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Combating For-Profit Education's Use of Erroneous, Deceptive, and Misleading Practices Against Veterans and the GI Bill

Luke R. Nelson

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**COMBATING FOR-PROFIT EDUCATION'S USE OF
ERRONEOUS, DECEPTIVE, AND MISLEADING
PRACTICES AGAINST VETERANS AND THE GI BILL**

Luke R. Nelson[†]

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I. INTRODUCTION

Nearly 800,000 veterans and family members every year use Post-9/11 GI Bill benefits through the Department of Veterans Affairs (VA).¹ The GI Bill benefits program is the VA's largest education-assistance program, covering expenses for military veterans and eligible dependents including tuition, fees, housing, and books.² For-profit education accepts billions of dollars annually through the program,³ but several recent cases of program abuse have received much-deserved media and public attention, as they involved for-profit institutions targeting veterans and military families with erroneous, deceptive, and misleading enrollment practices.⁴

Following a 2016 bench trial, a Minnesota state district court found that Globe University and Minnesota School of Business violated state consumer protection laws and engaged in multiple fraudulent practices by exaggerating the career eligibility and value of certain degrees.⁵ Twenty-four students testified against the for-profit institutions, detailing various misleading and fraudulent representations by counselors and admissions representatives.⁶ Six

† J.D., University of New Hampshire School of Law, 2011. Mr. Nelson is a veteran and recipient of the Post-9/11 GI Bill. He served five years as an active-duty Judge Advocate General (JAG) in the United States Air Force, stationed in Missouri, Washington, D.C., and the country of Qatar. He currently serves as a JAG in the United States Air Force Reserves in Minneapolis, Minnesota. The views expressed in this article are those of the author and do not represent the official policy or position of the Department of Defense or of the United States Air Force.

1. U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-42, POST-9/11 GI BILL: ADDITIONAL ACTIONS NEEDED TO HELP REDUCE OVERPAYMENTS AND INCREASE COLLECTIONS 3 (2015), <http://www.gao.gov/assets/680/673230.pdf>.

2. See Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, tit. V, § 5003(d), 122 Stat. 2357, 2378 (2010).

3. The latest study, conducted from June 2010 to July 2012, found that for-profit education received \$1.6 billion from the VA in the first two years following the enactment of the Post-9/11 GI Bill. See U.S. S. HEALTH, EDUC., LABOR & PENSIONS COMM., 112TH CONG., FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS 27 (2012), http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf [hereinafter SENATE HELP COMM., THE FAILURE TO SAFEGUARD].

4. See *infra* Section II.C.

5. See *State v. Minn. Sch. of Bus., Inc.*, No. 27-CV-14-12558, at 111–16 (Minn. Dist. Ct. Sept. 8, 2016). For example, a criminal justice degree from these schools did not allow a student to become a licensed peace officer in Minnesota. See *id.*

6. See *id.* at 36, 38–90.

of the twenty-four students who testified for the State were military veterans, and the court's factual findings highlighted the tens of thousands of dollars in GI Bill benefits used by veterans and squandered by the schools.⁷ In December 2016, the Department of Education withdrew funding under the federal student loan program from Globe University and Minnesota School of Business; without access to the expansive federal-financial-aid program, this action effectively foreclosed the schools from continued operation.⁸ Unbeknownst to many students though, the Department of Education's action had no impact on either school's access to GI Bill funds because, pursuant to federal law, the VA retains sole authority to withdraw GI Bill funding from educational institutions and training programs.⁹ How a school remains eligible for GI Bill funds following an effective closure by the Department of Education illustrates significant gaps in the VA's management of the GI Bill program and its protection of students.

Enforcement actions throughout the United States similar to those taken against Globe University and Minnesota School of Business are far too common in recent years.¹⁰ The Obama Administration sought to curb many of these abuses with more stringent regulations on for-profit educational institutions receiving federal financial aid and GI Bill funding, but some industry experts speculate that a Republican-controlled Congress will likely ease many of these regulations.¹¹

7. See, e.g., *id.* at 40 ("Defendants' misrepresentations cost Mr. Brown six (6) months of his GI [B]ill benefits, which he cannot get back . . ."), 60 ("Mr. Westby ultimately withdrew from the criminal justice program in September of 2012 because he did not want to use any more of his GI Bill military benefits . . ."), 71 ("Mr. Erickson exhausted his GI Bill benefits . . .").

8. See Mark Brunswick, *Feds End Student Aid Programs for Globe, Minnesota School of Business*, STAR TRIB. (Dec. 6, 2016, 9:54 PM), <http://www.startribune.com/feds-end-student-aid-programs-for-globe-minnesota-school-of-business/405041306>.

9. Several days after the Department of Education's action, even the VA's main Education and Training webpage stated that "[t]his action does not immediately impact . . . GI Bill benefits; however, these schools are under further review by State Approving Agencies and VA to determine if they should retain GI Bill approval." *Education and Training*, U.S. DEP'T OF VETERANS AFF., <http://benefits.va.gov/gibill/> (last visited Mar. 17, 2017).

10. See *infra* Section II.C.

11. See, e.g., Bill Alpert, *For Profit Colleges Could Prosper Under Trump*, BARRON'S (Nov. 12, 2016), <http://www.barrons.com/articles/for-profit-colleges-could-prosper-under-trump-1478931101>.

This article examines the breadth of abuse and attacks by for-profit education on veterans and the GI Bill and recommends several action steps for the VA to combat erroneous, deceptive, and misleading practices.¹² Part II frames the problem by highlighting several statistics on the Post-9/11 GI Bill program,¹³ the current legal and regulatory framework,¹⁴ and a survey of recent enforcement actions at the state and federal levels.¹⁵ It also discusses the roles and responsibilities of veterans and family members, non-profit and public education, and the higher-education lobby.¹⁶ Part III provides several recommendations for the VA to enhance transparency of information, strengthen oversight of financial aid, and protect student veterans and military families using GI Bill benefits.¹⁷ These action steps will ultimately restore the legitimacy of an essential benefit for our nation's veterans and military families.

II. BACKGROUND: THE BREADTH OF THE PROBLEM

A. *Statistics*

The United States Senate Committee on Health, Education, Labor and Pensions (HELP) conducted a two-year investigation into for-profit higher education, culminating in a 250-page report in July 2012.¹⁸ This is the last known investigation that calculates annual statistics and figures about for-profit education, identifies problem areas in the for-profit education industry, and provides recommendations to curb the problems. The latest figures show that for-profit education receives at least \$32 billion annually from all federal financial aid.¹⁹ In the GI Bill program, for-profit educational institutions receive thirty-seven percent of all program funds, representing the largest share of all recipients.²⁰ The HELP Committee estimated that in the 2012–13 academic year, for-profit educational institutions received \$1.7 billion in revenue from the GI

12. *See infra* Parts II–III.

13. *See infra* Section II.A.

14. *See infra* Section II.B.

15. *See infra* Section II.C.

16. *See infra* Section II.D.

17. *See infra* Part III.

18. *See* SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3.

19. *Id.* at 15.

20. *Id.* at 2–3, 27. The investigation's reporting period for calculations included 2009–10. *See id.* at 2.

Bill program, matching the total reimbursements from the previous four years combined.²¹ Eight of the top ten institutions receiving GI Bill funds are for-profit,²² and those eight institutions received \$2.9 billion from 2010 to 2013.²³ However, seven of those eight institutions either are or were recently under investigation by state or federal agencies for erroneous, deceptive, or misleading practices towards prospective students.²⁴ In 2010, the Government Accountability Office conducted an undercover operation using prospective students and found “deceptive or otherwise questionable” marketing practices to enroll students at fifteen for-profit educational institutions.²⁵

Despite for-profit educational institutions spending hundreds of millions annually on marketing and recruiting efforts nationwide, two-thirds of all GI Bill funds funnel to institutions located in California.²⁶ This is primarily due to corporate office locations in California.²⁷ As a result, the California Department of Veterans Affairs bears a disproportionate burden to monitor and regulate this enormous expenditure of GI Bill funds.²⁸

21. *See id.* at 3.

22. *Id.* at 27.

23. *See* U.S. S. HEALTH, EDUC., LABOR & PENSIONS COMM., 112TH CONG., IS THE NEW G.I. BILL WORKING?: FOR-PROFIT COLLEGES INCREASING VETERAN ENROLLMENT AND FEDERAL FUNDS i (2014), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/56100b87e4b0147725a71e86/1443892103628/GI-Bill-data-July-2014-HELP-report.pdf> [hereinafter SENATE HELP COMM., IS THE NEW G.I. BILL WORKING?].

24. *Id.* at 9. Corinthian Colleges received \$186 million from 2009 to 2013 before closing all campuses in 2015 due to financial distress. *See id.* at i, 11; Stephanie Gleason, *Corinthian Colleges Files for Chapter 11 Bankruptcy*, WALL ST. J. (May 4, 2015, 3:17 PM), <https://www.wsj.com/articles/corinthian-colleges-files-for-chapter-11-bankruptcy-1430746291>.

25. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-948T, FOR-PROFIT COLLEGES: UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES 9–13 (2010), <http://www.gao.gov/assets/130/125197.pdf>.

26. *See, e.g.*, SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3, at 5–6 (“In fiscal year 2009, the education companies examined by the committee spent . . . \$4.2 billion or 22.7 percent of all revenue on marketing, advertising, recruiting, and admissions staffing.”).

27. Aaron Glantz, *GI Bill Funds Flow to For-Profit Colleges that Fail State Aid Standards*, CTR. FOR INVESTIGATIVE REPORTING (June 28, 2014), <http://cironline.org/reports/gi-bill-funds-flow-profit-colleges-fail-state-aid-standards-6477>.

