

# Statement for the Record

*of*



*Submitted by*

**Kristofer Goldsmith**  
**Assistant Director for Policy and Government Affairs**

*for the*

**Senate Veterans' Affairs Committee**

*Regarding*

**S. 75, Arla Harrell Act; S. 410, Shawna Hill Post 9/11 Education Transferability Act; S. 473, Educational Development for Troops and Veterans Act of 2017; S. 798, Yellow Ribbon Improvement Act; S. 844, GI Bill Fairness Act of 2017; S. 882, Purple Heart GI Bill Act; S. 1192, Veterans TEST Accessibility Act; S. 1218, Empowering Federal Employment for Veterans Act of 2017; S. 1277, Veteran Employment Through Technology Education Courses Act of 2017; S. 1330, (Transferability for Surviving Dependents); and a Discussion Draft to improve Post-9/11 Educational Assistance.**

June 15, 2017

Chairman Isakson, Ranking Member Tester, and other distinguished members of the Committee on Veterans Affairs, on behalf of our National President John Rowan, our Board of Directors, and our membership, Vietnam Veterans of America (VVA) thanks you for the opportunity to present our views for the record concerning the legislation to be discussed at today's hearing.

Today the committee will discuss bills meant to modernize and improve the GI Bill, and hopefully come to agreement on the universal idea that our country should not leave behind any veteran deserving the support of our nation. It is the founding principle of VVA that "Never Again Will One Generation of Veterans Abandon Another," which is why our members are so passionate about improving and protecting earned veterans benefits that they will never use themselves. This founding principle has guided us to our three top priorities regarding the GI Bill, which we urge the committee to consider as you work to improve this important benefit:

1. Protect eligibility for the GI Bill for all veterans with other than dishonorable discharges, as this benefit has been stolen from thousands of veterans who were denied eligibility without the due process rights of Courts Martial;
2. Eliminate the arbitrary 15-year limitation on usage of the GI Bill benefit which punishes veterans who both struggle in their transition from service, and those who transition well then face unemployment or underemployment later in life;
3. Remove era-specific naming of educational programs so that the GI Bill is not destined to create disparities between current and future generations of veterans.

**Protecting GI Bill Eligibility** — VVA urges congress to return the GI Bill to the spirit of the 1944 Servicemen's Readjustment Act of 1944, more popularly known as the "GI Bill of Rights," which protected the rights and benefits of *all* returning veterans. Sadly, in recent decades, more and more veterans have been allowed to fall through the cracks.

According to 38 U.S. Code § 101 (2):

The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Why then does this our country deny veterans with administrative discharges, who were never afforded the due process rights of Courts Martial to be denied access to veterans benefits?

A GAO study titled *Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury Are Considered in Misconduct Separations* (GAO-17-260: Published: May 16,

2017) recently revealed that 62% or 57,141 of veterans separated for misconduct between 2011 and 2015 had before separation been diagnosed with a mental health condition such as PTSD or TBI. According to the GAO report, nearly 15% of all of the soldiers who left the Army in 2011 did so without GI Bill eligibility. Each of these veterans not only carries the stigma of “bad-paper” discharges, but nearly all are prevented from utilizing the most important transition benefit, the GI Bill. Worse yet, 13,283 of those veterans received Other-than-Honorable discharges, and won’t have access to nearly any basic VA services until they reach the point of suicidality. This is a national tragedy that must immediately be addressed by this congress.

**Elimination of the arbitrary 15 year limit on eligibility** — Denying the GI Bill to a veteran because the veteran was unable to or chose not to utilize the GI Bill does no good for veterans, nor for their families or taxpayers. While there are many reasons that a veteran may delay pursuing an education via the GI Bill, VVA would like to pose three scenarios of veterans who are essentially punished because they experience a transition that does not result in their quickly going to school after exiting the service.

In one scenario, if a veteran struggles to adapt to life outside the military due to PTSD, they may find themselves simply unable to enter a scholastic environment. While a service-connected disability may qualify a veteran for Vocational Rehabilitation, which may afford them access to some benefits to gain an education, this veteran would have lost eligibility for the GI Bill’s BAH stipend which is a large part of what makes going to school affordable for most veterans.

In another scenario, a veteran may exit the service unable to enter school for years because they have children to care for, or because they are a caregiver to a loved one. This veteran, under current law, is punished for fulfilling the responsibilities of caregiver, because they lose their eligibility for the GI Bill because of an arbitrary time limit.

On our final scenario, we have veterans who transition seamlessly out of the military and into another career. Yet, as we face an ever changing economy, some of these veterans are bound to lose their work due to technological and industrial changes. Whereas the average American experiences career changes five to seven times throughout their life, why should a veteran be denied the opportunity to retrain through use of the GI Bill at any of these points of career change?

**“The GI Bill”** — VVA strongly supports adjusting the GI Bill so that it is not, in the minds of Americans, “a wartime benefit.” After all, the United States has not officially declared war since 1941, when it declared war against Japan as a response to the attack on Pearl Harbor. Technically speaking, the conflicts in Korea, Vietnam, Iraq, Afghanistan, and now Syria, are “extended conflicts.” In these times there are no front lines, terrorists can strike at any time and anywhere,

and as a result, today and tomorrow's Active Duty, Reservist and National Guard troops and veterans are done a disservice when the name of the GI Bill implies it is for specific engagements. This erroneous perception is part of the reason why there are already loopholes in the GI Bill that makes "S. 798 — GI Bill Fairness Act of 2017" even necessary for introduction. VVA urges the committee to take preventative measures against the opening of future loopholes by correcting the GI Bill in name and function, so that it is a benefit for service for all veterans who have chosen a life at service, knowing full well the unpredictable nature of world events, emergencies and conflict.

**S. 75 — Arla Harrell Act:** *To provide for the reconsideration of claims for disability compensation for veterans who were the subjects of experiments by the Department of Defense during World War II that were conducted to assess the effects of mustard gas or lewisite on people, and for other purposes.*

VVA strongly supports this bill introduced by Senator McCaskill, which would provide for the reconsideration of claims for disability compensation for veterans who were the subjects of experiments by the Department of Defense during the Second World War that were conducted to assess the effects of mustard gas or Lewisite on humans. There are not many of the 60,000 or so veterans left who participated in these experiments. Still, because they are deserving of a measure of justice long denied them, VVA strongly supports passage of this bill, and thanks Senator McCaskill for taking the lead on ameliorating this historic wrong.

**S. 410 — Shauna Hill Post 9/11 Education Benefits Transferability Act:** *would authorize the transfer of unused Post-9/11 Educational Assistance benefits to additional dependents upon the death of the originally designated dependent.*

VVA strongly supports this bill, which would ensure that GI Bill eligibility does not end when a military family suffers the loss of a transferee. Under current law, a veteran can transfer their GI Bill eligibility to a spouse or child. If the transferee dies, the GI Bill eligibility dies with them.

This legislation honors Shauna Hill, the 16-year-old the daughter of retired Navy Captain Edward Hill, who was killed in a car crash in December 2012. Because of the rigidity of the program, due to the fact that Captain Hill had already separated from the Navy when Shauna died, he was unable to transfer the benefit to his other daughter, Haley.

VVA is pleased to see the committee working to fix this unintended shortfall in the transferability program of the GI Bill.

