibill/comparison_tool/about_this_tool.asp#CF) (last accessed August 9, 2024).

<sup>5</sup> Our Letter to Department of Veterans Affairs on the GI Bill Comparison Tool Information for Wheeling University (September 12, 2022), available at <https://vetsedsuccess.org/our-letter-to-department-of-veterans-affairs-on-the-gi-bill-comparison-tool-information-for-wheeling-university/>

As a general matter, caution flags are not consistently posted. For example, two of the students you met with attended DeVry University. In the Comparison Tool, several of the [DeVry University locations](#)<sup>6</sup> carry a caution flag showing that DeVry University agreed to a settlement with the Federal Trade Commission, but, inexplicably, about one-third of the DeVry University locations in the Comparison Tool do not have the caution flag.<sup>7</sup> The main campus for DeVry University, listed as Lisle IL in the Comparison Tool,<sup>8</sup> does not even have the caution flag. This failure to consistently post caution flags is not a unique circumstance. See, for example, our letters regarding ASA College, Bay State College, and IEC schools, alerting VA that caution flags should have been added for oversight and enforcement actions.<sup>9</sup>

Caution flags for enforcement and oversight actions provide critical information for prospective students. Whether the failure to include a caution flag is due to a mistake or an internal policy, we urge you to make sure VA has the policies and procedures that will result in caution flags being posted for all oversight and enforcement actions.

## **2. Restoration of benefits when a school closes or loses approval**

During the meeting, you seemed concerned for the student veteran who is awaiting GI Bill restoration after his school closed several months ago. Restoration of benefits when a school closes or loses approval should be a straightforward administrative process. Pursuant to changes made to 38 U.S.C. § 3699 in 2021, veterans who were enrolled in a school that closes are entitled to full restoration of their benefits so long as they do not transfer 12 or more credits to a new school. Unfortunately, since the legislation was first enacted, VA has provided incorrect information to students, caused confusion, and possibly prevented veterans from having their benefits restored. Until the last week or so, VA's [application](#) for restoration had an incorrect deadline for submitting, which, thankfully, now appears to have been removed. Previously, we have provided a list of recommendations to VBA for improving the closed school restoration process, which may be found [here](#).<sup>10</sup>

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<sup>6</sup> GI Bill Comparison Tool entry for “DeVry University” search.

<sup>7</sup> It appears that one campus, DeVry University-Chicago, may be carrying an incorrect caution flag for Heightened Cash Monitoring 2 status rather than the flag for the settlement with the Federal Trade Commission. See entry on the GI Bill Comparison Tool at <https://www.va.gov/education/gi-bill-comparison-tool/institution/21900113> (last accessed August 9, 2024). DeVry University does not appear on the Department of Education's most recent list for schools on HCM2 status, although DeVry University (Napierville, IL) does appear on the HCM1 status list. See Department of Education's December 2023 list at <https://studentaid.gov/data-center/school/hcm> (last accessed August 9, 2024).

<sup>8</sup> See the Comparison Tool entry for the Newark, CA location, which lists other school locations. The Newark, CA entry in the Comparison Tool does have a caution flag for the FTC Settlement. <https://www.va.gov/education/gi-bill-comparison-tool/institution/21801105> (last accessed August 9, 2024)

<sup>9</sup> Our Letter to VA Regarding ASA College (November 21, 2022), available at <https://vetsedsuccess.org/letter-to-va-regarding-asa-college/>; Our Letter to VA Regarding Bay State College (November 21, 2022), available at <https://vetsedsuccess.org/letter-to-va-regarding-bay-state-college/>; Our Letter to VA Regarding Florida Career College, UEI College, and United Education Institute (October 26, 2023), available at <https://vetsedsuccess.org/our-letter-to-va-regarding-florida-career-college-uei-college-and-united-education-institute>.

<sup>10</sup> Our Letter to VA Regarding Proposed New Application for Education Benefit Restoration Due to School Closure, Program Suspension or Withdrawal (May 3, 2024), available at <https://vetsedsuccess.org/our-letter-to-va-regarding-proposed-new-application-for-education-benefit-restoration-due-to-school-closure-program-suspension-or-withdrawal/>

One central improvement that VBA can make to help student veterans is to correctly apply the VETS Credit Act<sup>11</sup> so that all students can apply for restoration before enrolling in a new school. VBA has insisted that students must first enroll in a new school before they can obtain their Certificate of Eligibility for their restored benefits. We have long maintained that this is an incorrect interpretation of 38 U.S.C. § 3699, and professional staff for the Veterans Affairs Committee share this view. Such an interpretation pressures student veterans to rush to enroll in a new school. Many substandard or predatory schools are eager to recruit students who are unsure what to do when their school closes suddenly, and such interpretation incentivizes students to make hasty decisions.

In response to VBA's interpretation, the VETS Credit Act was passed to clarify that student veterans do not need to enroll in another school to obtain their Certificate of Eligibility. Despite the clear statutory directive, VBA mistakenly believes that the VETS Credit Act applies only to students attending schools that closed after December 27, 2022,<sup>12</sup> forcing students whose schools closed before December 27, 2022, to enroll in another school prior to applying for their Certificate of Eligibility.

In addition to forcing students into making hasty decisions, VBA's interpretation also has created an unnecessarily byzantine process for students to navigate and for VBA, itself, to administer, where two students who are applying for restoration on the same day may be given different directions about whether they need to first enroll in a new school. The application form already requires students to sign an attestation stating, "If I am transferred 12 or more credits from such program at a later date, the Secretary will rescind/revoke my restored entitlement." VBA does not need the student to be enrolled in a new school in order to enforce 38 U.S.C. § 3699.