28. *See infra* Section II.C (discussing California's active role in enforcement

The GI Bill program is lucrative for many for-profit educational institutions for multiple reasons. First, an educational institution must not receive more than a designated amount of federal financial aid, which is measured in proportion to private contributions. An institution cannot receive more than 90% of its revenue from federal financial aid loans and grants without receiving sanctions.²⁹ This is known as the “90/10 rule” and is borrowed from the VA’s “85/15 rule” that precludes GI Bill eligibility for any educational program enrolling more than 85% of students who are GI Bill eligible.³⁰ The purpose of the 90/10 rule is to prevent an educational institution from operating almost entirely on federal financial aid.³¹

However, federal statute does not require that GI Bill funds be calculated towards the maximum 90% federal-financial-aid proportion.³² Educational institutions can therefore calculate GI Bill funds as part of the 10% private-revenue-source proportion.³³ As a result, an institution can comply with the 90/10 rule despite receiving more than 90% of its revenue from federal financial aid. The HELP Committee estimates that 43 to 63% of the 10% private-revenue-source proportion is comprised of GI Bill funds.³⁴ This widely known “loophole”³⁵ undermines the purpose of the 90/10

actions).

29. See 20 U.S.C. § 1094(a)(24) (2012).

30. 38 C.F.R. § 21.4201 (2016). While exceedingly unlikely that a program would be at risk for enrolling more than 85% of its student population as GI Bill beneficiaries, this rule’s intent prevents educational institutions from targeting veterans and eligible dependents for the guaranteed funds in the GI Bill.

31. Sarah Ann Schade, *Reigning in the For-Profit Nature of For-Profit Colleges*, 56 ARIZ. L. REV. 317, 333 (2014).

32. See 20 U.S.C. § 1094(a)(24) (requiring that schools “derive not less than ten percent of such institution’s revenues from sources other than funds provided [by federal student assistance programs and work-study programs]”). Notably, GI Bill funds are provided under Title 38 (Veterans’ Benefits)—not Title 20 (Education) or Title 42 (Public Health and Welfare)—and are not part of the federal-financial-aid proportion.

33. See U.S. S. HEALTH, EDUC., LABOR & PENSIONS COMM., 112TH CONG., BENEFITTING WHOM? FOR-PROFIT EDUCATION COMPANIES AND THE GROWTH OF MILITARY EDUCATIONAL BENEFITS 8 (2010), [http://veteranseducationsuccess.org/reports/\[hereinafter SENATE HELP COMM., BENEFITTING WHOM?\].](http://veteranseducationsuccess.org/reports/[hereinafter SENATE HELP COMM., BENEFITTING WHOM?].)

34. SENATE HELP COMM., IS THE NEW G.I. BILL WORKING?, *supra* note 23, at 12.

35. The conflict is apparent when considering the purpose and intent of the 90/10 rule. GI Bill funds are public dollars with no practical difference from traditional federal financial aid. A veteran or eligible dependent has realized the GI Bill benefit and is not required to repay the disbursements, but this does not affect the color of the money: that these are public dollars directly paid to the educational

rule and incentivizes institutions to increase veteran and military family enrollment to collect GI Bill funds and offset the amount of funds received from traditional federal financial aid. Institutions can then increase enrollment using traditional federal financial aid based on the amount of GI Bill funds received that can offset the 90% federal-financial-aid proportion.³⁶ The Department of Education determined that in the 2014–15 academic year only seventeen for-profit educational institutions (out of 1897 institutions reviewed) did not meet the current 90/10 rule, in part because GI Bill funds are calculated towards the 10% private-revenue-source proportion.³⁷

Second, GI Bill funds are guaranteed revenue to an educational institution with no strings attached and no requirements for students to repay the benefit, unlike traditional federal-financial-aid loans. The Department of Education monitors student loan default rates and can sanction an educational institution with default rates over 30% within three years of graduation.³⁸ As with the 90/10 rule, educational institutions can also use enrolled students using GI Bill benefits to offset the 30% default rate calculation.³⁹

B. Current State of the Law and Regulation

The Post-9/11 GI Bill was passed on June 30, 2008, to provide education benefits to active-duty military members and veterans, along with their eligible dependents, who served after September 10, 2001; it provides up to thirty-six months of funding at educational institutions and trade schools to cover tuition, fees, housing, and

institution through a federal education program.

36. See SENATE HELP COMM., BENEFITTING WHOM?, *supra* note 33, at 8.

37. See U.S. DEP'T OF EDUC., PROPRIETARY SCHOOL 90/10 REVENUE PERCENTAGES: REPORT AND SUMMARY CHART, 2014–2015 AWARD YEAR (2016), <https://studentaid.ed.gov/sa/about/data-center/school/proprietary> [hereinafter 2014–2015 PROPRIETARY SCHOOL 90/10 REVENUE PERCENTAGES REPORT AND SUMMARY]; Letter from Lynn B. Mahaffie, Delegated Duties of Assistant Sec. for Postsecondary Educ., to Congressman John Kline (Dec. 21, 2016), <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/Transmittal-AY15.pdf>.

38. 20 U.S.C. § 1085(a)(2)(B)(iv) (2012).

39. This requirement has not been difficult to satisfy in recent years due to a number of new federal repayment programs and the ability to defer or postpone payments. See Shahien Hasiripour, *Student Loan Defaults Drop, but Numbers Are Rigged*, BLOOMBERG (Sept. 28, 2016, 1:13 PM), <https://www.bloomberg.com/news/articles/2016-09-28/student-loan-defaults-fall-but-the-numbers-are-rigged>.

books.⁴⁰ The Secretary of Veterans Affairs administers and regulates the program.⁴¹ The legislation authorized the creation of a State Approving Agency (SAA) in each state to approve programs and institutions, ensure compliance with federal standards, and investigate any program or institution as needed in each respective state.⁴² The Bill even requires the VA and SAAs to cooperate with each other in administering the GI Bill program:

It is necessary to establish an exchange of information pertaining to activities of educational institutions, and particular attention should be given to the enforcement of approval standards, enforcement of enrollment restrictions, and fraudulent and other criminal activities on the part of persons connected with educational institutions in which eligible persons or veterans are enrolled⁴³

Both the VA and SAAs have broad, independent statutory and regulatory authority to take action against educational institutions and programs receiving GI Bill funds.⁴⁴ An educational institution seeking eligibility for GI Bill funds must satisfy various requirements, including proper accreditation from a “nationally recognized accrediting agency or association”⁴⁵ and not being engaged in any erroneous, deceptive, or misleading practices, such as in the areas of marketing and recruiting.⁴⁶ The VA “*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

40. CASSANDRIA DORTCH, CONG. RESEARCH SERV., R42755, THE POST-9/11 VETERANS EDUCATIONAL ASSISTANCE ACT OF 2008 (POST-9/11 GI BILL): PRIMER AND ISSUES 1–4 (2014), <https://fas.org/sgp/crs/misc/R42755.pdf>; *see also* 38 U.S.C. §§ 3301, 3311–19, 3321–27.

41. 38 U.S.C. §§ 3323(c)(1), 3324(a).

42. *See id.* § 3671; *State Approving Agency: Role of the State Approving Agency in Education*, MINN. DEP’T OF VETERANS AFF., <https://mn.gov/mdva/resources/education/stateapprovingagency.jsp> (last visited Mar. 17, 2017).

43. 38 U.S.C. § 3673(a).

44. *See id.* § 3672 (authority to approve courses for GI Bill funding), § 3679 (authority to disapprove courses for GI Bill funding), § 3690 (authority to discontinue or suspend any program or institution for a variety of reasons such as overcharging, failing to meet course approval requirements, failing to meet recordkeeping and reporting requirements, and making false or misleading statements and claims).

45. *Id.* § 3675(a)(1)(A); 38 C.F.R. § 21.4253(a)(1) (2008).

46. 38 U.S.C. § 3696.

misleading either by actual statement, omission, or intimation.”⁴⁷ Institutions are required to maintain all “advertising, sales, [and] enrollment materials” for at least one year and be available for inspection by the VA and any SAA.⁴⁸ The legislation also requires the VA to coordinate with the Federal Trade Commission (FTC) to investigate advertising, sales, and enrollment practices.⁴⁹ The FTC conducts any required investigation and refers the final report and findings to the VA for action on the institution’s eligibility for GI Bill funds.⁵⁰ Actions include disapproving or suspending GI Bill eligibility at any institution found to have engaged in erroneous, deceptive, or misleading practices.⁵¹

In 2012, the Obama Administration issued Executive Order 13607 to curb many of the abusive practices by educational institutions receiving GI Bill funds and assure that veterans make informed decisions when choosing a school or program.⁵² The Order mandates the development of “Principles of Excellence” to “strengthen oversight, enforcement, and accountability” of the GI Bill program.⁵³ Educational institutions are required, under the Order and to the extent law permits, to “end fraudulent and unduly aggressive recruiting techniques” and to “obtain the approval of the institution’s accrediting agency for new course or programs offerings before enrolling students in such courses or programs.”⁵⁴ Regarding enforcement and compliance, the Order requires the creation of a centralized complaint system for students, with uniform complaint

47. *Id.* § 3696(a) (emphasis added).

48. *Id.* § 3696(b).

49. *Id.* § 3696(c). Neither statute nor regulation define “erroneous, deceptive, or misleading” for the VA or any other legal authority to determine whether an educational institution’s advertising, sales, or enrollment practices are unlawful. *See, e.g., id.* § 3696(a); 21 C.F.R. § 21.4252(h) (2016). However, the FTC has published guidance defining deceptive and misleading consumer trade practices according to relevant case law. *See* FTC Policy Statement on Deception, James C. Miller III, Chairman, Fed. Trade Comm’n (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (using a reasonable person standard to analyze if a practice is material and “likely to mislead” the consumer). This guidance should similarly apply to for-profit educational institutions engaged in advertising and sales practices towards prospective students.

50. 38 U.S.C. § 3696(c).

51. *See id.* §§ 3679, 3690; 38 C.F.R. §§ 21.4252(h), 21.4259.

52. Exec. Order No. 13,607, 77 Fed. Reg. 25,861 (Apr. 27, 2012).

53. *Id.* at 25,861–62.

54. *Id.*

procedures across the state SAAs.⁵⁵ Relevant parties—including SAAs, the VA, the FTC, accrediting agencies, the Consumer Financial Protection Bureau, and the Department of Justice—are required to share complaint information and refer civil and criminal enforcement actions.⁵⁶ The Order also requires that procedures be developed for targeted program reviews to “ensure that websites and programs are not deceptively and fraudulently marketing” to GI Bill beneficiaries.⁵⁷ Finally, the Order sets forth policy to identify integrity problems within the GI Bill program, increase coordination, and improve compliance and enforcement.