**S. 473 — Educational Development for Troops and Veterans Act of 2017:** *to make qualification requirements for entitlement to Post-9/11 Education Assistance more equitable, to improve support of veterans receiving such educational assistance, and for other purposes.*

VVA also strongly supports this legislation, which seeks to close several GI Bill loopholes which were shamefully created by the Armed Services Committees and the Department of Defense in order to avoid costs associated with activating and deploying Reservists and National Guard Troops.

VVA would like for the committee to consider amending this legislation in a manner that would prevent DoD from creating new orders that put troops downrange without allowing them to earn the eligibility for the benefits they deserve.

**S. 844 — GI Bill Fairness Act of 2017:** *This bill would consider certain time spent by members of reserve components while receiving medical care as active duty for the purposes of eligibility for Post-9/11 Educational Assistance.*

Over the last decade, we have met scores of reservists who have been held on active orders while they heal and wait for the med-board process to proceed apace, often separated from their families for months if not years at a time. For these soldiers, held on active duty orders, it is eminently unfair that they are not earning eligibility for GI Bill benefits while those on active duty living in the same barracks, and assigned to the same unit, are able to.

VVA also strongly supports this bill and looks forward to seeing these reservists get the benefits they deserve.

**S. 1192 — “Veterans to Enhance Studies Through Accessibility Act” or the “Veterans TEST Accessibility Act”:** *provides for pro-rated charges to entitlement to educational assistance under the Post-9/11 Educational Assistance Program for certain licensure and certification tests and national tests.*

VVA strongly supports this bill, which would prevent student veterans from losing an entire month of eligibility if they are using the GI Bill to pay for certain licensure, certification and national tests. This bill would encourage and assist veterans in achieving their potential by ensuring that benefits are not wasted because of an unintended bureaucratic shortcoming in the GI Bill.

**S. 1209 — a bill to increase special pension for Medal of Honor recipients:**

VVA strongly supports this bipartisan legislation, which would increase the support Medal of Honor recipients by increasing their monthly compensation from \$1000 to \$3000.

**S. 1277 — Veteran Employment Through Technology Education Courses Act” or the “VET TEC Act”:** *would direct the Secretary of Veterans Affairs to carry out a high technology education pilot program.*

VVA appreciates the intent of this legislation, which is to increase veterans’ options in receiving training in emerging technological fields, but we must oppose this bill as currently drafted as it would make the GI Bill vulnerable to abuses. We recognize the need for flexibility in the GI Bill as a response to an evolving economy, and would like to see this bill amended.

VVA supports accountability in GI Bill programs, and appreciates efforts in this legislation meant to ensure that benefits aren’t wasted. However, we have concerns about possible loopholes in this bill that could be exploited by unethical organizations that would qualify for this program.

First, VVA believes that Sec(2)(c)(4), as written, which allows entities that have only been operational for a period of two years to qualify for the program, should be amended to require programs to have been in operation for at least five years prior to enactment of this bill.

Second, VVA would like to see clarification of the term “meaningful employment” as it is used in Sec(2)(b)(4). We support the spirit of the proposal, which aims to ensure that GI Bill users are being trained with valuable skills. However, it is unclear if a veteran who obtains training through this program, yet is unable to find work in a field related to that program, and then accepts employment in an unrelated field, would that qualify as “meaningful employment.” Furthermore, if the GI Bill user accepts a job offer in a related field with a salary that is below what the training entity advertised, would that qualify as “meaningful employment”?

Third, VVA would like to see this pilot program restricted to those training organizations affiliated with institutions that are accredited by reputable State or Regional Accreditation Agencies.

**DISCUSSION DRAFT, Section 3** — *This legislation would authorize the Secretary of Veterans Affairs to provide additional educational assistance benefits under the Post-9/11 Educational*

*Assistance Program to certain eligible individuals.*

VVA also strongly supports the intent of enhancing the GI Bill by expanding the benefit beyond 36 months for veterans choosing to achieve valuable degrees that require additional time and effort. We believe it was the intent of congress for the GI Bill to empower veterans to achieve at minimum, bachelor's degrees. We urge this committee to expand the GI Bill so that it at minimum, covers the full cost of bachelor's degrees, including prerequisite courses that many veterans require upon returning to the classroom.

**DISCUSSION DRAFT, Section 4 — :** *This bill would increase the amounts of educational assistance payable under the VA's Survivors' and Dependents' Educational Assistance Program.*

VVA strongly endorses this legislation, which would increase the rates payable to survivors of servicemembers.

**DISCUSSION DRAFT Section 6 — Veterans' Education Equity Act:** *This bill would provide for the calculation of the amount of the monthly housing stipend payable under the VA's Post-9/11 Educational Assistance Program based on the location of the campus where classes are attended.*

VVA supports the intent of this bill, which is to ensure that GI Bill users receive a fair stipend to support living expenses while they attend school. Under current law, the VA determines Basic Assistance for Housing (BAH) payments to student veterans based on the zip code where the school is certified. This can create some disparity for veterans attending schools with multiple campuses, as BAH rates can vary greatly. The VA should pay BAH rates that align with the cost of living where the student veteran is attending school, not necessarily where the school is certified.

While VVA does believe that this bill addresses an unintended imbalance in the way that BAH rates are paid, we do have concerns about possible complexities arising from implementation of the bill as written. For example: How would this apply to a veteran attending classes in multiple locations at an institution that spans across multiple zip codes?

**DISCUSSION DRAFT, Section 7 —** *would extend the authority to provide work-study allowance for certain activities by individuals receiving educational assistance by the Secretary of Veterans Affairs.*

VVA supports this bipartisan bill, and is glad to see a removal of the sunset date of the work-study program. Work-study can provide GI Bill participants with much-needed stability and income. An estimated  $\frac{3}{4}$  of GI Bill users are currently working full or part time, and work-study allows them to choose to stay on campus.

**DISCUSSION DRAFT, Section 8** — *authorizes transfer of entitlements to Post-9/11 Educational Assistance by dependents who receive transfers from individuals who subsequently die.*

VVA strongly supports this proposal, which would fulfil the same worthy goals as S. 1330 to close an unfortunate and unintended shortfall in the GI Bill.

**DISCUSSION DRAFT Section 9** — *would direct the Secretary of Veterans Affairs to provide educational and vocational counseling for veterans on campuses of institutions of higher learning.*

This bill will make permanent the VetSuccess on Campus Program, also known as VSOC. VVA strongly supports expansion of VSOC, which places experienced Vocational Rehabilitation Counselors (VRCs) on campuses with high populations of GI Bill users, but urges the committee to ensure that the VA is authorized to make new hires to reduce the workload of VRCs. VRCs are an invaluable resource for student veterans, particularly those with service-related illnesses and injuries, and those still struggling with their transition out of the military. Placing VRCs on campus as part of the VSOC program increases support for veterans in ways that schools don't otherwise provide. VRCs address questions regarding VA educational benefits, health services, and general VA benefits, as well as enroll student veterans in the VA healthcare system right there on campus.

The VSOC program, which began as a pilot in 2009, is currently on 94 campuses. This program has proven to be extremely beneficial to veterans, and should be made permanent and expanded to everywhere that it is practical to do so.

Because VRCs currently have caseloads that far exceed recommended levels, VVA hopes that Congress will work with the VA to ensure that more VRCs are hired.

