

PROTECTING THOSE WHO PROTECT US:
ENSURING THE SUCCESS OF OUR
STUDENT VETERANS

JOINT FIELD HEARING

BEFORE THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
OF THE
COMMITTEE ON VETERANS' AFFAIRS

AND THE
SUBCOMMITTEE ON HIGHER EDUCATION AND
WORKFORCE INVESTMENT
OF THE
COMMITTEE ON EDUCATION AND LABOR
[Serial No. 116–18]

U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

HEARING HELD IN EL CAJON, CA, APRIL 24, 2019

Printed for the use of the Committee on Education and Labor



Available via: www.govinfo.gov; or
Committee address: <https://edlabor.house.gov>

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36–593 PDF

WASHINGTON : 2021

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PROTECTING THOSE WHO PROTECT US: ENSURING THE SUCCESS OF OUR STUDENT VETERANS

**Wednesday, April 24, 2019
House of Representatives,
Subcommittee on Higher Education and Workforce Investment,
Committee on Education and Labor,
Joint with the
Subcommittee on Economic Opportunity,
Committee on Veterans' Affairs,
El Cajon, CA**

The subcommittees met, pursuant to notice, at 10:33 a.m., at Grossmont College, 8800 Grossmont College Dr., Griffin Gate, Building 60, 1st Floor, El Cajon, CA, Hon. Susan Davis (Chairwoman of the committee) presiding.

Present: Representatives Davis (Ed & Labor Committee), Takano (Both Committees), Levin, Mike – CA (Veterans' Affairs Committee), and Lee (Ed & Labor Committee).

Staff Present: Tylease Alli, Chief Clerk (Education and Labor Committee); Claire Viall, Professional Staff (Education and Labor Committee); Justin Vogt, Staff Director, Economic Opportunity Subcommittee (Veteran's Affairs Committee); Jon Clark, Director of Economic Opportunity Subcommittee (Veterans Affairs Committee)

Mrs. DAVIS. Good morning. The Committee on Education and Labor will come to order. We want to welcome everybody here. We are delighted that you are with us today.

I want to note that a quorum is present, and the committee is meeting today for a legislative field hearing to hear testimony on Protecting Those Who Protect Us: Ensuring the Success of Our Student Veterans.

I want to thank everybody, including our wonderful witnesses, for attending this hearing today, and I appreciate the efforts taken on behalf of all of those involved to have this important field hearing. It is crucial that this committee, and thereby all of Congress really, hear directly from the public about matters in our jurisdiction that are affecting constituents in their communities and across the country.

This is an official congressional hearing, and I want to thank Anne Krueger, Communications and Public Information Director; Cindy Miles, the Chancellor of Grossmont; Kree Maka, Community College District; and Abu-Ghazaleh, Grossmont College President, for the use of this facility at Grossmont College for this purpose.

As this is an official congressional hearing, we are required to follow the rules of the committee and the House of Representatives, including the rules on decorum. So I want to remind our guests that demonstrations from the audience, including applause, actually—you cannot applaud—and verbal outbursts, as well as the use of signs or placards, are a violation of the rules.

The committee has invited witnesses to speak at this hearing, and guests are here to observe the proceedings. In addition to that, the use of cameras and the taking of photographs and/or videos is limited to accredited press only, and we thank the press for being here as well.

Pursuant to Rule 7(c), opening statements are limited to the Chair and the Ranking Member. However, given that this is a joint subcommittee hearing, Chairman Levin and Chairman Takano will also be giving opening statements, and we will then hear from our witnesses, and all members will have adequate time to ask questions.

I recognize myself now for this purpose of making an opening statement.

Today, we are here to discuss how to better protect students, veterans, and taxpayers from predatory, low-quality institutions of higher education.

Through their service to our country, returning veterans earn GI Bill benefits that provide access to quality colleges and universities and a pathway to success in civilian life. Unfortunately, far too many veterans have become victims of unscrupulous, low-quality, for-profit institutions.

For-profit institutions, by definition—by definition— have a fiduciary duty to stakeholders to maximize profits, often at the expense of students. Research clearly indicates that for-profit college students borrow more often, take out larger loans, and default at a higher rate than students in similar programs at public and non-profit colleges. Veterans are no exception. In fact, student veterans are disproportionately affected by low-quality institutions.

Although most student veterans do not attend for-profit institutions, these schools take in over 40 percent of all GI Bill funds. Between 2009 and 2017, eight of the top ten recipients of GI Bill tuition and fees went to for-profit schools, including now-shuttered college chains such as ITT Technical Institute, Education Corporation of America, and Dream Center Education Holdings, which consumed billions of taxpayer dollars, only to leave students with crushing debt and no degree.

The Art Institute of California, a Dream Center school located here in San Diego, disrupted the education and finances of nearly 200 student veterans, and that was just at one campus.

The connection between for-profit institutions and student veterans is, unfortunately, not a coincidence. For-profit institutions deliberately target student veterans because of loopholes in Federal law that incentivize them to do so.

The 90/10 rule, which requires for-profit schools to demonstrate their value by earning 10 percent of their revenue from non-Federal sources, counts GI Bill benefits as a non-Federal source. This makes GI Bill dollars extremely valuable to for-profit schools and

created a system in which student veterans are consistent targets of aggressive recruiting.

To make matters worse, the Department of Education under this Administration has repeatedly abandoned both its responsibility to protect students and taxpayers from low-quality schools and in fact, Secretary DeVos has even loosened the regulations holding for-profit schools accountable.

Student veterans who have been victimized by predatory institutions and lax Federal oversight have also been fleeced a second time by the Department's refusal to enforce vital protections for defrauded students.

Specifically, despite a court order, the Department has failed to implement the Borrowers Defense to Repayment rule, and many in the audience know what that is, which ensures that students can obtain relief from student loans if their college or university defrauds them. can get help.

However, just two weeks ago, Secretary DeVos revealed to the committee not a single application for loan relief from defrauded for-profit college students has been approved in the last six months.