Whether the VA, SAAs, and other relevant parties have effectively implemented the Order’s demands remains to be seen. The VA created the “GI Bill Feedback System” in January 2014 to satisfy the Order’s requirement for a centralized complaint system.⁵⁸ From January to November 2014, the VA received 2254 complaints, of which 312 were closed, and 42 program reviews were conducted based on serious complaints.⁵⁹ Eleven institutions received negative findings during the review with corrective action, and only two institutions were withdrawn from the GI Bill program.⁶⁰ Congress also amended Title 38 of the United States Code in 2013 to implement certain Executive Order provisions, including open access to information for students and the centralized complaint system.⁶¹ The amendment also banned incentive pay and bonuses to admissions employees who enroll students to meet quotas.⁶² The statute broadly prevents any institution receiving GI Bill funding from providing any “commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid”⁶³ This blanket ban on incentive pay faced significant legal challenges, and as of 2015, the Department of

55. *Id.* at 25,863–64.

56. *Id.*

57. *Id.*

58. *See* VETERANS BENEFITS ADMIN., U.S. DEP’T OF VETERANS AFFAIRS, GI BILL FEEDBACK SYSTEM 3 (2015), http://www.benefits.va.gov/GIBILL/docs/Overview_GI%20Bill_Feedback%20System_CY14.pdf.

59. *Id.*

60. *Id.* at 6.

61. *See* Comprehensive Veterans Education Information Policy, Pub. L. No. 112-249, 126 Stat. 2398 (2013) (codified at 38 U.S.C. § 3698).

62. *See* 38 U.S.C. § 3696(d)(1) (2012); Exec. Order No. 13,607, 77 Fed. Reg. 25,861 (Apr. 27, 2012).

63. 38 U.S.C. § 3696(d)(1).

Education relaxed its enforcement of the ban on incentive pay tied to student graduation rates.⁶⁴

The Department of Defense also responded to Executive Order 13607 with its own regulations directed at educational institutions.⁶⁵ Citing Department of Education regulations, the Department of Defense required all institutions marketing or providing education services to military members and families on Department of Defense property and military installations to “[b]an inducements, including any gratuity, favor, discount, entertainment, hospitality, loan, transportation, lodging, meals, or other item having a monetary value of more than a *de minimis* amount.”⁶⁶ All institutions must sign a Memorandum of Understanding with the Department of Defense before interacting with any potential student.⁶⁷

C. Enforcement Actions⁶⁸

Several recent enforcement actions illustrate the extent to which for-profit educational institutions will engage in deceptive and misleading practices in order to obtain GI Bill funding.⁶⁹ Out of 34,000 programs authorized and eligible to receive GI Bill funds, the VA has withdrawn GI Bill eligibility from only thirty-two educational institutions since 2010.⁷⁰ Any VA action to withdraw GI Bill eligibility entirely from an educational institution is almost never taken until an SAA first acts following an investigation or lawsuit by the Department of Justice, the FTC, or a state attorney general. In a representative case, California-based Corinthian Colleges, Inc. illegally used official military seals to appear officially sanctioned and recruit veterans, advertised programs not offered by the institution,

64. See, e.g., *Ass'n of Private Sector Colls. & Univs. v. Arne Duncan*, 681 F.3d 427 (D.C. Cir. 2012); Michael Stratford, *Reversal on Recruiter Bonus Pay*, INSIDE HIGHER ED (Nov. 30, 2015), <https://www.insidehighered.com/news/2015/11/30/us-loosens-part-its-ban-college-recruiter-pay>.

65. See U.S. DEP'T OF DEF., INSTRUCTION NO. 1322.25, VOLUNTARY EDUCATION PROGRAMS (2011), <http://www.dtic.mil/whs/directives/corres/pdf/132225p.pdf>.

66. *Id.* at 36.

67. See *id.* at 32.

68. This section is not meant to provide an exhaustive list of all enforcement actions taken against institutions and programs receiving GI Bill funding.

69. See Kimberly Hefling, *GI Bill Funds Still Flow to Troubled For-Profit Colleges*, POLITICO (Feb. 25, 2016, 5:21 AM), <http://www.politico.com/story/2016/02/veterans-education-for-profit-colleges-219758>.

70. *Id.*

and misrepresented graduation and job-placement rates.⁷¹ The California Attorney General sued Corinthian in 2013 for false and predatory advertising, intentional misrepresentation, securities fraud, and unlawful use of military seals.⁷² In 2014, California's SAA withdrew all GI Bill eligibility from Corinthian after the Securities and Exchange Commission (SEC) identified the institution as "fiscally unstable."⁷³ The institution then closed and filed for bankruptcy protection in 2015.⁷⁴

In another case, state attorneys general sued a marketing company for misleading students with a private website that appeared official and sanctioned by the military branches and federal government.⁷⁵ The marketing company QuinStreet provided prospective students' contact information to for-profit educational institutions by registering and representing the website GIBill.com as an official website for student veterans.⁷⁶ The company repaid the federal government \$2.5 million for its misrepresentations,⁷⁷ and now the VA owns and uses the domain name and web address as part of the settlement.⁷⁸

In 2011, the Texas SAA withdrew GI Bill eligibility from Westwood College for misrepresenting graduation rates, program costs, and graduate earnings to student veterans using the GI Bill.⁷⁹ The Colorado Attorney General reached a multi-million-dollar

71. Jacob Davidson, *How For-Profit Colleges Target Military Veterans (and Your Tax Dollars)*, TIME (Nov. 11, 2014), <http://time.com/money/3573216/veterans-college-for-profit>.

72. Press Release, Cal. Attorney Gen. Office, Attorney General Kamala D. Harris Files Suit in Alleged For-Profit College Predatory Scheme (Oct. 10, 2013), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-suit-alleged-profit-college-predatory>.

73. *CalVet Withdraws Approval for Corinthian Colleges*, CAL. DEP'T OF VETERANS AFF. (Aug. 25, 2014), <https://www.calvet.ca.gov/Pages/CalVet-WithdrawsApproval-for-Corinthian-Colleges.aspx>.

74. Gleason, *supra* note 24.

75. Davidson, *supra* note 71.

76. *Id.*

77. *Id.*

78. Press Release, U.S. Dep't of Veterans Affairs, States' Attorneys General Action a Victory for Veterans and the GI Bill (June 27, 2012), <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2345>.

79. Lindsay Wise, *VA Pulls GI Bill Funding for Westwood College*, HOUS. CHRON. (Mar. 9, 2011, 6:30 AM), <http://www.chron.com/news/houston-texas/article/VA-pulls-GI-Bill-funding-for-Westwood-College-1685900.php>.

settlement with Westwood College in 2012 for misrepresenting tuition and costs covered by the GI Bill, among other violations.⁸⁰

While Westwood College engaged in fraudulent practices on a regional level, the case of Education Management Corporation (EDMC) provides an example of using national-level schemes to maximize receipt of GI Bill funds. EDMC operates 109 educational institutions and programs in thirty-two states⁸¹ and received \$156 million in GI Bill funds in 2014 alone.⁸² In 2015, EDMC reached a global settlement with the Department of Justice following whistleblower claims under the False Claims Act and claims under various state consumer-protection statutes in a suit alleging that EDMC provided bonuses to admissions representatives based on student enrollment numbers.⁸³ The Department of Justice also accused EDMC of using deceptive recruiting practices against veterans and lying on financial aid applications to collect GI Bill funds.⁸⁴ Twelve states investigated or sued EDMC for fraud.⁸⁵ Yet, for unknown reasons, the VA did not take any enforcement action against any EDMC school.⁸⁶

The University of Phoenix, consistently ranked as the top recipient of GI Bill funds, received a three-month suspension from the Department of Defense that forbade any recruiters and admissions representatives from entering a military installation to conduct business.⁸⁷ During this time, the FTC and the State of

80. Press Release, Stop Fraud Colo., Attorney General Announces \$4.5 Million Settlement with Westwood College to Address Deceptive Business Practices (Mar. 14, 2012), <https://www.stopfraudcolorado.gov/about-consumer-protection/press-releases/2012-03-14-000000/attorney-general-announces-45-million>.

81. *About EDMC*, EDUC. MGMT. CORP., <http://www.edmc.edu/About/> (last visited Mar. 17, 2017).

82. Hefling, *supra* note 69.

83. Press Release, U.S. Dep't 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), <https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>.

84. Chris Fleisher, *EDMC Accused in GI Bill Scheme*, TRIB LIVE (Dec. 15, 2014), <http://triblive.com/business/headlines/7383497-74/edmc-aid-students>.

85. 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>.

86. Hefling, *supra* note 69.

87. Danielle Douglas-Gabriel, *Why the Defense Department Is Kicking the University of Phoenix off Military Bases*, WASH. POST (Oct. 9, 2015), <https://www.washingtonpost.com/news/grade-point/wp/2015/10/09/why-the>

California had open and ongoing investigations against the University of Phoenix.⁸⁸ The institution improperly used military logos and sponsored recruiting events⁸⁹ in violation of an order preventing for-profit educational institutions from gaining preferential access to the military.⁹⁰ The University of Phoenix deceptively recruited students on military installations by sponsoring concerts, dances, fashion shows, and festivals—all in violation of the Department of Defense Memorandum of Understanding forbidding such practices.⁹¹ Similar to EDMC, the VA did not take any enforcement action against the University of Phoenix that affected its eligibility to receive GI Bill funds.⁹²

In 2015, the FTC sued Ashworth College, a for-profit institution based in Georgia that provides education services online throughout the United States; the FTC alleged that Ashworth misled students on state certification and licensing program requirements.⁹³ These failed programs included home inspections and appraisals, massage practice, and early childhood education.⁹⁴ The complaint highlighted Ashworth's abuse towards student veterans and military families using GI Bill benefits, alleging that Ashworth's "marketing efforts have targeted military service members and their families,

-defense-department-is-kicking-the-university-of-phoenix-off-military-bases.

88. The 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>.

89. *Id.*

90. Douglas-Gabriel, *supra* note 87.

91. See Aaron Glantz, *University of Phoenix Sidesteps Obama Order on Recruiting Veterans*, REVEAL NEWS (June 30, 2015), <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans>; *supra* notes 65–67.