**DISCUSSION DRAFT, Section 10** — *Restoration of entitlement to Post-9/11 Educational*

*Assistance and other relief for veterans affected by IHL closure.*

VVA strongly supports this section, and urges this committee to empower the VA to recoup damages by these institutions and their investors.

The purpose of this section is to restore eligibility for tuition, but not BAH, for student veterans who attended an institutions that has unexpectedly closed. VVA supports the intent of this legislation, but urges the committee to amend it to restore BAH as well. Veterans who have had their educational paths approved and paid for by the VA, and who then experience a school closing, should not have the rug pulled out from under them.

VVA urges the committee to take a proactive approach to protecting student veterans by keeping the VA from approving GI Bill use at institutions that have questionable practices or are at risk of closure. As we have expressed many times before, VVA is concerned about abuses of the GI Bill and questionable recruiting practices by predatory schools that view student veterans as little more than federally guaranteed dollar signs. (For further information, please see the attached memorandum from the Veterans Legal Services Clinic at Yale Law School: *VA'S Failure to Protect Veterans from Deceptive Recruiting Practices* which is dated February 26, 2016.)

***According to Student Veterans of America's National Veteran Education Success Tracker (NVEST) Report, proprietary schools enroll 27% of GI Bill students, while taking in 40% of total GI Bill funding -- and only produce 19% of the total degree completions. By comparison, public schools enroll 56% of GI Bill students, take 34% of total GI Bill funding, and produce 64% of total degree completions.***

In recent years, proprietary schools have seen overall enrollment spiral down, with the proportion of GI Bill users among their student populations growing. In many cases, these schools are over-reliant on federal funding, and if GI Bill funding was considered as federal funding under the 90/10 rule, these entities would be far out of compliance.

VVA encourages this committee to work to make sure that GI Bill funding is counted as federal funds as it pertains to the 90/10 rule. This will help ensure that student veterans are not looked at as dollar signs that help pad questionable programs so that they can be in compliance with the rather liberal 90/10 rule.

**DISCUSSION DRAFT, Section 12** — *would direct the Secretary of Veterans Affairs to make improvements to the information technology system of the VA's Veterans Benefits Administration.*

VVA favors this section. However, we believe that rather than enact yet more legislation, Congress ought to focus on employing its oversight obligations to ensure that the VA is in fact making improvements to its IT system.

**DISCUSSION DRAFT Section 15** — *Limitation on use of reporting fees payable to educational institutions and joint apprenticeship training committees.*

We strongly support increasing funding fees to schools, so long as there are sufficient protections in place to ensure that these funds are earmarked specifically to services for GI Bill users only. Schools should not be able to blend VA funding fees with general funds, or use VA funding for general programming.

These funding fees provide schools which have large contingents of GI Bill users with ways to improve services and facilities dedicated to service members, veterans and their families. Many schools have used these funds to build and support dedicated on-campus Student Veteran Centers. These spaces are critical for many student veterans' successful transitions, as they serve as a rallying point where veterans can find others with similar experiences and backgrounds. Veterans who experience such camaraderie on campus are more likely to succeed in school, and as such, institutions collecting large sums of reporting fees should be encouraged to use these funds to support on-campus Student Veteran Centers.

**VIETNAM VETERANS OF AMERICA**

**Funding Statement**

June 15, 2017

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For further information, contact:

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## **Kristofer Goldsmith**

### **Assistant Director for Policy and Government Affairs**

Kristofer Goldsmith joined the Policy and Government Affairs team at Vietnam Veterans of America in May 2016. Mr Goldsmith advises Members of Congress and the administration on the implementation of policy regarding “new veterans” across the government.

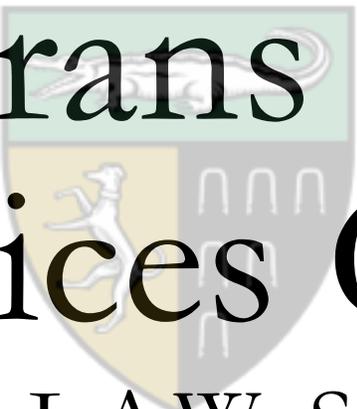
Born in New York, Mr Goldsmith joined the Army to serve a forward observer with the Army’s Third Infantry Division shortly after the terrorist attacks of September 11th 2001. He deployed with Alpha Company of the 3rd Battalion, 15th Infantry Regiment in support of Operation Iraqi Freedom for the year of 2005.

Since separating from the Army with a General discharge after surviving a post-traumatic stress disorder-related suicide attempt, Mr Goldsmith has since become an advocate for veterans with PTSD and those with less-than-honorable discharges.

As a disabled student veteran using Vocational Rehabilitation, Mr Goldsmith found both an opportunity to recover from PTSD and to continue serving his fellow veterans. At Nassau Community College, he established a million-dollar Veteran Resource Facility which serves as a center for hundreds of transitioning student veterans. After two years as President of NCC’s Student Veterans of America chapter, he transitioned to Columbia University’s School of General Studies to pursue a bachelor’s degree in Political Science.

Mr Goldsmith is the founder and chair of High Ground Veterans Advocacy, a 501c3 not-for-profit which partners with military and veterans service organizations to train vets to become grassroots advocates and leaders in their local communities. High Ground Veterans Advocacy was recognized on the HillVets 100 list of 2016 as one of the nation’s top new veterans organizations.

Mr Goldsmith has dedicated his entire adult life to serving this country and its veterans, and looks forward to many more years advocating for his brothers and sisters in arms. He believes it is the responsibility of today’s young veterans must keep the motto of VVA alive: “Never Again Will One Generation of Veterans Abandon Another.”



# Veterans Legal Services Clinic

YALE LAW SCHOOL

## MEMORANDUM

RE: VA'S FAILURE TO PROTECT VETERANS  
FROM DECEPTIVE RECRUITING PRACTICES

FEBRUARY 26, 2016

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# The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

## MEMORANDUM

To: Interested Parties

From: Erin Baldwin, Corey Meyer, Rachel Tuchman  
Law Student Interns, Veterans Legal Services Clinic

Date: February 26, 2016

Re: U.S. Department of Veterans Affairs and State Approving Agencies' authority to deny G.I. Bill funds to schools using deceptive marketing to recruit veterans

### **QUESTIONS PRESENTED**

Does the U.S. Department of Veterans Affairs ("VA") have the authority to protect veterans by denying G.I. Bill funds to educational institutions that use deceptive recruiting practices, including misleading marketing and false advertising, to target veterans? What actions can the VA and State Approving Agencies ("SAAs") take to prevent these institutions from receiving G.I. Bill funds?

### **SHORT ANSWER**

Both the VA and SAAs have the authority to approve, disapprove, and suspend G.I. Bill funds for educational institutions engaged in deceptive recruiting practices.<sup>1</sup> Indeed, the VA has an obligation to act: the VA must not approve veterans' enrollment in courses offered by institutions that use "erroneous, deceptive or misleading" advertising, sales, or enrollment practices.<sup>2</sup> Additionally, the VA and SAAs may disapprove and suspend the use of G.I. Bill funds at educational institutions that utilize such practices.<sup>3</sup>

### **BACKGROUND**

Educational institutions have strong incentives to engage in deceptive recruitment tactics to secure veterans' enrollment and collect G.I. Bill funds. For-profit institutions in particular rely on G.I. Bill funds to offset the statutory cap on other federal student aid programs.<sup>4</sup> As one official explained, this structure

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<sup>1</sup> See 38 U.S.C. §§ 3672, 3679, 3690.