Finally, the Department has failed to establish a transparent process for for-profit schools seeking to gain non-profit status. We cannot allow for-profit institutions to skirt accountability rules just by changing a tax designation on paper.

We want all student veterans to attend institutions that meet their needs and lead to good-paying jobs and Congress here has a rare opportunity to reform Federal higher education policies so that student veterans are empowered to meet the needs of our modern workforce. But those reforms must also push the Department of Education to ensure that schools receiving taxpayer dollars are financially stable and are not defrauding students, students and certainly our veterans. And in cases where students are cheated, the Department must provide relief so that veterans have a new start without the burden of debt for an education that, unfortunately for them, went nowhere.

Simply put, we have a responsibility to protect those who protect us.

I look forward to working with my colleagues to find solutions that ensure veterans both adequate protection against predatory schools and access to quality college degrees that lead to a rewarding career. I am sure that is something that we all want.

Thank you to all our witnesses for being here with us today. I look forward to your testimony and the discussion that will follow.

It is now my great pleasure to yield to the Chairman of the Veterans' Affairs Subcommittee on Economic Opportunity, Congressman Mike Levin, for his opening statement.

[The statement of Chairwoman Davis follows:]

Prepared Statement of Hon. Susan A. Davis, Chairwoman, Subcommittee on Higher Education and Workforce Investment

Today, we are here to discuss how to better protect students, veterans, and taxpayers from predatory, low-quality institutions of higher education.

Through their service to our country, returning veterans earn GI Bill benefits that provide access to quality colleges and universities and a pathway to success in civil-

ian life. Unfortunately, far too many veterans have become victims of unscrupulous, low-quality for-profit institutions.

For profit institutions, by definition, have a fiduciary duty to stakeholders to maximize profits, often at the expense of students. Research clearly indicates that for-profit college students borrow more often, take out larger loans, and default at higher rates than students in similar programs at public and non-profit colleges. Veterans are no exception. In fact, student veterans are disproportionately affected by low-quality institutions.

Although most student veterans do not attend for-profit institutions, these schools take in over 40 percent of all GI Bill funds. Between 2009 to 2017, eight of the top ten recipients of GI Bill tuition and fees went to for-profit schools, including now-shuttered college chains—ITT Technical institutes, Education Corporation of America, and Dream Center Education Holdings—which consumed billions of taxpayer dollars, only to leave students with crushing debt and no degree.

The Art Institute of California, a Dream Center school located here in San Diego, disrupted the education and finances of nearly 200 student veterans. And that's just one campus.

The connection between for-profit institutions and student veterans is not a coincidence. For-profit institutions deliberately target student veterans because of loopholes in federal law that incentivize them to do so.

The 90/10 rule, which requires for-profit schools to demonstrate their value by earning 10 percent of their revenue from non-federal sources, counts GI Bill benefits as a non-federal source. This makes GI Bill dollars extremely valuable to for-profit schools and created a system in which student veterans are consistent targets of aggressive recruiting.

To make matters worse, the Department of Education under this Administration has repeatedly abandoned both its responsibility to protect students and taxpayers from low-quality schools. In fact, Secretary DeVos has even loosened the regulations holding for-profit schools accountable.

Student veterans who have been victimized by predatory institutions and lax federal oversight have also been fleeced a second time by the Department's refusal to enforce vital protections for defrauded students.

Specifically, despite a court order, the Department has failed to implement the Borrowers Defense to Repayment rule, which ensures that students can obtain relief from student loans if their college or university defrauds them. Just two weeks ago, Secretary DeVos revealed to the Committee not a single application for loan relief from defrauded for-profit college students has been approved in the last six months.

Finally, the Department has failed to establish a transparent process for for-profit schools seeking to gain non-profit status. We cannot allow for-profit institutions to skirt accountability rules just by changing a tax designation on paper.

We want all student veterans to attend institutions that meet their needs and lead to good paying jobs. Congress has a rare opportunity to reform federal higher education policies so that student veterans are empowered to meet the needs of our modern workforce. But those reforms must also push the Department of Education to ensure that schools receiving taxpayer dollars are financially stable and are not defrauding veterans. And, in cases where students are cheated, the Department must provide relief so that veterans can have a new start without the burden of debt for an education that went nowhere.

Simply put, we have a responsibility to protect those who protect us.

I look forward to working with all my colleagues to find solutions that ensure veterans both adequate protection against predatory schools and access to quality college degrees that lead to a rewarding career.

Thank you to all our witnesses for being here with us today. I look forward to your testimony and the discussion that will follow.

I now yield to the Chairman of the Veterans Affairs Subcommittee on Economic Opportunity, Congressman Mike Levin, for his opening statement.

Mr. LEVIN. Thank you, Chair Davis.

It is great to be with all of you this morning. It is great to see you, Mr. Chairman.

I appreciate the opportunity to have a joint hearing today between our Veterans' Affairs Subcommittee on Economic Opportunity, and Chair Davis' Subcommittee on Higher Education. I am glad to be doing it here in Southern California, where we all represent, and I am grateful to you all for attending today.

This region is home to several hundred thousand veterans, many of whom depend on the GI Bill to obtain higher education as they transition from the military back to civilian life. When we ask our service members to defend our nation, we do so understanding that we owe them a great debt. One way we begin to repay that debt is by offering benefits like the GI Bill.

But beyond providing financial support, we have a responsibility to protect student veterans from unscrupulous institutions that seek to take advantage of the benefits that they have earned, institutions that prioritize profits over quality.

We must be sure that when our veterans get a degree, they are not just getting a piece of paper but valuable qualifications that prepare them for a career.

And that brings us to the issue at hand. We must ensure that GI Bill benefits are being used to serve veterans and not line the pockets of bad actors.

A little bit of history; in 1992, Congress began to crack down on bad actors by creating the 85/15 rule. This is all the way back in 1992. The 85/15 rule mandated that each higher education institution could only receive up to 85 percent of its revenues from the Federal Government, since high-quality programs should be able to attract other sources of funding.

Think about that: 85 percent. It is hard to believe that a college or university would rely that heavily on Federal aid. Yet, some institutions argued even that was too onerous, and in 1998, six years later, the rule was rolled back to 90/10.