92. Hefling, *supra* note 69. Former employees from the University of Phoenix sued the institution in 2015 for wrongful termination after misleading veterans and engaging in deceptive practices, resulting in missed recruitment goals. Shanna Hogan, *Ex-Employees Claim University of Phoenix Illegally Recruited Veterans*, PHX. NEW TIMES (Sept. 25, 2015, 7:30 AM), <http://www.phoenixnewtimes.com/news/ex-employees-claim-university-of-phoenix-illegally-recruited-veterans-7683450>. The federal district court dismissed the case because of an arbitration clause in the employee handbook, and the Sixth Circuit affirmed, so litigation remains pending outside of court. See *id.*; *Aldrich v. Univ. of Phx., Inc.*, No. 16-5276, 661 F. App'x 384 (6th Cir. 2016).

93. Complaint for Permanent Injunction and Other Equitable Relief at 4–5, *Fed. Trade Comm'n v. Prof'l Career Dev. Instit.*, No 1:15-mi-99999-UNA (N.D. Ga. May 26, 2015).

94. *Id.* at 11–15.

and [Ashworth] advertises that it employs 'Military Advisors' to speak with potential applicants who are eligible for military payment benefits.⁹⁵ The parties reached an \$11 million settlement and agreed to an injunction on future consumer rights violations.⁹⁶ However, Ashworth continued to receive hundreds of thousands of dollars in GI Bill funds throughout the pendency of the FTC investigation and subsequent lawsuit, and the institution is still eligible to receive GI Bill funds.⁹⁷ Many other unaccredited programs nationwide across various industries, such as law, education, psychology, nursing, and criminal justice, continue to receive GI Bill funds despite failing to meet state certification and licensing program requirements.⁹⁸

The FTC also sued DeVry University in 2016 for misleading students about job placement rates.⁹⁹ DeVry claimed in radio and television advertising that 90% of graduates obtained employment in relevant career fields within six months of graduation and that graduates with a degree from DeVry earned 15% more income than other graduates with similar degrees from other schools.¹⁰⁰ The VA responded with an enforcement action that effectively "reprimanded" the institution in a published letter, and the FTC and

95. *Id.* at 4.

96. Press Release, Fed. Trade Comm'n, Ashworth College Settles FTC Charge 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>.

97. See *GI Bill Comparison Tool*, VETS.GOV, <https://www.vets.gov/gi-bill-comparison-tool> (last visited Mar. 17, 2017) (search "Ashworth College" in "City, school or employer name" search bar; then select second option for "Ashworth College") [hereinafter *GI Bill Comparison Tool*].

98. See, e.g., Aaron Glantz, *GI Bill Pays for Unaccredited Sex, Bible and Massage Schools*, REVEAL NEWS (July 15, 2015), <https://www.revealnews.org/article/gi-bill-pays-for-unaccredited-sex-bible-and-massage-schools/>; *GI Bill Comparison Tool*, *supra* note 97 (search "Miles Law School" in "City, school or employer name" search bar) (demonstrating that an unaccredited law school in Birmingham, Alabama, is eligible for GI Bill funding).

99. George Altman, *VA Reprimands DeVry University Based on Federal Lawsuit, GI Bill Complaints*, MIL. TIMES (Mar. 14, 2016), <http://www.militarytimes.com/story/military/benefits/education/2016/03/14/va-reprimands-devry-university-based-federal-lawsuit-gi-bill-complaints/81775148>.

100. Press Release, Fed. Trade Comm'n, DeVry University Agrees to \$100 Million Settlement with FTC (Dec. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc> [hereinafter DeVry Settlement Press Release].

DeVry subsequently reached a \$100 million settlement that provided student loan debt relief and cash refunds.¹⁰¹ However, DeVry remains eligible to receive GI Bill Funds.¹⁰²

A true breakdown in bureaucracy involving the VA's rather fickle relationship with SAAs occurred in 2016 with Ashford University, which enrolled more than 5000 students using GI Bill benefits.¹⁰³ The institution used physical campuses in California and Iowa¹⁰⁴ but operated its educational programs almost entirely online.¹⁰⁵ The VA considers Ashford to be located in California based on its regional accreditation in that state.¹⁰⁶ In 2013, the California Attorney General initiated an investigation into Ashford and its parent organization for false and misleading practices in telephone calls and other marketing techniques targeting prospective students.¹⁰⁷ In 2016, the California SAA indicated that it would not approve Ashford's application for GI Bill program eligibility.¹⁰⁸ In response, Ashford looked to Iowa, where it still maintained a physical campus, to approve GI Bill program eligibility with the understanding that the Iowa SAA could approve GI Bill funding for all Ashford online programs no matter the physical location of student veterans enrolled in the online programs.¹⁰⁹ The California Department of Veterans Affairs attempted to coordinate with the Iowa SAA and ensure that Ashford would not receive approval; the national VA then weighed in, concluding that the Iowa SAA did not have authority to approve the application because

101. *Id.*

102. Altman, *supra* note 99; see also *GI Bill Comparison Tool*, *supra* note 97 (search "DeVry University" in "City, school or employer name" search bar).

103. Ashley A. Smith, *GI Bill Benefits on the Brink*, INSIDE HIGHER ED (June 10, 2016), <https://www.insidehighered.com/news/2016/06/10/ashford-university-brink-losing-gi-bill-benefits>.

104. Paul Fain, *More Drama for Ashford*, INSIDE HIGHER ED (Aug. 25, 2016), <https://www.insidehighered.com/news/2016/08/25/iowa-regulator-agreed-ashford-universitys-complaint-about-meddling-federal-and#.WdIWWhs05QA0.link>.

105. Alex Horton, *Ashford U. Edges Closer to Losing GI Bill Certification for Thousands of Vets*, STARS AND STRIPES (Aug. 5, 2016), <http://www.stripes.com/news/ashford-u-edges-closer-to-losing-gi-bill-certification-for-thousands-of-vets-1.422607>.

106. Fain, *supra* note 104.

107. Larry Gordon, *State Attorney General Probes San Diego Company's For-Profit Colleges*, L.A. TIMES (July 24, 2013, 2:49 PM), <http://www.latimes.com/local/lanow/la-me-ln-san-diego-online-colleges-probe-20130724-story.html>.

108. Fain, *supra* note 104.

109. *See id.*

Ashford is a California educational institution.¹¹⁰ The Iowa SAA responded by disapproving Ashford's eligibility in the GI Bill program, triggering Ashford to immediately sue the Iowa Department of Education for declaratory and injunctive relief.¹¹¹ Ashford alleged that the VA and California SAA improperly interfered with Iowa's decision-making authority.¹¹² This case illustrates the inherent complexity involved in seeking GI Bill program eligibility, especially for nationwide online programs, and allowing educational institutions the ability to forum shop SAAs for GI Bill program approval.

D. Placing the Blame

The Senate HELP Committee recognized that military members and veterans represent a highly vulnerable population in American society.¹¹³ In 2010, the federal government estimated that at least 400,000 veterans cope with some amount of posttraumatic stress disorder or traumatic brain injury.¹¹⁴ The mental and behavioral health of military families is also vulnerable, especially following a deployment or long absence by one parent.¹¹⁵ And in passing the Post-9/11 GI Bill, Congress greatly expanded eligibility for GI Bill benefits to include military spouses and children as qualifying beneficiaries, which prompted a massive increase in GI Bill program funds available to educational institutions.¹¹⁶ Expanding this massive financial benefit to an already vulnerable population helped create a perfect storm for educational institutions to maximize revenue from a public funds program with few restrictions or limitations.

110. *See id.*

111. *See* Amended Petition for Declaratory and Injunctive Relief Pursuant to Iowa Code § 17A at 1, *Ashford Univ., LLC v. Iowa Dep't of Educ.*, No. 05771 EQCE080188 (S.D. Iowa Aug. 19, 2016) (on file with author).

112. *Id.* at 7.

113. *See* SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3, at 69.

114. CONG. BUDGET OFFICE, THE VETERANS HEALTH ADMINISTRATION'S TREATMENT OF PTSD AND TRAUMATIC BRAIN INJURY AMONG RECENT COMBAT VETERANS 1 (2012), https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/02-09-PTSD_0.pdf.

115. NAT'L CTR. FOR PTSD, U.S. DEP'T OF VETERANS AFFAIRS, HOW DEPLOYMENT STRESS AFFECTS CHILDREN AND FAMILIES: RESEARCH FINDINGS (2016), http://www.ptsd.va.gov/professional/treatment/family/pro_deployment_stress_children.asp.

116. *See* 38 U.S.C. §§ 3301, 3311–19, 3321–25 (2012).

Lobbying efforts by for-profit education have a direct impact on policymaking, regulations, and enforcement.¹¹⁷ For-profit educational institutions committed \$8.1 million to lobbying in 2010, which has steadily increased annually.¹¹⁸ This figure is startling considering that nearly all revenue received by for-profit education originates from federal-financial-aid programs—in essence, the very revenue streams received from federal student loans and the GI Bill program are in turn earmarked in the millions of dollars for lobbying efforts to oppose industry regulation.¹¹⁹ Even lobbying groups representing non-profit and public educational institutions have joined for-profit education to oppose additional regulation.¹²⁰ Failure to amend the 90/10 rule loophole despite broad support to amend in Congress is arguably a result of staunch lobbying efforts. In fact, attempts in Congress to halt all new regulations on the higher-education industry—such as instructor evaluations and monitoring of post-graduation gainful employments rates—have received strong support from lobbying groups including for-profit, non-profit, and public institutions alike.¹²¹

Another outstanding concern is the role, or lack thereof, of public and non-profit educational institutions. Of the forty-two program reviews conducted by the VA and SAAs from the GI Bill Feedback System, thirty-six institutions are for-profit.¹²² Eight of the top ten recipients of the GI Bill are for-profit educational institutions,¹²³ and seven of those eight institutions are or were under investigation by state and federal authorities for various offenses and violations.¹²⁴ For-profit education receives 37% of GI Bill funds but enrolls only 25% of GI Bill students.¹²⁵ While an argument can be made that graduation and job placement measures should determine an institution's eligibility in the GI Bill program vice tax

117. See SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3, at 85.

118. *Id.* at 85–86.