<sup>2</sup> See *id.* § 3696.

<sup>3</sup> See *id.* § 3679, 3690; 38 C.F.R. § 21.4259.

<sup>4</sup> Under the Higher Education Act, for-profit institutions are barred from receiving federal funds if they draw more than 90 percent of their revenue from federal student aid programs. 20 U.S.C. § 1094(a)(24). However, the statute does not list G.I. Bill funds, thereby creating a loophole that allows for-profit institutions to count G.I. Bill funds as non-public dollars that do not count against the 90 percent cap. See Daniel J. Riegel, Note, *Closing the 90/10 Loophole in the Higher Education Act: How to Stop Exploitation of Veterans, Protect American Taxpayers, and Restore Market*; Letter from 22

incentivizes many for-profit educational institutions to view veterans “as nothing more than dollar signs in a uniform.”<sup>5</sup>

Predatory for-profit schools routinely employ deceptive advertising practices to entice veterans to enroll in their programs.<sup>6</sup> The aggressive recruitment tactics garnered public attention in 2012 when a two-year investigation by the Senate Committee on Health, Education, Labor, and Pensions documented evidence of schools recruiting veterans at hospitals and wounded warrior centers.<sup>7</sup> The report cited internal corporate documents and training materials depicting a boiler-room sales environment in which for-profit colleges instructed recruiters to “pok[e] the pain”<sup>8</sup> in prospective students’ psyches and mislead them about tuition, accreditation, transferability of credits, academic quality, graduation rates, job and salary prospects, career assistance, and the inability of G.I. Bill funds to cover the full tuition.<sup>9</sup> Other tactics included creating fake military websites that purported to offer unbiased advice on G.I. Bill educational opportunities, but in reality sold veterans’ contact information to for-profit schools, which subjected the veterans to a barrage of recruiting calls and emails.<sup>10</sup> Another example involved recruiters attending job fairs under the guise of hiring veterans when they actually sought to enroll students in their programs.<sup>11</sup>

In addition, many schools accepting G.I. Bill funds lack the accreditation needed to deliver on their

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State Attorneys General to the Senate and House Committee on Veterans’ Affairs (May 29, 2012), [https://www.iowaattorneygeneral.gov/media/cms/Schools\\_4\\_profit\\_924BF51B5599F.pdf](https://www.iowaattorneygeneral.gov/media/cms/Schools_4_profit_924BF51B5599F.pdf) (stating that this accounting gimmick runs contrary to the intent of the Higher Education Act statute, if not its letter).

<sup>5</sup> Hollister K. Petraeus, Op-Ed, *For Profit Colleges, Vulnerable G.I.’s*, N.Y. TIMES, Sept. 21, 2011, [http://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html?r=1\\_\[hereinafter Petraeus, For Profit Colleges\]](http://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html?r=1_[hereinafter Petraeus, For Profit Colleges]).

<sup>6</sup> See, e.g., *PBS News Hour: Are For-Profit Universities Taking Advantage of Veterans?* (PBS July 24, 2015), available at <http://www.pbs.org/newshour/bb/profit-universities-taking-advantage-veterans/>; *PBS News Hour: Is G.I. Bill Benefitting For-Profit Colleges Instead of Helping Veterans?* (PBS July 7, 2014), available at <http://www.pbs.org/newshour/bb/gi-bill-benefitting-profit-colleges-instead-helping-veterans/>; Susannah Snider, *3 Steps to Take Before Using G.I. Bill Benefits at For-Profit Colleges*, U.S. NEWS & WORLD REPORT, Nov. 11, 2015, available at <http://www.usnews.com/education/best-colleges/paying-for-college/articles/2015/11/11/what-veterans-need-to-know-about-gi-bill-benefits-at-for-profit-colleges>.

<sup>7</sup> S. Health, Educ., Labor & Pensions Comm., 112th Cong., *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (2012), available at [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI-PartIII-SelectedAppendixes.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf).

<sup>8</sup> *Id.* at 60.

<sup>9</sup> *Id.* at 4 (citing U.S. GOV. ACCOUNTABILITY OFFICE, GAO-10-948T, FOR-PROFIT COLLEGES: UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES (2010)), available at <http://www.gao.gov/products/GAO-10-948T> (reporting that each one of 15 large for-profit schools made deceptive statements to federal undercover officers in recruiting, and four encouraged fraudulent practices by encouraging students to falsify FAFSA forms).

<sup>10</sup> Larry Abramson, *For-Profit Schools Under Fire for Targeting Veterans*, NATIONAL PUBLIC RADIO, April 9, 2012, <http://www.npr.org/2012/04/09/150148966/for-profit-schools-under-fire-for-targeting-veterans> (reporting that when an employee of Veterans of Foreign Wars tested the aggressiveness of recruiting by entering his information at “gibill.com,” for profit colleges telephoned him more than 70 times and emailed more than 300 times over the course of a few days); see also Petraeus, *For Profit Colleges*, *supra* note 5; Patricia Cohen, *For-Profit Colleges Accused of Fraud Still Receive U.S. Funds*, N.Y. TIMES, Oct. 12, 2015, <http://www.nytimes.com/2015/10/13/business/for-profit-colleges-accused-of-fraud-still-receive-us-funds.html> (noting how Alta Colleges marketed a criminal justice program promising prime careers where only 3.8% of graduates were actually employed as law enforcement or correctional officers).

<sup>11</sup> Chris Kirkham & Alan Zarembo, *For-Profit Colleges are Using the G.I. Bill to Make Money Off of Veterans*, L.A. TIMES, Aug. 18, 2015, <http://www.latimes.com/business/la-fi-for-profit-colleges-gi-bill-20150809-story.html>.

educational promises to veterans. A 2015 study found that as much as 20 percent of the current educational programs approved for G.I. Bill funds lacked the accreditation that is needed for students to work in the relevant field (such as medical and law careers).<sup>12</sup> In addition, a 2015 news report found that 2,000 unaccredited schools approved for G.I. Bill funds, including sex schools and bible schools, have taken more than \$260 million in G.I. Bill dollars since 2009.<sup>13</sup>

Veterans seeking higher education can use their G.I. Bill benefits only at educational institutions meeting specific approval criteria.<sup>14</sup> These criteria include a prohibition on using deceptive or misleading recruitment practices.<sup>15</sup> The authority for enforcing the prohibition rests with the VA and SAAs, state agencies created by Congress to ensure that veterans' education and training programs comply with federal standards.