But that still was not a low enough threshold for bad actors, so they found a loophole. Veteran and military benefits are currently not counted as Federal aid under the 90/10 rule, making GI Bill funding a target for low-quality institutions. These bad actors use aggressive and often deceptive marketing techniques to recruit vets. They call veterans repeatedly, rush them into a decision, and even stoop as low as recruiting at VA hospitals and Wounded Warrior centers in order to enroll students. They make false promises that their schools' credits are transferable, their policies accommodate deployments, or even falsely guarantee that the veteran will secure a great job upon graduation.

These practices cannot be allowed to stand as they are.

I was encouraged by the Department of Veterans Affairs' Secretary, Mr. Wilkie, in our budget hearing last month when he recognized that the 90/10 rule needs to be looked at more closely, and I hope our hearing here this morning can further those efforts, as well as explore other ways we can prevent the exploitation of our student veterans, including by reestablishing gainful employment standards.

The Obama Administration finalized the gainful employment rule in 2014 to improve the accountability and transparency of higher education programs, and those regulations track whether higher education institutions were awarding degrees that were valued in the workforce to ensure that the institutions were not just degree factories built on exploiting students.

Sadly, the current Administration does not share this goal. Instead of building on this work, President Trump and Secretary DeVos have undermined the gainful employment standards and are

no longer tracking this important information. These cracks in the system are adding up, making it harder and harder for veterans to find a quality education. We cannot allow this to continue.

It is incumbent upon us, all of us, to come together in the best interests of our student veterans to address these issues.

I want to thank our witnesses for joining us today as we determine where to focus our efforts. I am especially glad to have Kristyl Rodriguez, who is a constituent and a student veteran, on the panel, and I am also pleased we could be joined by my friend, Bob Muth, who first educated me about these issues years ago. He has done extremely important work.

So I look forward to hearing your testimony today, grateful to be here with you, and I will yield back.

Mrs. DAVIS. Thank you very much, Mr. Levin.

It is my pleasure now to yield to Chairman Takano of the House Committee on Veterans' Affairs for his opening statement. He is the Chairman of the Veterans' Affairs Committee. I want to make particular note of that as well.

Mr. TAKANO. Yes. To the public it may be confusing that you have three Chairs up here.

[Laughter.]

Mr. TAKANO. But let me explain a little.

I want to express my gratitude to Susan Davis, who chairs the Education and Labor Subcommittee on Higher Education, and Mr. Levin, who chairs the Subcommittee on Economic Opportunity for the committee I chair, the full committee I chair, which is the Veterans' Affairs Committee.

I want to thank these two subcommittee chairs for taking the initiative to organize and put together this very important hearing on the topic that we are going to discuss today on the for-profit college industry and its impacts on student veterans.

I will concede that there may be good experiences that some veterans have and that there are some good actors out there, but that does not contradict the basic premise I think that we are going to set out here today, is that the industry, the for-profit college industry, is fundamentally able to take advantage systemically of a loophole in the 90/10 loophole for veterans. While one good experience for a veteran in a for-profit school is great for that particular veteran, it does not erase the many, many, many bad experiences that veterans have had being at the hands of a rapacious for-profit school.

Even 100 good experiences does not erase a blunted transition or an unfulfilled promise of reintegration into civilian life for a veteran. One hundred percent perfect transitions and reintegrations into civilian society are probably impossible to achieve, but we have to hold ourselves to a very high standard. We have to aim for that 100 percent as we try to design that transition process.

Unfortunately, we have seen too many for-profit schools close their doors abruptly, leaving student veterans holding credits that they cannot transfer and financially crippling student loan debt.

From the recent closures of Argosy schools to the closures of ITT Tech and Corinthian Colleges in 2015 and 2016, the sudden and unplanned closures of for-profit schools have been a constant occurrence since the passage of the post-9/11 GI Bill.

Congress passed the Servicemen's Readjustment Act in 1944 to help service members and veterans close the opportunity gap with their civilian peers who did not have to step away from their life at home to go and serve the nation during World War II. That is the history of all of this.

That legacy has been continued and improved over the years, specifically in the education space with the Montgomery GI Bill and the post-9/11 GI Bill, and most recently in 2017 with the Forever GI Bill. The whole reason why we fund the GI Bill is to provide opportunities to our veterans, not just to thank them for their service but to close the gaps in opportunity and mitigate the disadvantages they faced for choosing to serve their country and putting their community before themselves.

While graduation rates and post-graduation employment rates are not a perfect measure of the opportunities afforded to our veterans by the GI Bill, they are the best approximation we currently have. Schools closing their doors mid-semester with no teach-out plan and not providing the students with the ability to transfer their credits to another institution to complete their degree completely undermines the goal of and the reason we have the GI Bill.

It is incumbent on Congress to ensure that the GI Bill funding provides the reintegration and readjustment opportunities for our veterans not only as stewards of taxpayer money but also to fulfill the promise of a decent civilian existence and the promise that we have made to our service members upon leaving the military.

The single greatest threat to the all-volunteer force is the situation in which our nation's citizens no longer want to serve, and that could happen when future generations see our nation breaking the promises we have made to previous and current generations of service members.

This hearing is not about right versus left, free market versus regulation, or Democrat versus Republican. This hearing is about national security and upholding our faith to our service members, the faith our service members have placed in the United States Government.

The Obama Administration attempted to address this through the gainful employment rule that went into effect in July 2015. Programs were required to make sure that graduates are gainfully employed and make enough to repay their loans. This rule was intended to protect students and taxpayers from waste and fraud. It is one of the most effective accountability tools that measures opportunities for student veterans upon graduation.

It is unconscionable that the Trump Administration has proposed rescinding the rule in favor of for-profit institutions. This Administration's own estimates show that eliminating the rule will cost the government \$4.7 billion over 10 years.

Another way we can ensure quality is what I mentioned earlier in my remarks, enforcing the 90/10 rule. For those that are unaware, Congress implemented this rule to ensure that for-profit institutions of higher education offered high-quality programs. For-profit institutions of higher education are required by statute to produce 10 percent of their revenue from non-Title IV Federal dollars.