119. See SENATE HELP COMM., BENEFITTING WHOM?, *supra* note 33, at 7.

120. See Alex MacGillis, *Higher Ed Lobby Quietly Joins For-Profit Schools to Roll Back Tighter Rules*, HUFFINGTON POST (May 5, 2015, 3:35 PM), http://www.huffingtonpost.com/2015/05/05/higher-ed-lobby-rules_n_7215986.html.

121. *Id.*

122. VETERANS BENEFITS ADMIN., U.S. DEP'T OF VETERANS AFF., *supra* note 58, at 4.

123. SENATE HELP COMMITTEE, THE FAILURE TO SAFEGUARD, *supra* note 3, at 28.

124. NC JUSTICE CENTER, FOR PROFIT SCHOOLS FACT SHEET 1 (2015), <http://ncveteransworkinggroup.org/wp-content/uploads/2009/06/Fact-Sheet-for-Veterans-3.26.15.pdf>.

125. SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3, at 28.

status,¹²⁶ these statistics and figures confirm that for-profit education is overwhelmingly responsible for the abuses committed against veterans and military families in the GI Bill program.

Finally, consideration should be given to the responsibilities of veterans and family members when making education decisions based on individual and familial circumstances. With military families located worldwide and frequently moving due to military obligations, online education programs are oftentimes the best source for an education and degree.¹²⁷ The Career Education Colleges and Universities,¹²⁸ one of the largest trade and lobbying organizations representing for-profit educational institutions, claims that the flexibility of programs, flexibility of completing degrees, and convenience make for-profit education attractive to veterans and military families.¹²⁹ Therefore, a cogent argument can be made that veterans and military families can make rational choices about education without the need for government intervention—in other words, that veterans and military families choose for-profit educational institutions for their merits as opposed to being disproportionately lured to such schools under perverse incentives.¹³⁰ However, rational decision-making is undermined when an institution uses erroneous, deceptive, and misleading practices to receive GI Bill funds. A level playing field for veterans and military families requires government intervention and enforcement actions that enhance transparency of information, strengthen oversight of financial aid, and protect students.

126. See, e.g., Mark Schneider, *For G.I. Bill Benefits, Results Matter, Not a College's Tax Status*, N.Y. TIMES (June 9, 2016, 2:26 PM), <http://www.nytimes.com/roomfordebate/2016/06/09/should-for-profit-colleges-be-able-to-benefit-from-the-gi-bill/for-gi-bill-benefits-results-matter-not-a-colleges-tax-status>.

127. See Andrew Tilghman, *PCS Costs Rising Across the Force, Even as Moves Decline*, MIL. TIMES (Sept. 12, 2015), <http://www.militarytimes.com/story/military/pentagon/2015/09/17/pcs-gao/71963784>.

128. This organization was formerly known as the Association of Private Sector Colleges and Universities. See Press Release, Career Educ. Colls. and Univs., *The Future of Career Education Colleges and Universities* (June 6, 2016), <http://www.career.org/news/the-future-of-career-education-colleges-and-universities>.

129. Davidson, *supra* note 71.

130. Indeed, individuals make decisions that are based on evaluation, consistency, and their goals, rather than on impulse or randomness. See Amos Tversky & Daniel Kahneman, *Rational Choice and the Framing of Decisions*, 59 J. BUS. S251, S251–60 (1986).

This Part highlighted the GI Bill program's legal framework and recent enforcement actions to illustrate the need for immediate changes to curb program abuses. The ultimate responsibility rests with for-profit education, which insists on maximizing revenue at the expense of veterans and military families enrolled in the GI Bill program.

III. RECOMMENDATIONS AND ACTION STEPS TO COMBAT FOR-PROFIT EDUCATION'S ATTACK ON VETERANS AND THE GI BILL

A. *The Need for Legal and Regulatory Action at the State and Federal Levels*

Recent regulations seeking to curb fraud and abuse in the GI Bill program have made some progress, but there remains room for improvement. Strong media coverage and public attention have arguably given rise to enforcement actions by various agencies including state attorneys general, the FTC, the SEC, the Department of Justice, and Department of Defense in recent years. In its 2012 report, the Senate HELP Committee made three general proposals to protect veterans, military families, and GI Bill funds from erroneous, deceptive, and misleading practices:

1. Gather relevant and accurate data regarding student outcomes in order to enhance transparency;
2. Increase oversight of federal financial aid; and
3. Implement meaningful protections for students.¹³¹

This article makes several realistic recommendations that fit within the HELP Committee's three proposals. Recommendations include amending the 90/10 rule; instituting serious reforms in the VA's responsibilities to ensure law and regulations are followed and enforced against institutions engaged in erroneous, deceptive, or misleading practices; creating a system that allows SAAs the ability to investigate and engage in enforcement actions at the first sign of deceptive practices or other illegal conduct; and creating a uniform and singular accreditation agency to assess educational institutions and programs seeking eligibility to receive GI Bill funding.

131. SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3, at 10–11.

B. Gather Relevant and Accurate Data Regarding Student Outcomes in Order to Enhance Transparency

Of the HELP Committee's three proposals, the VA made the most headway in transparency and disseminating information to prospective students. Executive Order 13607 mandated that the VA create a tool for prospective students to compare institutions and programs, including school performance and consumer protection information.¹³² Student outcome data, including graduation and gainful employment rates, provide students with useful measurements of student success.¹³³ The VA created the "GI Bill Comparison Tool" web app as a single location to compare programs and learn about such student outcome measures.¹³⁴ The VA uses a yellow "caution flag" to designate programs or institutions that are under investigation or have received any kind of negative enforcement action by state or federal authorities.¹³⁵ Any litigation or settlements with a state attorney general, the FTC, or the Department of Justice will trigger a caution flag, warning students to scrutinize the institution before enrolling.¹³⁶ The VA also cracked down on misleading websites appearing to offer official recommendations on institutions and programs for prospective students. The most prominent example is GIBill.com, which appeared to be an official website to find for-profit institutions for prospective students.¹³⁷ The website now reverts to the official VA government website.¹³⁸

These reforms have undoubtedly enhanced transparency and disseminated helpful information to prospective students, but additional steps are necessary to meet the HELP Committee's proposal. The comparison tool's "caution flag" is not a sufficient

132. Exec. Order No. 13,607, 77 Fed. Reg. 25,861 (Apr. 27, 2012).

133. *See id.*

134. *See GI Bill Comparison Tool, supra* note 97.

135. *See About This Tool*, U.S. DEP'T OF VETERANS AFF., http://www.benefits.va.gov/gibill/comparison_tool/about_this_tool.asp (last visited Mar. 17, 2017).

136. *See id.*

137. Davidson, *supra* note 71.

138. Before redirecting to the official Education and Training page on the VA website, "GIBill.com" first briefly reverts to a page explaining that "[a]s the result of a legal settlement, the award of the GIBill.com domain name to [the] VA is a victory for all Veterans and the GI Bill." *GIBill.com*, U.S. DEP'T OF VETERANS AFF., <http://www.GIBill.com> (last visited Mar. 17, 2017).

mechanism to notify students of ongoing concerns or enforcement actions against an institution. Instead, all enforcement actions for erroneous, deceptive, and misleading practices tied to receipt of GI Bill funds should require the institution to notify all current, incoming, and prospective students of the pending enforcement action.¹³⁹ If the enforcement action involves administrative action by the VA or an SAA, such as a form of suspension or reprimand, regulations should be amended to require that the institution notify all current, incoming, and prospective students using GI Bill benefits at the institution. Finally, the VA should work with the Department of Defense to provide better exit counseling to military members transitioning to civilian status about researching educational institutions, including how to use the GI Bill Comparison Tool and identify signs of erroneous, misleading, or deceptive practices.¹⁴⁰

C. *Increase Oversight of Federal Financial Aid*

1. *Amend the Higher Education Act and the 90/10 Rule to the 85/15 Rule and Calculate GI Bill Funds as Federal Financial Aid*

Meaningful statutory change to the GI Bill requires closing multiple loopholes in the 90/10 rule that allow for-profit educational institutions unfettered access to GI Bill funds.¹⁴¹ First,

139. For example, the FTC's settlement with DeVry University required the institution to notify all students of the settlement and eligibility for debt relief. *See* DeVry Settlement Press Release, *supra* note 100.

140. Congress passed the VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011 to overhaul the services and assistance provided to all military members separating from active duty. *See* VOW to Hire Heroes Act of 2011, Pub. L. No. 112-56, 125 Stat. 712; *see also* 38 U.S.C. § 4113 (2012); 10 U.S.C. § 1144.

141. The 90/10 rule loophole is undoubtedly the most critiqued feature of the existing regulatory scheme, prompting commentators and academics alike to recommend reform to the for-profit industry. *See, e.g.*, Kate O'Gorman, *The 90-10 Rule: Why Predatory Schools Target Veterans*, NEWGIBILL.ORG (May 7, 2012), <http://www.newgibill.org/blog/the-90-10-rule-why-predatory-schools-target-veterans> (calling for Congress to pass legislation closing this loophole). Thus, this article will propose a variety of other reforms to specifically address deceptive and misleading practices towards veterans and their families in the name of GI Bill funds. *See* Jaclyn Patton, Comment, *Encouraging Exploitation of the Military by For-Profit Colleges: The New GI Bill and the 90/10 Rule*, 54 S. TEX. L. REV. 425 (2012); 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 Incentives to the For-Profit College Industry*, 81 GEO. WASH. L. REV. 259 (2013); Schade, *supra* note 31.

GI Bill funds must be calculated as federal financial aid and included in the 90% cap on federal dollars. In November 2015, the HELP Committee introduced the Protecting Our Students and Taxpayers (POST) Act to calculate GI Bill funds as part of the 90% federal-financial-aid proportion.¹⁴² The bill remains stalled in committee.¹⁴³ Amending 20 U.S.C. § 1094 to include GI Bill funds as part of the 90% federal-financial-aid proportion is not a unique proposition. Indeed, GI Bill funds are themselves federal public dollars paid directly by the federal government to the educational institution, but without the features of a traditional federal-financial-aid loan to be repaid by the student.