In response to the deceptive tactics of some educational institutions, in 2012, the White House issued Executive Order 13607, to require educational institutions receiving G.I. Bill funding to, *inter alia*, “end fraudulent and unduly aggressive recruiting techniques.”<sup>16</sup> Pursuant to the Executive Order, the VA and other federal agencies, must—among other measures—engage in targeted risk-based program reviews of schools that may be engaged in deceptive recruiting tactics; create a centralized system to receive, respond to, and refer complaints to law enforcement; and ensure websites and programs are not engaged in deceptive marketing, including trademarking military and veterans related terms.<sup>17</sup>

Meanwhile, a growing number of federal agencies and state officials have directly investigated, sued, or taken other actions against educational institutions. The Department of Education (DoE) threatened to cut off federal funds to Corinthian Colleges in 2014, resulting in the school's eventual closure, following its failure to correct falsified job placement numbers.<sup>18</sup> Shortly after, California SAA (“CalVet”) withdrew G.I. Bill approval for California veterans from Corinthian Colleges.<sup>19</sup> Also in 2014, the Consumer Financial Protection Bureau sued the ITT chain for predatory, deceptive loan schemes targeting students, while the Securities Exchange Commission sued ITT in 2015 for deceiving shareholders.<sup>20</sup> In 2015, the Department of

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<sup>12</sup> See Walter Ochinko, Veterans Education Success, “The GI Bill Pays for Degrees That Do Not Lead to a Job,” available at

<http://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5619840ae4b0ae8c3b994957/1444512778604/Final+Research+paper+for+Senate+Testimony.pdf>.

<sup>13</sup> See Aaron Glantz, *GI Bill Pays for Unaccredited Sex, Bible and Massage Schools*, REVEAL NEWS, Jul. 15, 2015, <https://www.revealnews.org/article/gi-bill-pays-for-unaccredited-sex-bible-and-massage-schools>.

<sup>14</sup> See 38 U.S.C. § 3672.

<sup>15</sup> See *id.* §§ 3696, 3676(c)(10).

<sup>16</sup> Exec. Order No. 13607, Fed. Reg. 285, 861 (April 17, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-02/pdf/2012-10715.pdf>; see also Tamar Lewin, *Obama Signs Order to Limit Aggressive College Recruiting of Veterans*, N.Y. TIMES, Apr. 27, 2012, <http://www.nytimes.com/2012/04/28/education/obama-signs-order-to-protectveteransfrom-college-recruiters.html>.

<sup>17</sup> *Id.*; see also Pub. L. No. 112-249, 126 Stat. 2398 (Jan. 10, 2013) (codifying certain aspects of the executive order, including improving access to information for veterans choosing a school, requiring the VA to create a system to obtain student veteran's feedback about schools, and banning incentive compensation at schools to limit deceptive recruiting).

<sup>18</sup> Richard Perez-Peña, *College Group Run for Profit Looks to Close or Sell Schools*, N.Y. TIMES, July 14, 2014, [http://www.nytimes.com/2014/07/05/education/corinthian-colleges-to-largely-shut-down.html?\\_r=0](http://www.nytimes.com/2014/07/05/education/corinthian-colleges-to-largely-shut-down.html?_r=0).

<sup>19</sup> Press Release, California Department of Veteran Affairs, *CalVet Withdraws Approval for Corinthian Colleges*, Aug. 25, 2014, <https://www.calvet.ca.gov/Pages/CalVet-WithdrawsApproval-for-Corinthian-Colleges.aspx>.

<sup>20</sup> Press Release, Consumer Financial Protection Bureau, *CFPB Sues For-Profit College Chain ITT For Predatory Lending*, Feb. 26, 2014, <http://www.consumerfinance.gov/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory>

Defense temporarily banned the University of Phoenix from recruiting on military bases after finding that the institution deceptively and surreptitiously targeted veterans and service members.<sup>21</sup> The Department of Justice, in 2015, announced a \$95.5 million settlement with another large for-profit college chain, Education Management Corporation, following a multi-year suit for violating federal rules that prevent deceptive recruiting.<sup>22</sup> In 2015, the Federal Trade Commission (FTC) settled with Ashworth College for deceiving students about career training and transferability of credits.<sup>23</sup> Most recently, in January 2016, the FTC filed suit against the operators of DeVry University, alleging that its advertisements deceived consumers about the prospect of finding employment after graduation.<sup>24</sup> Finally, more than 30 state Attorneys General have investigated and sued dozens of for-profit colleges for deceptive recruiting. These institutions include unaccredited programs deceiving students about their ability to work in licensed fields and schools' unlawfully using military seals and claiming Pentagon approval to lure veterans.<sup>25</sup>

Although the VA is responsible for overseeing education benefits for veterans, it has been slow to join other agencies in addressing deceptive practices, drawing criticism from Congressional and veterans' leaders.<sup>26</sup> Veterans advocates note the VA has not completed its obligations under the 2012 Executive Order and that the VA's own "Choosing a School" guide directs veterans to a profit-making college search website that collects and sells veterans' contact information, rather than directing veterans to the DoE's reputable college search tools.<sup>27</sup>

According to the VA, it has limited authority to take action against educational institutions that use deceptive marketing practices. In response to a July 2015 letter from eight U.S. Senators concerned about

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-lending/; Press Release, U.S. Securities and Exchange Commission, *SEC Announces Fraud Charges Against IIT Educational Services*, May 12, 2015, <https://www.sec.gov/news/pressrelease/2015-86.html>.

<sup>21</sup> Douglas Belkin & Ben Kesling, *Justice, Education Departments Coordinate University of Phoenix Probes*, WALL ST. J., Oct. 9, 2015, [http://www.wsj.com/article\\_email/university-of-phoenix-barred-from-military-bases-1444369975](http://www.wsj.com/article_email/university-of-phoenix-barred-from-military-bases-1444369975)

-lMyQjAxMTI1NDE5MDQxODAxWj; see also Letter from Dawn Bilodeau, Chief Department of Defense Voluntary Education, Military Community and Family Policy, to University of Phoenix (Oct. 7, 2015), available at [http://chronicle.com/blogs/ticker/files/2015/10/Suspension-Letter-to-University-of-Phoenix\\_7Oct20151.pdf](http://chronicle.com/blogs/ticker/files/2015/10/Suspension-Letter-to-University-of-Phoenix_7Oct20151.pdf).

Department of Defense lifted the ban in January 2016. See Associated Press, *Arizona: Sanction Lifted for University of Phoenix*, N.Y. TIMES, Jan. 15, 2016, [http://www.nytimes.com/2016/01/16/us/arizona-sanction-lifted-for-university-of-phoenix.html?\\_r=0](http://www.nytimes.com/2016/01/16/us/arizona-sanction-lifted-for-university-of-phoenix.html?_r=0).

<sup>22</sup> Press Release, Department of Justice, *For-Profit College Company to pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations*, Nov. 16, 2015, available at <http://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>.

<sup>23</sup> Press Release, Federal Trade Commission, *Ashworth College Settles FTC Charges it Misled Students About Career Training, Credit Transfers*, May 26, 2015, <https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about> [hereinafter FTC Press Release].

<sup>24</sup> Press Release, Federal Trade Commission, *FTC Brings Enforcement Action Against DeVry University*, Jan. 27, 2016, <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-brings-enforcement-action-against-devry-university>.

<sup>25</sup> David Halperin, *Law Enforcement Investigations and Actions Regarding For-Profit Colleges*, REPUBLIC REPORT, Oct. 9, 2015, <http://www.republicreport.org/2014/law-enforcement-for-profit-colleges> [hereinafter Halperin, *Actions Regarding For-Profit Colleges*].