Earlier this month we had Secretary Wilkie testify before our full committee, and he recognized that the 90/10 loophole is something that we must seriously review.

Including GI Bill benefits in the 90/10 calculations is not a perfect measure of schools who provide opportunities to veterans, but the ones that fail it are the ones that fail veterans. We know that these schools are targeting veterans to stay in compliance with the 90/10 regulations, not out of the pure desire to help veterans.

So I urge us to take action today and remove the incentive to target veterans for the wrong reasons. Let's close this 90/10 loophole.

I look forward to hearing from the witnesses on the impact that targeting student veterans has on those student veterans and what we can do to address the issue.

I would like to welcome the student veteran we have here on the panel today. Ms. Rodriguez, welcome. Thank you for serving your community and for serving our country, and thank you for continuing to serve your community by being a willing witness here to address us today. It is great to hear that you are having a good experience at your school, and your school may be a good actor in this space, and I will be interested to hear if the Marines you served with and the veterans you know have been impacted by bad actor schools and for-profit schools that have shut down due to funding issues.

Thank you, Madam Chair, and I yield back.

Mrs. DAVIS. Thank you very much, Chairman Takano.

I also wanted to just note that, without objection, all other members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 o'clock on May 7th, 2019.

I also wanted to acknowledge our colleague from Nevada, Mrs. Susie Lee. We are just delighted that you have joined us today as well. Thank you.

And now I would like to introduce our witnesses.

Mr. Robert Muth is the Professor-in-Residence and Managing Attorney of the Veterans Legal Clinic at the University of San Diego School of Law. He served as a Judge Advocate in the United States Marine Corps, where he handled a wide range of criminal matters. While serving as Captain in the Marine Corps, he was deployed to Fallujah as part of Operation Iraqi Freedom. He received his bachelor's degree from Northwestern University and his law degree from Duke University.

Thank you for being with us.

Chancellor Eloy Ortiz Oakley was appointed by the California Community Colleges Board of Directors in December of 2016. He is best known throughout California and the nation for implementing innovative programs and policies to help students succeed in college. He served four years in the U.S. Army and then enrolled at Golden West College. Chancellor Oakley went on to receive his bachelor's degree and Master of Business Administration from the University of California at Irvine.

Thank you for being with us.

And Ms. Kristyl Rodriguez served in the U.S. Marine Corps from 2014 to 2018. She served in the field of 3051 as a warehouse supply clerk and ascended to the rank of Sergeant E5 prior to separating.

She is currently enrolled at Bellus Academy in Poway under the post-9/11 GI Bill. Kristyl is studying at the barber and cosmetology program at Bellus Academy, and she previously attended a community college. Kristyl is originally from Queens, New York, but she now resides in Oceanside, California.

Thank you for being with us, Kristyl, Ms. Rodriguez.

Mr. Robert Shireman is the Director of Higher Education Excellence and Senior Fellow at the Century Foundation. He previously served in the Clinton White House as a Senior Policy Adviser to the National Economic Council, and in the Obama Administration as Deputy Under Secretary of Education. Mr. Shireman holds a bachelor's degree in economics from the University of California at Berkeley, a Master's of Education from Harvard, and a Master's in Public Administration from the University of San Francisco.

If I could give instructions now to our witnesses, we appreciate again all of you being here and we look forward to your testimony. I want to remind you that we have read your written statements, and they will appear in full in the hearing record.

Pursuant to Rule 7(d) and committee practice, each of you is asked to limit your oral presentation to a five-minute summary of your written statement. Pursuant to Title 18 of the U.S. Code, Section 1001—we have to get all this out there—it is illegal to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress, or otherwise conceal or cover up material fact.

Before you begin your testimony, please remember to press the button on the microphone, which I have obviously had trouble doing, so I hope you will do better, so that it will turn on and the members will hear you.

As you begin to speak, the clock on the screens above will count down from five minutes until the time is up. We will let the entire panel make their presentations before we move to member questions, and when answering a question please remember once again to turn on your microphone.

I will first recognize Mr. Muth. Thank you again.

STATEMENT OF ROBERT F. MUTH, J.D., PROFESSOR-IN-RESIDENCE; MANAGING ATTORNEY, VETERANS LEGAL CLINIC, UNIVERSITY OF SAN DIEGO SCHOOL OF LAW, SAN DIEGO, CA

Mr. MUTH. Thank you. Chairwoman Davis, Chairman Levin, Chairman Takano, and Representative Lee, thank you for inviting me to offer testimony at this important joint hearing on ensuring the success of student veterans.

In 2012, I founded the Veterans Legal Clinic at the University of San Diego School of Law to provide pro bono legal representation to veterans harmed by utilizing their veterans' education benefits. Thus far, clinic attorneys and law student interns have assisted hundreds of veterans and military personnel. Virtually all of our clients attended for-profit schools. They have reported problems with recruiting and after enrollment.

In the recruitment process, they have been lied to with respect to virtually everything you could be lied to about a program. They have been told false job placement rates. They have been told false

expected salaries. They have been told schools were accredited when they were not.

With respect to after they have enrolled, the students have been told misrepresentations as to the quality of the instruction and the credentials of the instructors that would be providing them their teaching.

They have also been misrepresented with respect to the total cost of the program and the length of the program. We have even had veterans who have been told that the school could accommodate their serious service-connected disabilities when they could not.

Two examples I think are illustrative of these concerns. The first is a client we represented who was a United States Marine Corps veteran who was medically retired after sustaining a devastating traumatic brain injury in an enemy attack while serving in Iraq. The Marine attempted to utilize his GI Bill benefits at a for-profit school in order to gain skills that would allow him to be gainfully employed despite his serious service-connected disabilities. The veteran was misled by the school with respect to the overall length and cost of the program. He was also misled with respect to whether the school was accredited or not.