The 90/10 rule should also be amended to revive the traditional 85/15 rule. Congress originally enacted the federal-aid-proportion rule in 1992 as the 85/15 rule but later amended the rule in 1998 to its current state.¹⁴⁴ The HELP Committee has proposed amending the 90/10 rule back to the 85/15 rule and requiring that educational institutions receive no more than 85% of revenue from federal-financial-aid sources.¹⁴⁵ There remains no action taken on this bill or multiple other bills to curb similar abuses in the higher-education industry.¹⁴⁶

It is unclear whether the 1998 amendment that created the current 90/10 rule is a product of the higher-education lobby or actual struggles of schools and programs to meet the 85% threshold, but the Department of Education estimates that a revived 85/15 rule today would increase the number of noncompliant for-profit

142. Protecting Our Students and Taxpayers Act of 2015, S. 2272, 114th Cong. § 2(a)(2)(B) (2015).

143. *S.2272—POST Act of 2015*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/2272/actions> (last visited Mar. 17, 2017).

144. See Higher Education Amendments of 1998, Pub. L. No. 105-244, § 102(b)(1)(F), 112 Stat. 1588 (codified at 20 U.S.C. § 1088(b)) (substituting “10 percent” in place of “15 percent”); Higher Education Amendments of 1992, Pub. L. No. 102-325, § 481(b)(3), 106 Stat. 611 (requiring “at least 15 percent of its revenues from sources that are not derived from funds provided under this title”).

145. S. 2272 (“[A]n institution shall derive not less than 15 percent of [its] revenues from sources other than Federal funds . . .”).

146. See Military and Veterans Education Protection Act, H.R. 3988, 114th Cong. (2016); Military and Veterans Education Protection Act, S. 1664, 114th Cong. (2015); Military and Veterans Education Protection Act, S. 2837, 113th Cong. (2014); Military and Veterans Education Protection Act, S. 2116, 112th Cong. (2012); Military and Veterans Education Protection Act, H.R. 4055, 112th Cong. (2012); *S.2272—POST Act of 2015*, *supra* note 143.

institutions from seventeen to 563.¹⁴⁷ In other words, shifting the threshold amount of federal financial aid a for-profit educational institution receives by just 5% would result in a thirty-three-fold increase in noncompliant institutions. The number of noncompliant institutions would likely increase even more if GI Bill funds are also calculated as federal financial aid. This staggering statistic implies a gross organizational problem with the for-profit education industry that has come to rely on billions of dollars in federal public funds to remain solvent.¹⁴⁸ However, in the 2014–15 academic year, the Department of Education calculated federal-financial-aid percentages for 1897 for-profit educational institutions and found that institutions averaged 69% of funding through federal-financial-aid sources.¹⁴⁹ This indicates that responsible and solvent for-profit educational institutions can absorb a modified 85/15 rule that also calculates GI Bill funds as federal financial aid.

Amending to the 85/15 rule while also calculating GI Bill funds as federal financial aid will help ensure that for-profit education is not entirely reliant on public funds. The amendment would also limit an institution's unfettered access to GI Bill funds as a source of revenue. Finally, veterans and military families would be relieved from unlawful targeting and deceptive practices because the amendment would remove incentives to enroll students using the GI Bill in order to offset funds received from traditional federal-financial-aid programs.

2. *A Single, Uniform Accreditation Agency Should Assess For-Profit Educational Institutions Seeking Eligibility for GI Bill Funding*

Accreditation by a private, mostly regional, agency should not determine initial eligibility in a national federal program like the GI

147. Press Release, U.S. Dep't of Educ., *New Analysis Finds Many For-Profits Skirt Federal Funding Limits* (Dec. 21, 2016), <http://www.ed.gov/news/press-releases/new-analysis-finds-many-profits-skirt-federal-funding-limits>.

148. For example, when the Department of Education denied federal financial aid to Globe University and Minnesota School of Business, the schools immediately responded by closing all Minnesota campuses. See Mark Brunswick, *Globe University and Minnesota School of Business to Close Campuses by End of January*, STAR TRIB. (Dec. 21, 2016, 8:42 PM), <http://www.startribune.com/globe-university-and-minnesota-school-of-business-to-close-campus-by-end-of-january/407775176> (“Without access to federal student loans, the schools struggled to stay afloat.”).

149. See 2014–2015 PROPRIETARY SCHOOL 90/10 REVENUE PERCENTAGES REPORT AND SUMMARY, *supra* note 37.

Bill. Instead, a single federal body should monitor and certify accreditation for institutions seeking eligibility to receive GI Bill funds. This will ensure that uniform standards are applied when assessing educational institutions, which is essential given the growing trend towards national-level online education services provided by for-profit education.

The VA largely relies on the Department of Education's accreditation system to approve programs and institutions.¹⁵⁰ Current regulation allows for the VA and SAAs to approve programs and institutions that receive accreditation from a "nationally recognized" agency accepted by the Department of Education.¹⁵¹ SAAs can use the accreditation to approve a program for receipt of GI Bill funds.¹⁵² Dozens of accrediting agencies certify the legitimacy of programs and institutions in the United States.¹⁵³ The Department of Education recognizes more than thirty agencies that certify institutions and programs for receiving federal financial aid.¹⁵⁴

No industry standards exist to assess institutions for accreditation. The institution's ability to self-report information and data during the accreditation process with minimal review authority invites manipulation and accreditation shopping.¹⁵⁵ In 2016, a federal regulatory panel and the Department of Education barred the largest accreditation agency of for-profit educational institutions from continuing to operate due to several violations and errors.¹⁵⁶ The agency had certified 725 educational institutions and

150. SENATE HELP COMM., BENEFITTING WHOM?, *supra* note 33, at 4.

151. 38 C.F.R. § 21.4253 (2016). The Department of Education's authority to publish a list of approved accreditors is found in 38 U.S.C. § 3675(a) (2012).

152. *See* 38 C.F.R. § 21.4253.

153. *See The Database of Accredited Postsecondary Institutions and Programs*, U.S. DEP'T OF EDUC., <http://ope.ed.gov/accreditation/Agencies.aspx> (last visited Mar. 17, 2017) (providing a list of regional, national, and specialized accreditation agencies).

154. *See* Lauren Camera, *Regulators Vote to Shut Down Nation's Largest For-Profit Accrediting Agency*, U.S. NEWS & WORLD REP. (June 23, 2016, 7:57 PM), <http://www.usnews.com/news/articles/2016-06-23/regulators-vote-to-shut-down-nations-largest-for-profit-accrediting-agency>.

155. *See* SENATE HELP COMM., THE FAILURE TO SAFEGUARD, *supra* note 3, at 7, 122.

156. *See* Lauren Camera, *Education Department Strips Authority of Largest For-Profit Accreditor*, U.S. NEWS & WORLD REP. (Sept. 22, 2016, 6:31 PM), <http://www.usnews.com/news/articles/2016-09-22/education-department-strips-authority-of-acics-the-largest-for-profit-college-accreditor>.

programs,¹⁵⁷ many of which were for-profit, including the now-closed Corinthian Colleges and ITT Tech.¹⁵⁸

Using a single body to assess and monitor educational institutions is not a unique proposal and has been recommended within the Department of Education.¹⁵⁹ The current accreditation structure is flawed and allows institutions to either forum shop for a favorable accreditation or sue an accrediting agency when it takes negative action: “the accrediting agency has, to some extent, been held hostage by bad actors in the for-profit sector that wage legal battles against the accreditor every time it attempts to sanction them.”¹⁶⁰

The VA and SAAs must also reassess the viability of approving unaccredited programs such as trade schools and on-the-job training programs. One-third of approved VA programs lack any kind of accreditation because the VA has a system for allowing unaccredited programs (for instance, a horseshoeing school in California) to apply for GI Bill eligibility after meeting certain criteria.¹⁶¹ Federal statute allows for SAA approval of “non-accredited courses” after meeting several subjective criteria, including “adequate” educators; curriculum “consistent in quality, content, and length with similar courses in public schools”; a “financially sound” institution; and institutional administration of “good reputation and character.”¹⁶² “Training on the job” is also approved for GI Bill funding after meeting similar subjective requirements for nonaccredited courses and when the training is “adequate to qualify the eligible veteran or person for appointment to the job for which the veteran or person is to be trained.”¹⁶³ Nearly 2000 unaccredited trade schools and on-the-job training programs have received GI Bill funds for arguably obscure education services, for example sex, blackjack, scuba diving,

157. *Id.*

158. *Id.*

159. See Amanda Harmon Cooley, *The Need for Legal Reform of the For-Profit Educational Industry*, 79 TENN. L. REV. 515, 559–60 (2012) (recommending an oversight body of the for-profit education industry within the Department of Education).

160. Camera, *supra* note 154.

161. Glantz, *supra* note 27.

162. 38 U.S.C. § 3676(c) (2012). The statute also requires that the institution “not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation.” *Id.* § 3676(c)(10).

163. 38 U.S.C. § 3677(c)(1).

and dog grooming schools.¹⁶⁴ While trade schools and on-the-job training programs remain vital to the successful veteran transition from military service to a civilian career, an appropriate balance is needed to preserve the sanctity of the program and provide meaningful higher education and training where veterans can continue to be productive and contribute to our economic society.

3. *Accreditation for Specialty Programs Must Be Approved by the Degree's Governing Accreditation*

Most specialty programs (law, medicine, etc.) receive accreditation from the degree's single, uniform governing accreditation (e.g., the American Bar Association or the Accreditation Council for Graduate Medical Education). Yet many specialty programs remain eligible to receive GI Bill funds without proper accreditation.¹⁶⁵ Programs in law, education, psychology, nursing, and criminal justice continue to receive GI Bill funds despite failing to meet state certification and licensing program requirements.¹⁶⁶ The approval criteria for a nonaccredited course listed in 38 U.S.C. § 3676 are not sufficient, and there is no legitimate reason for the GI Bill to fund specialty programs in medicine, law, and science that lack accreditation by the degree's national accreditation agency. One study found that the VA approved programs at sixty institutions that did not qualify students for state licensure or credentialing requirements.¹⁶⁷ Oftentimes students are ignorant of the fact that programs are not properly accredited for their chosen career field.¹⁶⁸ Case in point, numerous students attending Globe University and Minnesota School of Business later learned that their criminal justice degrees did not satisfy Minnesota requirements to become licensed police officers.¹⁶⁹ One veteran

164. See Glantz, *supra* note 98.

165. See David Halperin, *Law Enforcement Investigations and Actions Regarding For-Profit Colleges*, REPUBLIC REP. (Apr. 9, 2014, 4:21 PM), <http://www.republicreport.org/2014/law-enforcement-for-profit-colleges>.