VBA should abandon its practice and not require any student to enroll in another school before applying to have their benefits restored.

### **3. Oversight and Enforcement Authority**

In the meeting, you were sympathetic to the student veterans who relied on VA's stamp of approval and who wondered why VA would approve schools that engage in fraud and provide little education, but you expressed concerns that VA has limited enforcement authority. We have looked closely at VA's statutory authority and believe VA's view of its oversight and enforcement authority is too restrictive.<sup>13</sup> While the GI Bill Comparison Tool is an essential tool for helping veterans choose a school, VA cannot shift the burden of avoiding predatory and substandard schools to student veterans. VA can do more to remove shoddy programs and predatory schools from approval.

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<sup>11</sup> Public Law No. 117-297

<sup>12</sup> The VBA restoration webpage states: "Public Law 117-297, Veterans Eligible to Transfer Schools (VETS) Credit Act, has also made it easier to apply for restoration of entitlement. For any covered closure or disapproval after December 27, 2022, you do not need to enroll in a new school prior to applying for restoration of benefits." <https://www.benefits.va.gov/GIBILL/Restoration.asp#:~:text=If%20you%20apply%20for%20and,your%20entitlement%20is%20restored%20immediately> (last accessed August 9, 2024).

<sup>13</sup> See our Issue Brief, *VA Still Not Enforcing 1974 Ban on Schools that Engage in Deceptive Advertising and Recruiting* (October 2019), available at <https://vetsedsuccess.org/va-still-not-enforcing-1974-ban-on-schools-that-engage-in-deceptive-advertising-and-recruiting/>

State Approving Agencies have a critical role in gatekeeping schools and investigating misconduct, but they do not have exclusive authority in assuring program quality and integrity. In 2018, the [VA OIG released a report](#)<sup>14</sup> criticizing VA for its position, stating:

The oversight weaknesses identified during the [OIG’s] audit were largely attributable to VBA’s position that it had a limited role in the SAA oversight process and that the statute prohibited VBA from supervising the SAAs. Congress clearly intended VBA to work cooperatively with the SAAs to ensure the quality and effective administration of programs and to protect student and taxpayer interests. However, the former Executive Director of VBA Education Service stated to OIG auditors that the SAAs were primarily responsible for the review, approval, and continuous monitoring of programs, and that VBA was prohibited under Title 38 from exercising control over the SAAs.

The OIG Report disagreed with VBA’s position, pointing out:

“38 U.S.C. § 3679, *Disapproval of courses*, also allows VA to approve or disapprove schools, courses, or licensing or certification tests and does not include any limitations stating VA can only exercise this authority when acting in the role of an SAA.”<sup>15</sup>

The OIG also noted VBA’s clear power to ensure better oversight of the GI Bill given its authority to establish contracts with SAAs, to set forth requirements for SAA completion of program reviews, approvals, and monitoring, and to determine whether the SAA is complying with the standards and provisions of the law.

Further, 38 U.S.C. § 3696 provides VBA with express and direct enforcement authority when educational institutions engage in deceptive practices. Whenever the Secretary becomes aware of a federal agency’s final judgment against an educational institution or its owner, or becomes aware of other credible evidence that the institution engaged in substantial misrepresentation, subsection (f) directs that “the Secretary, in partnership with the applicable State Approving agency, shall–

- (1) within 30 days, alert the educational institution or owner that it is at risk of losing approval under this chapter of its courses or programs of education;
- (2) provide the educational institution or owner 60 days to provide any information it wishes to the Secretary;
- (3) require the educational institution or owner to submit to the Secretary a report prepared by an approved third-party auditor of the advertising and enrollment practices of the educational institution or owner; and
- (4) refer the matter to the Under Secretary of Benefits, who may thereafter make a preliminary finding under subsection (g).”

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<sup>14</sup> *VA’s Oversight of State Approving Agency Program Monitoring for Post-9/11 GI Bill Students*, Department of Veterans Affairs Office of Inspector General (December 3, 2018), available at <https://www.oversight.gov/sites/default/files/oig-reports/VAOIG-16-00862-179.pdf> (last accessed August 9, 2024).

<sup>15</sup> *Id.* at p. 28.

The law goes on to direct the Under Secretary for Benefits to make preliminary findings and final determinations with respect to the evident violations of section 3696.<sup>16</sup> The statute also requires VA to have a Memorandum of Understanding with the FTC, allowing VA “to utilize, where appropriate, [FTC’s] services and facilities, consistent with its available resources, in carrying out investigations and making the Under Secretary of Benefit’s preliminary findings.”<sup>17</sup>

Upon making a final determination that an educational institution engaged in substantial misrepresentation or other violations of section 3696, the Under Secretary for Benefits is required to impose one of several consequences on the school, including publishing a caution flag on the GI Bill Comparison Tool and alerting currently enrolled students, or suspending or revoking the school’s approval.<sup>18</sup> Clearly, when VA has credible evidence that a school has engaged in substantial misrepresentation, VA not only has the authority but also the legal obligation to take action to protect student veterans.

We hope the above recommendations are responsive to the questions you had about measures VBA can take to help student veterans right now. The changes we have recommended for the restoration process and the Comparison Tool are easily implemented and will immediately benefit student veterans. The most critical improvement VA can make to help student veterans, however, is to exercise its statutory authority to safeguard program quality and integrity.

Sincerely,



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William Hubbard  
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<sup>16</sup> 38 U.S.C. §3696(g)

<sup>17</sup> 38 U.S.C. §3696(e)

<sup>18</sup> 38 U.S.C. §3696(h)