After the veteran left the school, we discovered that the school continued to run his GI Bill benefits even though he was no longer enrolled. Many months after he was no longer enrolled, the Department of Veterans Affairs, through its state approving agency, conducted a compliance audit on the school. They determined that the school should never have been approved for accepting GI Bill benefits in the first place and retroactively disapproved the school. They then sent our veteran a letter saying that because the school was no longer approved, even though it was approved at the time he was enrolled, he would be responsible for paying back all of the GI Bill benefits that the school continued to hold. The veteran has no funds, and so the VA instead garnished his disability compensation benefits.

In another case, our clinic represented a United States Air Force veteran who attended a large, now-closed for-profit school. The school deliberately misrepresented to the veteran critical information such as job placement rates for the program, average graduate salaries, and the quality of the instruction provided by the school.

After spending more than \$100,000 on his now-worthless degree, the veteran learned that he had been misled. Virtually none of his fellow classmates were able to get jobs in their chosen field. It was an IT-related program, and the information that they had been trained was more than a decade out of date.

Abrupt school closures in the for-profit sector are another common phenomenon and will likely continue. In recent years, more than 22,000 veterans enrolled at for-profit colleges have found themselves left in the lurch when the school they were attending closed. For instance, when the large nationally branded Corinthian Colleges closed, our clinic's intake line was overwhelmed by the number of veterans seeking assistance navigating the destruction left in the wake of the school's closure.

In addition to the immediate shock that a student veteran faces when they try to attend class to find the doors closed and a sign in the window saying that the school was closed, veterans often

have immediate academic and non-academic concerns. Academically, students often have great difficulty transferring to a quality institution in a timely fashion. Furthermore, student veterans are often unable to acquire their academic transcripts; and even if they are able to do so, they are often bitterly disappointed to discover that no quality institution will accept transfer credits from their for-profit school.

Veterans are uniquely harmed in non-academic ways as well when their for-profit school closes. Most student veterans rely upon the housing allowance they receive in conjunction with their GI Bill tuition benefits. When a school closes, many veterans will not only immediately face the closure of their school but also potentially the loss of their home.

There are countless other examples of student veterans who tried to use their GI Bill benefits at for-profit schools to better their career prospects but were ultimately left with nothing more than empty promises. The action of bad actors in the for-profit school sector are unfair to student veterans and to the American taxpayers who are grateful for our veterans' service and want to see them succeed.

The Department of Education, the VA, and state agencies can and must do more to protect the rights of those who have sacrificed greatly to protect and defend their fellow citizens.

Thank you very much for the opportunity to testify today, and I would be happy to answer any questions you may have for me.
[The statement of Mr. Muth follows:]

United States House of Representatives

Testimony before the Subcommittees on Higher Education and Workforce Investment (House Committee on Education and Labor) and Economic Opportunity (House Committee on Veterans Affairs) Joint Hearing

Protecting Those Who Protect Us: Ensuring the Success of our Student Veterans

Robert F. Muth

Professor-in-Residence

Managing Attorney, Veterans Legal Clinic

University of San Diego School of Law

Chairwoman Davis, Chairman Levin, Chairman Takano and Representative Lee thank you for inviting me to offer testimony at this important joint hearing on ensuring the success of student veterans, and in particular, issues surrounding the abrupt closure of schools and the VA's oversight of GI Bill funds.

In the 75 years since the Servicemen's Readjustment Act of 1944, now commonly referred to as the GI Bill®¹, was signed into law by President Franklin Delano Roosevelt, millions of men and women have used their hard-earned veterans benefits to pursue higher education. The GI Bill has been credited with helping to develop the American middle class, fostering widespread homeownership and easing the transition back to civilian life for millions of Americans. The original GI Bill and the subsequent iterations that have come since, including the Montgomery GI Bill and the Post 9/11 G Bill are counted as some of the most important and successful pieces of legislation in the history of our great Nation.

The education benefits afforded by the GI Bill to veterans who have served honorably are a critical tool to facilitate a successful transition to civilian life. The GI Bill offers veterans an opportunity to augment their skills and acquire new ones that will set a veteran on a path towards a stable and beneficial post-service career. The educational benefits provided by the Post 9/11 GI Bill are generous. They afford a veteran tuition to cover a four-year bachelor program, a housing allowance that is often greater than the one the veteran enjoyed while serving on active duty, a book stipend, funds to cover professional licensing exams and more.

¹ The GI Bill is a registered trademark of the Department of Veterans Affairs.

The Troubled For-Profit School Sector

Unfortunately, the generous benefits provided by the GI Bill have also attracted unscrupulous actors seeking to make a quick buck off the backs of veterans at the expense of the American taxpayer. While not all for-profit education companies are bad, misconduct by for-profit schools is widespread and well documented.² For-profit schools have been accused of all manner of misrepresentations during the student recruitment process and of failing to provide students with a quality education after they enroll. Veterans have been a particular target for abuse by for-profit schools dating back to the original GI Bill.³ Post 9/11 GI Bill era veterans have not been spared these harms.⁴

The University of San Diego's Veterans Legal Clinic

In 2012, I founded the Veterans Legal Clinic at the University of San Diego School of Law to provide pro bono legal representation to veterans harmed by for-profit schools while utilizing their veterans' education benefits. Clinic attorneys and law student interns have assisted hundreds of veterans through individual representation, counseling and advice, contract review, and outreach presentations designed to advise veterans of their legal rights and how to make a wise investment of their GI Bill benefits.