166. See *supra* note 98 and accompanying text.

167. See WALTER OCHINKO, VETERANS EDUC. SUCCESS, THE GI BILL PAYS FOR DEGREES THAT DO NOT LEAD TO A JOB 2 (Sept. 2015), <http://veteranseducationsuccess.org/reports/>.

168. See *State v. Minn. Sch. of Bus., Inc.*, No. 27-CV-14-12558, at 111–16 (Minn. Dist. Ct. Sept. 8, 2016) (explaining that a degree in criminal justice from Minnesota School of Business and Globe University did not satisfy state requirements to become a licensed police officer).

169. See Amended Complaint at 30–36, *State v. Minn. Sch. of Bus., Inc.*, No. 27-

stated that he “wasted most of my GI Bill educational benefits, and I have nothing to show for it,” after learning that he could not become a police or probation officer with an associate’s degree in criminal justice.¹⁷⁰

The current crisis invading the GI Bill program has reached a breaking point that requires action to control the types of programs being approved to receive GI Bill funds. While the GI Bill is intended to provide veterans the opportunity to receive a funded education or training program, there is no inherent right to use GI Bill funds on any program, trade school, or training program without limitation. A multi-billion-dollar federal program requires appropriate safeguards to prevent erroneous, deceptive, or misleading practices from harming veterans and misappropriating program funds. This begins with addressing the types of programs being approved to receive GI Bill funds.

D. Implement Meaningful Protections for Students

1. The VA Must Follow and Enforce Current Laws and Regulations on Erroneous, Deceptive, and Misleading Practices

The VA has near limitless statutory and regulatory authority to suspend or even disapprove GI Bill funding for educational institutions, subject to basic administrative due process requirements.¹⁷¹ Despite wielding this power, the VA has consistently failed to act in cases warranting suspension or even disapproval of funds.¹⁷² The VA also does not use a coherent system to track the various enforcement actions taken by state and federal authorities

CV-14-12558 (D. Minn. Mar. 20, 2015).

170. *Id.* at 34.

171. *See* 38 U.S.C. § 3672 (2012) (providing authority to approve courses for GI Bill funding), § 3679 (providing authority to disapprove courses for GI Bill funding), § 3690 (providing authority to discontinue or suspend any program or institution for a variety of reasons, like overcharging, failing to meet course approval requirements, failing to meet recordkeeping and reporting requirements, and making false or misleading statements and claims), § 3696(a) (noting that the VA “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” (emphasis added)); 38 C.F.R. § 21.4210(e) (2016) (outlining due process requirements to accompany a mass suspension of funds).

172. *See, e.g., supra* Section II.C.

around the United States.¹⁷³ While state and federal law enforcement and regulatory authorities have no obligation to notify or coordinate with the VA on its enforcement actions, the VA and SAAs must develop a better system to identify, monitor, and act on cases where outside authorities investigated and already developed the basis for an enforcement action on GI Bill eligibility. Even a VA deputy undersecretary understood the problem during an interview:

Keeping up with all the state attorney generals, keeping up with the Department of Justice, keeping up with [the Consumer Financial Protection Bureau] . . . [the] FTC, it's a huge challenge Part of our challenge is we don't have the resources or the wherewithal in some cases to do, if you will, financial forensics of a school when we go do a compliance review.¹⁷⁴

As recently as 2015, the VA placed all responsibility to disapprove or suspend GI Bill funding with the SAAs. In response to a report that unaccredited and ineligible educational programs had received VA education benefits, the VA's Under Secretary of Benefits wrote in a letter to Congress,

The authority for the approval of educational programs is specifically granted to the [SAAs] under Title 38 of the United States Code 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.¹⁷⁵

This legal position creates cases like Ashford University that impact multiple states and SAAs without any VA intervention.¹⁷⁶ The VA has an obligation to act on cases involving multiple states and SAAs, which have grown exponentially in the era of online education. This lack of VA intervention accurately depicts a strained cooperation between the VA and SAAs, and Congress has taken notice. In 2017, Congress mandated the Comptroller General of the United States to study "the effectiveness of the cooperation between

173. Hefling, *supra* note 69.

174. *Id.*

175. Letter from Allison A. Hickey, Former Under Sec'y of Benefits in the Dep't of Veteran Affairs, to Senator Richard J. Durban (Sept. 4, 2015), <https://www.documentcloud.org/documents/2428666-va-educational-benefit-program-letter-to-sen.html> (emphasis added).

176. See *supra* notes 103–12 and accompanying text.

the [VA] and [SAAs] regarding the execution of shared compliance and oversight responsibilities,” with a report to be submitted to Congress in 2018.¹⁷⁷ Statute and regulation clearly direct that either the VA or SAAs must act against educational institutions and programs that engage in erroneous, deceptive, or misleading practices.¹⁷⁸ In fact, the VA retains the final authority and approval when suspending funds, including the mass suspension of funds against an educational institution.¹⁷⁹ Yet many times the VA fails to take administrative action against an educational institution despite legal action by state and federal authorities.¹⁸⁰ The VA defends its actions, or lack thereof, by claiming the VA is not an “investigative agency,”¹⁸¹ but for years federal statute has directed the VA to coordinate its investigations with the FTC.¹⁸² Even the 2010 amendments to the Post-9/11 GI Bill statute “expand[ed] VA’s authority regarding approval of courses,” “better utilize[ed] the services of SAAs,” and provided “greater authority” for the VA to “utilize the SAAs more effectively.”¹⁸³ But not until November 2015

177. Harry W. Colmery Veterans Educational Assistance Act of 2017, H.R. 3218, 115th Cong. § 311(a)(1)–(b) (2017) (enacted).

178. See *supra* Section II.B. Under 38 U.S.C. § 3675, “[t]he Secretary or a [SAA] may approve” a program, and per § 3679, “[a]ny course approved . . . which fails to meet any of the requirements . . . shall be immediately disapproved by the Secretary or the [SAA].” 38 U.S.C. §§ 3675, 3679 (2012). The VA shall also not approve an “institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading.” *Id.* § 3696(a). Regulation also dictates that the VA retains the authority to “disapprove schools, courses, or licensing or certification tests for reasons stated in the law and to approve schools, courses, or licensing or certification tests notwithstanding lack of [SAA] approval.” 38 C.F.R. § 21.4152(b)(5) (2016). SAAs must also cooperate with the VA and provide services and information to the VA that is “necessary for the Secretary’s approval or disapproval” of any educational institution. *Id.* § 21.4151(b)(6). Finally, 38 C.F.R. § 21.4210 articulates the requirements for the mass suspension of funds issued to an educational institution, with the “Director of the VA Regional Processing Office of jurisdiction” to enforce the action. *Id.* § 21.4210(d).

179. See 38 C.F.R. §§ 21.4152(b)(5), 21.4210(e).

180. Hefling, *supra* note 69.

181. *Id.*

182. See 38 U.S.C. § 3696(c).

183. S. REP. NO. 111-346, at 21 (2010); see also Post-9/11 Veterans Education Assistance Improvements Act of 2010, Pub. L. No. 111-377, 124 Stat. 4106 (2011) (“The Secretary may utilize the services of a State approving agency for such compliance and oversight purposes as the Secretary considers appropriate without regard to whether the Secretary or the agency approved the courses offered in the State concerned.”).

did the VA enter into an agreement with the FTC to coordinate investigations.¹⁸⁴ The agreement sought to “provide mutual assistance in the oversight and enforcement of laws pertaining to the advertising, sales, and enrollment practices of institutions of higher learning.”¹⁸⁵ It remains unclear whether this agreement has allowed the VA to better identify and investigate educational institutions and later commit to meaningful enforcement actions.

Eight state attorneys general went as far as to request in a 2016 letter that the VA restore education benefits to GI Bill recipients scammed by Corinthian Colleges, largely because the VA failed to act.¹⁸⁶ Citing 38 U.S.C. § 503(a), which grants the Secretary of Veterans Affairs discretion to provide equitable relief in the event of an “administrative error,” the attorneys general believe the VA “should find that an administrative error was made in allowing student veterans to enroll at an institution with misleading job placement rates” and “restore veterans’ eligibility and entitlement to their benefits when the VA has authorized the use of benefits in contravention of its own governing statutes and regulations.”¹⁸⁷ Finally, the letter urged the VA to “support the efforts of [SAAs] and Attorneys General in protecting veterans from misconduct” and to immediately review an institution’s eligibility for GI Bill funds upon future findings by the Department of Education, SAAs, state attorneys general, or courts of “erroneous, deceptive, or misleading advertising, sales, or enrollment practices.”¹⁸⁸

Reinstating expended GI Bill benefits to defrauded students because the VA failed to act is an extreme remedy with significant logistical, financial, and legal hurdles to overcome. While traditional federal financial aid can be repaid to the student through debt forgiveness and debt repayment by the educational institution following a settlement, GI Bill funds are not considered federal student loans and cannot be repaid to the student once used.¹⁸⁹

184. See DEP’T OF VETERANS AFF. & FED. TRADE COMM’N, MEMORANDUM OF AGREEMENT BETWEEN THE FEDERAL TRADE COMMISSION AND THE DEPARTMENT OF VETERANS AFFAIRS 5 (2015), https://www.ftc.gov/system/files/documents/cooperation_agreements/151110ftc_va_mou.pdf.

185. *Id.* at 1.

186. See Letter from Attorneys Gen. of Cal., Conn., Ill., Ky., Mass., N.M., Or., and Wash., to the Honorable Robert A. McDonald, Sec’y of Veterans Affairs (Feb. 29, 2016), <https://oag.ca.gov/sites/all/files/agweb/pdfs/va-multi-state-letter.pdf>.

187. *Id.* at 3, 5.

188. *Id.* at 5, 9.

189. Alex Horton, *California Revokes GI Bill Approval for ITT Tech*, MILITARY.COM

When an educational institution fails, it can repay student debt either directly to the student or the Department of Education, but it cannot repay students who already used their GI Bill benefits through the VA. Because of this, the VA and state SAAs have an obligation to act with a sense of urgency at the first indication of wrongdoing by an institution. And the premise of the letter from the attorneys general still rings true throughout the GI Bill program: the VA has the legal authority and obligation to enforce the law against those institutions engaged in erroneous, deceptive, and misleading practices, but it has consistently failed to act, even sometimes against the will of SAAs.