<sup>26</sup> Telephone Interview with Rick Weidman, Executive Director of Veterans Affairs, Vietnam Veterans of America (Feb. 10, 2016); see also Bobby Caina Calvin, *University of Phoenix Probation Brings Calls for VA to Pull the Plug*, REVEAL NEWS, Oct. 9, 2015, <https://www.revealnews.org/article/university-of-phoenix-probation-brings-calls-for-va-to-pull-the-plug/>.

<sup>27</sup> Telephone Interview with Carrie Wofford, Director, Veterans Education Success (Feb. 9, 2016) [hereinafter Wofford Interview].

unaccredited schools receiving G.I. Bill funds,<sup>28</sup> then VA Under Secretary of Benefits, Allison Hickey, stated that SAAs, not the VA, are responsible for disapproving funds to the schools in question and that the VA has limited authority over the process. The letter noted:

The authority for the approval of educational programs is specifically granted to the State Approving Agencies (SAAs) under Title 38 of the United States Code (38 U.S.C.) . . . Any course approved for benefits that fails to meet any of the approval requirements should be immediately disapproved by the appropriate SAA. VA is prohibited, by law, from exercising any supervision or control over the activities of the SAAs, except during the annual SAA performance evaluations.<sup>29</sup>

Moreover, veterans groups report that VA officials suggest they cannot take intermediate steps, such as a suspension of funds.<sup>30</sup> Both the VA and SAAs, however, have explicit authority to suspend courses, in addition to their authority to approve and disapprove courses.<sup>31</sup>

When SAAs have taken action, the VA has declined to support—or has even undercut—SAAs’ efforts to prevent non-compliant institutions from enrolling veterans. In one instance, although not related to deceptive recruitment practices, the California SAA (CalVet) blocked the enrollment of additional veterans at the University of Phoenix’s San Diego campus after an audit revealed the university exceeded an enrollment cap on veterans,<sup>32</sup> but the VA reversed the enrollment ban within days.<sup>33</sup> When CalVet suspended G.I. Bill funds to ITT and withdrew approval from Corinthian Colleges, the VA declined to assist CalVet.<sup>34</sup> Most

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<sup>28</sup> See Letter from Richard Durbin, Senator from Illinois, to Under Secretary of Benefits Allison Hickey (July 17, 2015), *available at* <http://www.durbin.senate.gov/newsroom/press-releases/senators-terrible-failure-of-our-veterans-senators-terrible-failure-of-our-promise-to-veterans-and-taxpayers-when-gi-bill-benefits-wasted-on-questionable-institutions-> [hereinafter Durbin Letter].

<sup>29</sup> Letter from Allison A. Hickey, Former Under Secretary of Benefits in the Department of Veteran Affairs, to Senator Richard J. Durbin (Sept. 4, 2015), *available at* <http://assets.documentcloud.org/documents/2428666/va-educational-benefit-program-letter-to-sen.pdf>.

<sup>30</sup> Wofford Interview, *supra* note 27.

<sup>31</sup> 38 U.S.C. §§ 3675, 3679 (granting both “[t]he Secretary or a State approving agency” authority to approve and disapprove educational institutions); *see also* 38 U.S.C. § 3690(b)(3)(A) (granting suspension authority to the VA); 38 C.F.R. § 21.4210 (detailing the process that must accompany a mass suspension of funds, and of enrollments or reenrollments at educational institutions); 38 C.F.R. § 21.4259 (granting suspension authority to the SAA); S. REP. NO. 111-346, at 21 (2010) (noting that the 2010 amendments to the G.I. Bill were intended “to *expand* VA’s authority regarding approval of courses for the enrollment of veterans (and other eligible persons) who are in receipt of VA-administered educational assistance programs”) (emphasis added).

<sup>32</sup> Adithya Sambamurthy, *VA Overturns Veteran Enrollment Ban on University of Phoenix Programs*, REVEAL NEWS, Aug. 5, 2014, <https://www.revealnews.org/article-legacy/va-overturns-veteran-enrollment-ban-on-university-of-phoenix-programs>.

<sup>33</sup> *Id.* (“VA spokeswoman Victoria Dillon said the agency reversed the state’s enrollment ban without returning to the campus to conduct its own audit. Instead, she said the decision was made after the for-profit school sent new figures by email.”).

<sup>34</sup> For information about CalVet’s suspension of G.I. Bill funds for ITT, *see, for example*, Press release, California Department of Veterans Affairs, *CalVet Suspends GI Bill Approval for ITT Technical Institute*, May 15, 2015, <https://www.calvet.ca.gov/Pages/CalVet-Suspends-GI-Bill-Approval-for-ITT-Technical-Institute.aspx>; Letter from Congresswoman Speier to Secretary Robert McDonald, Congresswoman Speier Urges the Department of Veteran Affairs to Suspend GI Bill Benefits for ITT Educational Services (May 21, 2015), *available at* [http://speier.house.gov/index.php?option=com\\_content&view=article&id=1686:congresswoman-speier-urges-the-department-of-veterans-affairs-to-suspend-gi-bill-benefits-for-itt-educational-services&catid=20:press](http://speier.house.gov/index.php?option=com_content&view=article&id=1686:congresswoman-speier-urges-the-department-of-veterans-affairs-to-suspend-gi-bill-benefits-for-itt-educational-services&catid=20:press)

recently, in late 2015, after Virginia's SAA withdrew approval from ECPI's Medical Career Institute based on findings of deceptive recruiting, the VA failed to release the corresponding compliance review that would support the SAA's decision, despite requests from veterans' organizations.<sup>35</sup>

## **ANALYSIS**

This analysis proceeds in two parts. First, it explains the VA's statutory obligation to deny G.I. Bill funds for schools engaging in deceptive recruitment practices. Second, it discusses SAAs' authority to approve, disapprove, or suspend funding for educational institutions that engage in such practices.

### **I. The VA must deny G.I. Bill funds to educational institutions engaging in deceptive recruitment practices**

The VA's statutory authority is clear: the VA is responsible for approving, disapproving, and suspending G.I. Bill funds for educational institutions according to various criteria.<sup>36</sup> Although SAAs also have authority to act, the VA retains authority to disapprove schools or courses and approve schools "notwithstanding lack of State approval."<sup>37</sup>

More specifically, federal statutes and regulations explicitly prohibit the VA from approving veterans' enrollment in courses offered by institutions that utilize deceptive practices.<sup>38</sup> Under 38 U.S.C. § 3696(a), "[t]he Secretary shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation." In addition to its approval authority, the VA can disapprove or suspend G.I. Bill funds based on a finding of deceptive practices, as 38 U.S.C. § 3696 is incorporated into the grounds for disapproval and suspension.<sup>39</sup>

The legislative history of 38 U.S.C. § 3696 underscores Congress' intent that the VA take action against educational institutions that use deceptive recruitment practices. Congress added § 3696 in 1974 as part of the Vietnam Era Veterans' Readjustment Assistance Act to require the VA to prevent colleges with predatory advertising practices from receiving G.I. Bill funds. The Senate Committee on Veterans' Affairs Report concerning the legislation states that the language of the bill includes "safeguards to prevent abuses of the veterans' educational assistance program" in response to the "deep concern . . . about abuses of the G.I. Bill

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For information about CalVet's withdrawal of approval for Corinthian Colleges, see, for example, Press Release, California Department of Veteran Affairs, *CalVet Withdraws Approval for Corinthian Colleges*, Aug. 25, 2014, <https://www.calvet.ca.gov/Pages/CalVet-WithdrawsApproval-for-Corinthian-Colleges.aspx>.