Clinic clients have almost uniformly reported to me that they have been subjected to high-pressure sales tactics employed by for-profit school recruiters. They have been lied to about job

² The thorough investigation and subsequent report produced by the Senate Committee on Health, Education, Labor, and Pensions documented widespread abuse and systemic failures in the for-profit education sector. *See*, https://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf

³ *See*, Whitman, David. "Truman, Eisenhower, and the First GI Bill Scandal." The Century Foundation, January 24, 2017: <https://tcf.org/content/report/truman-eisenhower-first-gi-bill-scandal/?agreed=1>

⁴ *See*, Smith, Martin. "Educating Sergeant Pantzke: For-profit colleges promise veterans a high quality degree – but do they deliver?" PBS Frontline, June 28, 2011: <https://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/>; Glantz, Aaron. "University of Phoenix sidesteps Obama order on recruiting veterans," Reveal, June 30, 2015: <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

placement rates, expected salaries upon graduation and whether a school was accredited. Veterans have been misled as to the quality of the instruction provided and the credentials of the professors at their for-profit schools. Recruiters have misrepresented the length of the program and the total expense involved. Student veterans have told us that, unbeknownst to them, loans were taken out in their name by their for-profit school. We have even had veterans report that their school's recruiters lied to them about whether the school could accommodate their serious, service-connected disabilities. While attorneys from our Veterans Legal Clinic have been successful many times in forcing a school to return some or all of a veteran's tuition dollars, we cannot give them back the time and effort they have wasted in pursuit of a worthless degree. In the case of for-profit schools that have abruptly closed, a veteran's options to recover their precious education benefits are severely limited.

Abrupt For-Profit School Closures

Abrupt school closures in the for-profit sector are a common phenomenon and will likely continue. More than 50 for-profit colleges, representing hundreds of campuses, have closed just since 2016. Large national brands such as Corinthian Colleges, ITT Tech, Education Corp. of America and others have closed as have smaller local for-profit schools. The closure of a particularly predatory school may have a generally salutary effect as the school is no longer in business targeting unsuspecting students. However, for students enrolled at the time the school closes the effects of the closure can be devastating.

In recent years more than 22,000 veterans have found themselves left in the lurch when the for-profit school they were attending closed.⁵ In addition to the immediate shock a student veteran

⁵ According to the Chronicle of Higher Education, "more than 22,000 GI Bill recipients were enrolled at for-profits when the college shut down between 2014 and 2018." See, Vasquez, Michael and Bauman, Dan. "How America's

faces when they try to attend class only to find the doors locked and a sign in the window stating the school was closed, a veteran is likely to have other immediate academic and non-academic concerns. Academically, students attending for-profit schools that abruptly close often have great difficulty transferring to a quality institution. Depending on when in the traditional academic year a for-profit school closed, it may be many months before a reputable public or private non-profit institution could enroll the student. Furthermore, a student veteran is often unable to acquire their academic transcripts following a school's closure and, even if they are able, are often bitterly disappointed to discover that no quality institution will accept transfer credits from their for-profit school.

Veterans are uniquely harmed in non-academic ways as well when their for-profit school abruptly closes. Most student veterans rely upon the housing allowance they receive in conjunction with their GI Bill tuition benefits. When a school closes many veterans immediately face not only the loss of their school but the potential loss of their home unless they are able to quickly make up the lost housing allowance benefit.⁶ This perversely incentivizes veterans to enroll in any school that will immediately admit them in order to keep housing allowance benefits consistent and a roof over their family's head. Unfortunately, often only other for-profit schools will admit a student with no real application process in the middle of a traditional academic semester.⁷

College-Closure Crises Leaves Families Devastated: when colleges shut down, people get hurt." *The Chronicle of Higher Education*, April 4, 2019: <https://www.chronicle.com/interactives/20190404-ForProfit>

⁶ In some limited circumstances, veterans are able to continue receiving their housing allowance for the remainder of their expected term, or 120 days, whichever is shorter. However, the vast majority of veterans who have attended schools that closed do not qualify for this assistance.

⁷ It is not uncommon to see recruiters from other for-profit schools appear on the campuses of a school that closes abruptly to try and immediately enroll students who showed up thinking they were going to be attending class that day at the closed school. *See*, Armario, Christine. "Corinthian students face hard choices." *Military Times*, April 29, 2015: <https://rebootcamp.militarytimes.com/2015/04/29/corinthian-students-face-hard-choices/>

Students of closed schools have limited options to seek redress if they feel they were defrauded by their former school. When the student veteran's school closes they must then navigate a complicated maze of choices seeking least-bad options, each of which requires compliance with complicated and confusing regulations. A misstep along the way can foreclose the hope of any chance to be made whole again. Most student veterans who face this dilemma are forced to do so without legal assistance.

A first possible option for students to recover funds would involve filing suit against the school. However, litigation against a closed school is almost always unproductive. As soon as the school declares bankruptcy, courts will enforce a stay against pending litigation seeking to recover damages. Even if a student were able to subsequently pursue litigation, the school will likely already be stripped of its assets by insiders and the student, as an unsecured creditor, will not receive any funds from the bankrupt entity.

A second possible option for students harmed by a for-profit school closure would entail pursuing a Borrower Defense to Repayment application. This type of application theoretically allows students to have federal loans forgiven if the school they attended misled them or engaged in other misconduct in violation of the law. As many student veterans at for-profit schools also incur significant amounts of student loans on top of expending GI Bill benefits, this form of loan relief can be very important to veterans. Unfortunately, the Department of Education ("ED") has failed to process such applications in a timely manner despite being under court order to do so.

However, for student veterans who used exclusively GI Bill benefits to attend a closed school, their options to recover the cost of their tuition are limited. In 2017, the Harry W. Colmery Veterans Educational Assistance Act of 2017, was signed into law. The Colmery Act, *inter alia*, provided a limited number of veterans at closed schools an opportunity to have a portion of their

GI Bill benefits restored. While this is welcome relief, many veterans are still left behind. In order to qualify for a restoration of benefits, the veteran must have attended an Institution of Higher Learning (“IHL”) between January 1, 2015, and August 16, 2017, while utilizing GI Bill benefits. Additionally, the student veteran generally must not have transferred credits earned at the closed school to another IHL. Certain GI Bill beneficiaries that meet this threshold will qualify to have all of the benefits expended at a closed school restored.⁸ However, most veterans who attended closed schools will only be eligible for restoration of benefits for the actual term they were enrolled at the time the school closed.⁹

Most students who attend a closed for-profit school will be unable to successfully transfer all of the credits they earned at the closed school to a quality institution. This means that a veteran who dutifully attended a school for three years only to watch the school close during his/her final year will likely be unable to fully transfer his/her credits to another institution. As the VA will not restore all of the benefits spent at the closed school back to the veteran except in the very limited circumstances described above, the veteran will have to pay out of pocket to complete any coursework that does not transfer to another IHL.