For an immediate deterrent impact on institutions contemplating erroneous, deceptive, and misleading practices, the VA and SAAs should immediately suspend any new GI Bill enrollments and funding at the first finding of abuse. Current regulation allows for the director of any VA regional processing office to disapprove any new enrollment when the director “finds” that the institution used erroneous, deceptive, or misleading practices.¹⁹⁰ Enforcement actions like the “reprimand” letter issued to DeVry University or a short suspension of recruiting on military installations for the University of Phoenix are not sufficient or equivalent to the violations committed by the institutions.¹⁹¹ Instead, upon finding erroneous, deceptive, or misleading practices, or when another state or federal agency initiates legal action against an institution for engaging in such practices, the educational institution should receive an immediate suspension from enrolling any new students that use GI Bill funds. This will trigger a sixty-day period for the institution to take corrective action, even though the damage is already done by the institution through past fraudulent conduct.¹⁹² While a stronger VA stance on suspension will undoubtedly trigger increased litigation—as seen already in at least one case claiming the VA and SAA acted without authority and based on unfounded

(Sept. 3, 2016), <http://www.military.com/daily-news/2016/09/03/california-revokes-gi-bill-approval-for-itt-tech.html> (statement of James Schmeling of Student Veterans of America).

190. 38 C.F.R. § 21.4210(d)(4) (2016); *see also id.* § 21.4252(h). There are three regional processing offices in the United States. *Regional Processing Offices*, U.S. DEP'T OF VETERANS AFF., http://www.benefits.va.gov/gibill/regional_processing.asp (last visited Mar. 17, 2017).

191. *See Altman, supra* note 99; Hefling, *supra* note 69.

192. 38 C.F.R. § 21.4210(e)(1)(ii)(B).

findings¹⁹³—the risk of litigation should not influence the VA and SAA's responsibility to create meaningful protections for student veterans and military families.

The VA must also develop a system to track and monitor enforcement actions at the state and federal level, then either support SAAs or initiate action to suspend an educational institution upon a finding of erroneous, deceptive, or misleading practices. In cases involving online programs spanning multiple states and SAAs, the VA must spearhead the enforcement action. Only strong, consistent, and immediate enforcement actions will deter institutions from engaging in practices that threaten the integrity of the GI Bill program.

2. *SAAs Must Have the Legal Authority, Manpower, and Resources to Investigate and Commit to Enforcement Actions upon Any Notice of Erroneous, Deceptive, or Misleading Practices*

Congress created SAAs in 1947 to contract with the VA and approve educational programs according to the VA's established regulations and standards.¹⁹⁴ The primary mission of SAAs, which requires the most manpower to accomplish, is to assist the federal government in preventing fraud, waste, and abuse in the GI Bill program.¹⁹⁵ In 2007, the Government Accountability Office identified several overlapping functions between SAAs and the Department of Education, the Department of Labor, and the VA.¹⁹⁶ Recommendations included the VA having stronger oversight with SAAs and more reporting on SAA functions and actions.¹⁹⁷

193. See, e.g., Liz Palka, *ECPI University Files Lawsuit Against State Agency*, WAVY.COM (Dec. 11, 2015), <http://wavy.com/2015/12/11/ecpi-university-files-lawsuit-against-state-agency>.

194. *The Evolution of State Approving Agencies: Hearing Before the Subcomm. on Econ. Opportunity of the H. Comm. on Veterans' Affairs*, 111th Cong. 2 (2009), <https://www.gpo.gov/fdsys/pkg/CHRG-111hhrg51874/pdf/CHRG-111hhrg51874.pdf> [hereinafter *House Hearing on the Evolution of SAAs*] (opening statement of Herseth Sandlin, the Chairwoman of the House Subcommittee on Economic Opportunity).

195. *Id.* at 35 (statement of Justin Brown, Legislative Associate for the organization Veterans of Foreign Wars of the United States).

196. U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-384, *MANAGEMENT ACTIONS NEEDED TO REDUCE OVERLAP IN APPROVING EDUCATION AND TRAINING PROGRAMS AND TO ASSESS STATE APPROVING AGENCIES* 4 (2007), <http://www.gao.gov/assets/260/257465.pdf>.

197. See *id.*

Within Title 38 of the United States Code, §§ 3670 through 3679 list the statutory authorities of SAAs, and § 3673 requires the VA and SAAs to cooperate and coordinate in order to reduce overlap and improve efficiency.¹⁹⁸ The Senate Committee on Veterans' Affairs even recognized the essential role of SAAs in administrating the GI Bill program:

SAAs represent a valuable resource for VA as the implementation of the new Post-9/11 GI Bill continues, particularly as they might identify issues and problems that may arise regarding the possible misuse of benefits and instances of fraud, misrepresentation, and abuse. . . . [T]he Committee recognizes the role of the SAAs as a link between educational institutions and VA that assist institutions in providing education and training opportunities to eligible students, as well as representing an important outreach tool.¹⁹⁹

For years SAAs received a \$19 million annual budget to conduct operations that included approximately 5000 compliance reviews,²⁰⁰ but recent years required additional SAA oversight due to the “proliferation of nondegree and on-the-job training (OJT) apprenticeship programs.”²⁰¹ Although Congress, through 2017 legislation, finally aided SAAs by increasing funding to \$23 million by fiscal year 2019 with an additional \$3 million annually for necessary operations and services, SAAs must be equipped with the necessary manpower, resources, and tools to identify and track fraud cases, then refer these cases to the VA for any needed enforcement action.²⁰² If the VA continues with inaction, Congress should provide

198. 38 U.S.C. §§ 3670–79 (2012).

199. S. REP. NO. 111-346, at 22 (2010).

200. *House Hearing on the Evolution of SAAs*, *supra* note 193, at 2. SAAs received a “funding increase in [fiscal year] 2003 from \$13 million with a graduated increase to \$19 million by [fiscal year] 2006 In consideration of inflation, [State Approving Agencies’] funding levels ha[ve] continually eroded since their last increase in [fiscal year] 2006.” *Id.* at 34.

201. *Id.* at 3 (statement of Congressman John Boozman, Ranking Republican Member on the Subcommittee of Economic Opportunities).

202. *See* Harry W. Colmery Veterans Educational Assistance Act of 2017, H.R. 3218, 115th Cong. § 301 (2017) (enacted) (amending 38 U.S.C. § 3674(a), the funding statute for SAAs, to render “necessary services in ascertaining the qualifications of educational institutions”). Congress even mandated the Comptroller General of the United States to study whether Congress has appropriated sufficient funds for SAAs to fulfill their responsibilities and submit a report back to Congress within a year. *Id.* § 311. As an example of the obvious need

SAAs the manpower and resources necessary to conduct independent investigations at the local level, report back to the VA, and take independent enforcement actions that bind all other SAAs nationwide to prevent forum shopping.²⁰³ In the era of online education, SAAs should retain the authority to initiate enforcement actions against any educational institution that provides online education services within the SAA's state jurisdiction. A negative enforcement action by one SAA should bind all other jurisdictions and SAAs. Having this authority would meet the SAA's primary mission to prevent fraud, waste, and abuse in administering a multi-billion-dollar federal benefit program.

IV. CONCLUSION

Ignorance and inaction created the current problem of allowing educational institutions to reap billions of dollars in GI Bill funds at the expense of veterans and military families. For-profit education's business model focuses on maximizing profits, arguably at the expense of quality services, lower fees and tuition, and expansive educational programs.²⁰⁴ This model inherently conflicts with an institution's obligation to provide high-quality education

for VA enforcement actions, when the California SAA withdrew GI Bill funding from Corinthian Colleges after the SEC identified the institution as "fiscally unstable," the VA did not act against Corinthian in other states. *See CalVet Withdraws Approval for Corinthian Colleges*, *supra* note 73. Further, when the FTC sued DeVry University in 2016 for misleading practices, the VA did not act on DeVry's continued receipt of GI Bill funds. *See Altman*, *supra* note 99. Instead, the VA issued a letter that effectively reprimanded the institution. *Id.* To date, 191 students receiving GI Bill benefits submitted complaints to the VA against DeVry. *See GI Bill Comparison Tool*, *supra* note 97. DeVry reached a \$100 million settlement with the FTC in December 2016. Danielle Douglas-Gabriel, *DeVry Agrees to \$100 Million Settlement with FTC*, WASH. POST (Dec. 15, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/12/15/devry-agrees-to-100-million-settlement-with-the-ftc>.

203. *See* Harry W. Colmery Veterans Educational Assistance Act of 2017, H.R. 3218, 115th Cong. § 311(a)(2)–(b) (2017) (enacted) (requiring the Comptroller General of the United States to analyze whether SAAs have the "resources necessary for [SAAs] to fulfill [their] responsibilities" and submit a report to Congress in 2018).

204. *See* Riegel, *supra* note 141, at 273–75 (comparing the for-profit industry's business model to that of subprime mortgage lenders). "Like large investment banks, [for-profit schools] have carefully perfected a business model that relies on high-risk loans, immediate profits, and shifting of risk to third parties, and have done so by exploiting lax regulations and gaps in the laws intended to prevent the precise behaviors in which they are engaging." *Id.* at 273.

services and gainful employment opportunities.²⁰⁵ The VA and SAAs have an obligation to employ stringent oversight and strong enforcement actions immediately upon a finding of erroneous, deceptive, and misleading practices by for-profit educational institutions. Only practical changes to the VA's application and enforcement of laws and regulations that prohibit these practices, along with serious consequences, will produce much-needed reforms in the GI Bill program. Transparency alone will not restore the integrity and confidence this historic program once held for those who served.

205. See Patton, *supra* note 141, at 442 (“To meet their duty to their shareholders, publicly traded schools must ‘generate higher revenues while keeping down costs, including teaching costs.’” (quoting U.S. S. HEALTH, EDUC., LABOR & PENSIONS COMM., 111TH CONG., EMERGING RISK?: AN OVERVIEW OF GROWTH, SPENDING, STUDENT DEBT AND UNANSWERED QUESTIONS IN FOR-PROFIT HIGHER EDUCATION 5 (2010))).

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