<sup>35</sup> Wofford Interview, *supra* note 27; see also *Virginia Department of Veterans Services, Medical Careers Institute- School of Health and Science of ECPI University, Virginia Beach Campus Withdrawn from Offering Education and Training to Veterans and their Dependents*, VIRGINIA DEPT. OF VET. SERV., Dec. 7, 2015, <http://www.dvs.virginia.gov/news-room/education-employment-news/medical-careers-institute-va-beach-approval-withdrawn>.

<sup>36</sup> See 38 U.S.C. § 3672(a) (stating that educational courses are approved "by the State approving agency for the State, . . . or by the Secretary"); *id.* § 3675(a)(1) (stating that "the Secretary or a State approving agency may approve accredited programs").

<sup>37</sup> 38 C.F.R. § 21.4152(b)(5).

<sup>38</sup> 38 U.S.C. § 3696(a); 38 C.F.R. § 21.4252(h)(1).

<sup>39</sup> 38 U.S.C. § 3679 ("Any course approved for the purposes of this chapter which fails to meet any of the requirements of this chapter shall be immediately disapproved by the Secretary or the appropriate State approving agency."); *id.* § 3690(b).

program in general.”<sup>40</sup> According to the Report, the bill “clarifies and strengthens the law with respect to the [Secretary’s] authority to disapprove enrollment of veterans in institutions which utilize advertising, sales, or enrollment practices which are erroneous, deceptive, or misleading.”<sup>41</sup>

Congress created two mechanisms to ensure that educational institutions using deceptive recruitment practices do not receive G.I. Bill funds. First, educational institutions are subject to mandatory recordkeeping and disclosure obligations.<sup>42</sup> Specifically, schools must maintain a record of all advertising, sales, and enrollment materials used during the preceding 12 months.<sup>43</sup> This record must be made available for inspection by the VA or SAAs.<sup>44</sup> Second, the VA is required to enter into an agreement with the FTC to utilize FTC resources to investigate and make determinations as to “enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.”<sup>45</sup> Although the mandate to cooperate with the FTC was passed by Congress in 1974,<sup>46</sup> it appears that only in early November 2015, after pressure from veterans groups and the White House,<sup>47</sup> did the VA and the FTC enter into a Memorandum of Agreement to “provide mutual assistance in the oversight and enforcement of laws pertaining to the advertising, sales, and enrollment practices” of educational institutions that receive G.I. Bill benefits.<sup>48</sup>

Once the VA determines that an educational institution has used deceptive practices, the VA may take three actions affecting different groupings of G.I. Bill beneficiaries: suspend payments for veterans already enrolled in a course,<sup>49</sup> disapprove new enrollments in a course,<sup>50</sup> or disapprove new enrollments for the institution as a whole.<sup>51</sup> The VA must follow certain procedures regardless of which action it decides to take.<sup>52</sup> First, the Secretary must provide both the SAA and the educational institution with written notice of any

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<sup>40</sup> S. REP. NO. 93-907, at 36 (1974). The Report cited numerous findings including Federal Trade Commission investigations of the Vocational and Home Study School Industry; a series of news articles on the practices of the private profit-making vocational education industry; and a Brookings Institution report prepared for the Office of Education entitled “Private Accreditation and Public Eligibility.” *See id.* at 22-23.

<sup>41</sup> *Id.* at 38.

<sup>42</sup> *See* 38 U.S.C. § 3696(b); 38 C.F.R. § 21.4252(h)(3) (“The materials in this record shall include but are not limited to: (i) Any direct mail pieces, (ii) Brochures, (iii) Printed literature used by sales people, (iv) Films, video cassettes and audio tapes disseminated through broadcast media, (v) Material disseminated through print media, (vi) Tear sheets, (vii) Leaflets, (viii) Handbills, (ix) Fliers, and (x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution.”).

<sup>43</sup> 38 U.S.C. § 3696(b) (“Such materials shall include but are not limited to any direct mail pieces, brochures, printed literature used by sales persons, films, video tapes, and audio tapes disseminated through broadcast media, material disseminated through print media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel, agents, or representatives of such institution.”).

<sup>44</sup> *Id.* (“Such record shall be available for inspection by the State approving agency or the Secretary.”).

<sup>45</sup> 38 U.S.C. § 3696(c); 38 C.F.R. § 21.4001(f).

<sup>46</sup> Pub. L. No. 93–508, 88 Stat. 1578 (Dec. 3, 1974).

<sup>47</sup> Telephone Interview with Walter Ochinko, Policy Director, Veterans Education Success (Feb. 9, 2016).

<sup>48</sup> DEPARTMENT OF VETERANS AFFAIRS and FEDERAL TRADE COMMISSION, MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL TRADE COMMISSION AND THE DEPARTMENT OF VETERANS AFFAIRS (2015), *available at* [https://www.ftc.gov/system/files/documents/cooperation\\_agreements/151110ftc\\_va\\_mou.pdf](https://www.ftc.gov/system/files/documents/cooperation_agreements/151110ftc_va_mou.pdf).

<sup>49</sup> 38 C.F.R. § 21.4210(d)(1)(i).

<sup>50</sup> *Id.* § 21.4210(d)(1)(ii).

<sup>51</sup> *Id.* § 21.4210(d)(4).

<sup>52</sup> 38 U.S.C. § 3690(b)(3)(B); *see also* 38 C.F.R. § 21.4210 (detailing the process that must accompany a mass suspension of funds, and of enrollments or reenrollments at educational institutions).

failure to meet the approval requirements.<sup>53</sup> Second, the VA must provide the institution 60 days to take corrective action.<sup>54</sup> Finally, within 30 days of notice to the institution, the Secretary must provide each eligible veteran and person already enrolled written notice of the VA's intent to take action against the educational institution.<sup>55</sup> For any actions affecting groups of veterans, including suspensions and disapprovals, the VA Director of the Regional Processing Office must refer the matter to that regional office's Committee on Educational Allowances.<sup>56</sup> The Committee then makes findings of fact and recommendations on the matter to the Director of the Regional Processing Office.<sup>57</sup> The Director of Regional Processing then considers the recommendation of the Committee and makes a decision, though it does not have to be the same decision as the Committee.<sup>58</sup> The educational institution affected by a decision can request review by the VA Director of Education Services.<sup>59</sup>

The statutes and regulations establishing the VA's authority over the administration of the G.I. Bill program enable the VA to actively participate in the disapproval or suspension of educational institutions that engage in deceptive marketing or recruitment practices, contrary to the VA's claims. Yet the VA has been slow to take action against educational institutions that engage in such practices.<sup>60</sup>

## **II. SAAs must deny G.I. Bill funds to educational institutions engaging in deceptive recruitment practices**

SAAs, like the VA, are responsible for approving educational institutions and courses that receive G.I. Bill funding.<sup>61</sup> Accordingly, Congress characterized cooperation between the VA and SAAs as "essential," particularly with respect to the "enforcement of approval standards."<sup>62</sup>

SAAs have authority to approve accredited courses<sup>63</sup> and non-accredited courses offered by public or private, for-profit or non-profit schools.<sup>64</sup> In regards to advertising practices, SAAs may only approve a non-accredited institution after confirming that "the institution does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation."<sup>65</sup> To evaluate an institution under this requirement, SAAs must determine whether the FTC has issued an order instructing the institution to discontinue "erroneous or misleading" advertising acts or practices and must take any order into

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<sup>53</sup> 38 U.S.C. § 3690(b)(3)(B)(i).