The collapse of just one school, Corinthian Colleges, resulted in the USD Veterans Legal Clinic’s largest investment of time and effort to date. Our Clinic’s intake line was overwhelmed by the number of veterans seeking assistance navigating the destruction left in the wake of the

⁸ In order to have all of their GI Bill benefits expended at a closed school restored, a veteran must meet very specific criteria in addition to that mentioned above. Students meeting these requirements are referred to as qualifying for a Special Application. The veteran must not only have attended the school during the timeframe specified, but the school they attended must also have closed during this time window. The veteran must also have attended the school within 120 days of the school’s closure. The veteran must also not have enrolled in a comparable program prior to August 16, 2017, or if they did enroll in such a program they must not have transferred any credits from the closed school.

⁹ Students who do not meet all of the stringent requirements outlined above for a Special Application are instead routed to a Regular Restoration of Entitlement. These veterans will only be entitled to have their benefits restored for the actual term or semester they were enrolled at the time the school closed.

school's closure. What is particularly galling about the Corinthian closure is how readily apparent it should have been to federal regulators that the school was in trouble and should have no longer been allowed to enroll students. Well prior to closing, Corinthian had already been successfully sued by the California Attorney General and I believe most in the industry knew that it was only a matter of time until the school went under. However, rather than stepping in early to mitigate the damage done to students, ED and VA allowed the problem to fester and more students to be harmed before the school's inevitable demise.

SAA's and the Department of Veterans Affairs' GI Bill Oversight

Due to the difficulty in making student veterans harmed by for-profit schools whole again, it is imperative that the VA, ED, and state agencies work together to prevent abuses before they occur. Unfortunately, effective coordination and oversight is often lacking. The VA attempts to outsource the task of ensuring that schools seeking to receive GI Bill funds comply with applicable laws and provide veterans with a quality educational experience. The VA does this by contracting with a state approving agency ("SAA") created in each state to administer GI Bill benefits.¹⁰ SAA's are primarily responsible for approval of new programs, oversight of existing programs, training applicable school personnel, and conducting outreach efforts. The SAA is often housed in a state's department of veterans' affairs or education. The employees of the SAA are state employees and are paid by the state with some or all of the costs reimbursed by the VA according to its contract with an SAA. Statutory authority for the SAA's contemplates a cooperative working relationship between the VA and SAA's but this is often lacking.

¹⁰ Forty-eight states and Puerto Rico have SAA's. Alaska, Hawaii, Washington D.C., and the U.S. Virgin Islands do not. The VA performs SAA duties for states/territories without an SAA.

SAAAs invest most of their resources reviewing initial applications by programs seeking approval to receive GI Bill funds and in compliance surveys done on schools that have already been approved. Certain programs are “deemed approved” and do not require an SAA to conduct an in-depth review prior to approving the program to receive GI Bill funds. Accredited public and private, non-profit schools are the most common example of programs that are deemed approved. Programs at for-profit schools are subject to an in-depth review by an SAA before they are eligible to receive GI Bill funds. While there is generally a standardized process by which an SAA is supposed to review schools that are not deemed approved, in practice the degree of scrutiny given to a particular program can vary widely depending on the SAA. This creates a potential forum-shopping problem where a school that could arguably be headquartered in more than one state may try and apply to the SAA with the worst reputation for oversight.

Once a school has been approved to receive GI Bill funds, SAAAs conduct compliance surveys to ensure the school is operating in accordance with applicable laws and regulations. While a compliance survey could potentially entail a broader audit of the quality of the program, in practice the focus is mainly on reviewing student records to ensure financial accountability for governmental payments.

The VA attempts to exercise oversight of the SAAAs through the contracting process and, to a lesser extent, VA Education Liaison Representatives (“ELRs”). However, according to a recent audit conducted by the VA’s Office of the Inspector General (“OIG”), VA oversight of SAAAs is woefully inadequate.¹¹ The OIG found that the VA and the SAAAs “lacked effective

¹¹ The VA OIG report was highly critical of the VA’s approach to GI Bill oversight. The OIG explained that “Specifically, SAAAs lacked effective, sufficient controls to ensure the proper review and evaluation of programs, program modifications, and advertisements after the programs were approved.” Further, the report found that the VA’s “compliance survey process, which should have focused on ensuring schools and programs continued to meet all the

controls to ensure the proper review, approval, and monitoring of programs, [VA] could not provide reasonable assurance that Post-9/11 GI Bill benefits were paid to eligible schools and programs and that students received quality education and training.”¹² The VA’s and SAAs’ combined lax oversight efforts have likely resulted in millions of dollars in wasted taxpayer money going to for-profit programs.

In instances when the VA and an SAA disagree over whether a particular school should be approved or maintain continued approval, it is often unclear how this will be resolved. As a way to deflect blame, the VA frequently points to the SAAs when it becomes clear that a troubled school was allowed to continue enrolling student veterans long after it was apparent the school was in trouble. However, the VA also appears to intercede on behalf of certain schools in contradiction of an SAA’s determination that a given school should be disapproved.¹³ This creates a scenario where the VA is able to abdicate responsibility for predatory schools while at the same time undermining SAA attempts to rein in bad actors from harming veterans and wasting taxpayer funds. To resolve this problem the VA must either: 1) assume full responsibility for the initial and continued approval of schools; or 2) empower SAAs to hold predatory schools accountable and prohibit continued approval to receive GI Bill benefits for schools that simply do not provide veterans with a quality educational experience.

conditions of their program approval, did not adequately address ongoing program eligibility.” See, <https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf>

¹² *Id.*

¹³ Smith, Ashley A. “California Reverses Decision on Veterans’ Benefits.” Inside Higher Ed, September 7, 2018: <https://www.insidehighered.com/news/2018/09/07/california-agency-stands-suspension-colleges-state-based-gi-eligibility>; See also, Stratford, Michael. “VA warns California in for-profit college dispute.” Politico, January 17, 2019: <https://www.politico.com/newsletters/morning-education/2019/01/17/va-warns-california-in-for-profit-college-dispute-482445> ; and

Fain, Paul. “Corrected Numbers: The U.S. Department of Veterans Affairs backs University of Phoenix in its squabble with a California state agency over veterans’ enrollment numbers.” Inside Higher Ed, August 4, 2014: <https://www.insidehighered.com/news/2014/08/04/u-phoenix-wins-push-corrected-numbers-veterans-enrollment-san-diego-campus>.