<sup>54</sup> *Id.* § 3690(b)(3)(B)(ii).

<sup>55</sup> *Id.* § 3690(b)(3)(B)(iii).

<sup>56</sup> 38 C.F.R. § 21.4210(g); *see also id.* § 21.4212 (explaining the referral process to the Committee on Educational Allowances); *id.* § 21.4211 (discussing the composition of the Committee on Educational Allowances); *id.* § 21.4213 (providing details on notice of hearings by the Committee on Educational Allowances); *id.* § 21.4214 (describing the rules and procedures for the Committee on Educational Allowances); *id.* § 21.4215 (discussing decision guidelines for the Committee on Educational Allowances).

<sup>57</sup> 38 C.F.R. § 21.4211(a)(ii)(5).

<sup>58</sup> *Id.* § 21.4215.

<sup>59</sup> *Id.* § 21.4216.

<sup>60</sup> Aaron Glantz, *VA Lags in Addressing Complaints Against Colleges Using GI Bill Funds*, REVEAL NEWS, Nov. 19, 2014, <https://www.revealnews.org/article-legacy/va-lags-in-addressing-complaints-against-colleges-using-gi-bill-funds>.

<sup>61</sup> 38 U.S.C. § 3672(a)(1).

<sup>62</sup> *Id.* § 3673(a); *see also* 38 C.F.R. § 21.4151(a) (stating that "the cooperation of the Department of Veterans Affairs and the State approving agencies is essential").

<sup>63</sup> 38 U.S.C. § 3675.

<sup>64</sup> *Id.* § 3676.

<sup>65</sup> *Id.* § 3676(c)(10); *see also* 38 C.F.R. § 21.4254(c)(10).

consideration.<sup>66</sup> In addition, SAAs and the VA may inspect the advertising materials used by schools, a record of which must be kept by educational institutions for the preceding 12-month period.<sup>67</sup>

SAAs also share authority with the VA to disapprove educational institutions found to be out of compliance with the approval requirements, including those related to deceptive recruitment practices.<sup>68</sup> Like the VA, SAAs must “immediately disapprove” noncompliant courses.<sup>69</sup> The SAAs’ responsibilities also include evaluating compliance of schools and “inspecting and supervising schools within the borders of their respective states.”<sup>70</sup> To ensure ongoing compliance, SAAs conduct compliance surveys (routine and regulated compliance checks) at educational institutions.<sup>71</sup>

SAAs must follow certain procedures to take action against educational institutions that engage in deceptive recruiting practices. The SAAs have authority to suspend enrollment in a new course for a period of up to 60 days.<sup>72</sup> If the educational institution does not meet requirements for approval or correct deficiencies within the 60 day period, the SAA has the authority to disapprove the course.<sup>73</sup> In the event the course is in a state without an SAA, the VA has authority to handle the suspension and disapproval function of the SAA.<sup>74</sup>

Despite this authority, few SAAs are thoroughly reviewing programs as part of the approval and disapproval process.<sup>75</sup> A former SAA official has suggested that the Post-9/11 G.I. Bill amendments to the approval and disapproval process effectively stopped SAAs from conducting thorough approval reviews.<sup>76</sup> The official observed that the VA and SAAs have begun to summarily approve accredited institutions, thus limiting SAAs to auditing already approved institutions through compliance surveys.<sup>77</sup> Although SAAs have the authority to review institutions and suspend or disapprove funding for those found out of compliance

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<sup>66</sup> 38 U.S.C. § 3676(c)(10).

<sup>67</sup> *Id.* § 3696(b); 38 C.F.R. § 21.4252(h)(3).

<sup>68</sup> *See* 38 U.S.C. § 3670 *et seq.*

<sup>69</sup> *Id.* § 3679.

<sup>70</sup> 38 C.F.R. § 21.4151(b); *see also id.* § 21.4253(b) (recognizing the SAAs’ authority to approve accredited courses); *id.* § 21.4253(d) (recognizing the SAAs’ authority to approve school applications).

<sup>71</sup> *See* 38 U.S.C. § 3673(d) (noting the Secretary’s authority to utilize services of SAAs for compliance and oversight); *see also* U.S. Department of Veterans Affairs, *Compliance Survey Report* (March 2014), *available at* <https://assets.documentcloud.org/documents/1236731/university-of-phoenix-audit-report.pdf> (showing that VA form includes two requirements SAAs must check related to deceptive recruiting).

<sup>72</sup> 38 C.F.R. § 21.4259(a)(1).

<sup>73</sup> *Id.* § 21.4259(a)(2).

<sup>74</sup> *Id.* § 21.4259(c).

<sup>75</sup> *But see Virginia Department of Veterans Services, Medical Careers Institute- School of Health and Science of ECPI University, Virginia Beach Campus Withdrawn from Offering Education and Training to Veterans and their Dependents*, VIRGINIA DEPT. OF VET. SERV., Dec. 7, 2015, <http://www.dvs.virginia.gov/news-room/education-employment-news/medical-careers-institute-va-beach-approval-withdrawn> (documenting Virginia SAA’s recent suspension action against Medical Careers Institute for 60 days followed by a disapproval action for the Virginia Beach Campus of the University under 38 C.F.R. § 21.4252(h)(1)(i) for findings of misleading materials).

<sup>76</sup> Interview with Jim Bombard, National Association of State Approving Agencies, Retired Legislative Director and Retired Chief, New York Bureau of Veterans Education (Nov. 11, 2015) (on file with author) [hereinafter “Bombard Interview”].

<sup>77</sup> *Id.*

with statutory requirements, resource constraints undermine SAAs' capacity to disapprove G.I. Bill funding.<sup>78</sup> In addition, veterans advocates note that SAAs report feeling relegated by the VA to simple financial audits of schools.<sup>79</sup> Whatever the cause, a former SAA director has suggested that SAAs rarely, if ever, review advertising materials during compliance reviews.<sup>80</sup>

## **CONCLUSION**

Both the VA and SAAs have the authority and an obligation to protect veterans from deceptive recruiting by denying G.I. Bill funds to educational institutions that deceive and defraud veterans. Both the VA and SAAs are mandated by law to approve funding only for courses that comply with statutory requirements and to suspend or disapprove funds for educational programs that utilize deceptive advertising to entice veterans to enroll in their programs. Thus far, both the VA and SAAs have failed to fulfill their duty to prevent schools from recruiting veterans through misleading recruitment tactics. The VA and SAAs must take action against institutions that are using deceptive practices to recruit veterans.

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<sup>78</sup> Statements of Dr. Joseph W. Wescott, President, National Association of State Approving Agencies before the Subcommittee on Economic Opportunity Committee on Veteran's Affairs, United States House of Representatives, Nov. 19, 2014.

<sup>79</sup> Telephone Interview with Col. Robert F. Norton (Ret.), Deputy Director of Government Relations, Military Officers Association of America (Feb. 10, 2016).

<sup>80</sup> Bombard Interview, *supra* note 76.