Real World Impacts

The failure to adequately regulate for-profit schools receiving GI Bill funds all too often results in horrible real world impacts for student veterans. For example, our Veterans Legal Clinic has represented a US Marine Corps veteran who was medically retired after sustaining a devastating traumatic brain injury in an attack while serving in Iraq. The Marine attempted to utilize his GI Bill benefits at a for-profit school in order to gain skills that would allow him to be gainfully employed despite his serious service connected disabilities. The veteran was misled by a school recruiter as to the overall length and cost of the program. He was also told the school was accredited when it was not. After the veteran left the school he discovered that the school continued to collect GI Bill funds from the VA even after he was no longer enrolled.

Long after the veteran no longer attended the institution, the relevant SAA conducted a compliance audit on the veteran's former school. It was determined that, despite the program being approved at the time the veteran attended the school, the SAA was retroactively determining the school should not have been approved. The VA then notified our veteran that because the program was no longer approved for the time he was enrolled, he would be responsible to pay the VA back the cost of his benefits. We have appealed the VA's decision and the matter is still, years later, working its way through the interminable VA appeals process.

In another case, our Clinic represented an US Air Force veteran who attended a large, now defunct, for-profit school. The school deliberately misrepresented to the veteran critical information such as job placement rates for his program, average graduate salaries, and the quality of the instruction provided by the school. The school also promised robust job placement assistance upon graduation. After spending more than \$100,000 on his degree, the veteran learned that he had been misled. Virtually none of his fellow classmates found work in their intended careers and

he discovered that the materials he learned in his IT related program were nearly a decade out of date. Unable to find work in his chosen field, the veteran was forced to return to the same retail position he had held before enrolling in the school.

There are countless other student veteran stories similar to these of individuals who tried to use their GI Bill benefits at for-profit schools to better their career prospects but were ultimately left with nothing more than empty promises. The actions of bad actors in the for-profit school sector are unfair to student veterans and to the American taxpayers who are grateful for our veterans' service and want to see them succeed.

Conclusion

The GI Bill is a critical tool to assist a veteran's transition back to civilian life. Unfortunately, too many schools in the for-profit sector have failed to fulfill their promise to provide veterans with quality educational opportunities. The stakes are high for veterans who enroll in such schools and the VA, ED, and SAAs must do more to protect and defend the rights of those who have answered the call to protect and defend their fellow citizens. Thank you for the opportunity to provide you with testimony on these important issues.

Mrs. DAVIS. Thank you.

Mr. Oakley, Chancellor Oakley.

STATEMENT OF ELOY ORTIZ OAKLEY, CHANCELLOR, CALIFORNIA COMMUNITY COLLEGES, SACRAMENTO, CA

Mr. OAKLEY. Yes. Good morning to our distinguished Chairs and members of Congress. Thank you for inviting us here to testify.

My name is Eloy Ortiz Oakley, and I have the pleasure of being the Chancellor of the California Community Colleges, and my story is very similar to the nearly 2.2 million students that we serve in the California Community Colleges.

Coming out of high school, I did not have a clear understanding of how to navigate higher education, nor did I have the resources in my family or my community to provide me clear direction. Instead of attending college, I proudly joined the United States Army on the heels of the Grenada invasion. President Reagan was my Commander-in-Chief, and I served in America's Honor Guard, the 82nd Airborne Division, for most of my enlistment.

By the time I found my way to college, I was a father and the primary provider in my family. I worked full time, attended school part time, and eventually made it through Golden West College, on to earning my MBA at the University of California at Irvine. Through hard work, perseverance, the support of committed faculty and staff, and a lot of luck, I am here today proudly serving the nation's largest system of higher education.

My goal as Chancellor of the California Community Colleges is to ensure that all students have the opportunity to benefit from high-quality, affordable college education. Each year the California Community Colleges serve nearly 80,000 veterans and active-duty service members. Like the Veterans Resource Center here at Grossmont College, we provide more than academic and career training. We also assist with the often difficult transition to civilian life after military service, particularly after combat service.

Our colleges are part of an integrated post-secondary education structure here in California, one that relies on both public and private partners to ensure access for all students. When one sector of higher education is consistently failing our students, it affects our entire system here in California.

In recent years, California has been particularly hard hit by the fraudulent practices and abrupt closures of a number of for-profit providers, many of which are nothing more than profiteers whose leadership has never donned our nation's uniform. And because of the benefits provided by the post-9/11 GI Bill and the loopholes in the Federal 90/10 rule, our veteran students are particularly vulnerable to these circumstances.

It has been and will continue to be within the mission of the California Community Colleges to serve students affected by these closures. When the Corinthian Colleges shut its doors, my office performed direct outreach and worked with our colleges to serve approximately 16,000 former Corinthian students living in California, about 1,200 of whom were veterans. We offered training and resources, participated in webinars and outreach events, and provided information on transfer credit, loan forgiveness, and tuition recovery. We found that many of these students had received a poor quality education that could not easily transfer. Many faced the expiration of financial aid benefits, and many had massive debt loads.

The California Community Colleges are committed to providing students high-quality, low-cost pathways to meaningful college degrees and credentials, and our system certainly will continue to find ways to help students pick up the pieces of their educational goals in the aftermath of the closures.

At the same time, we hope Congress will take swift action to support students by providing meaningful oversight, accountability, and student protections, actions that are commensurate with the sacrifices that our veterans have made. From our perspective, meaningful accountability structures must hold colleges responsible for measureable outcomes, ensure career training programs result in wage gains that allow students to at least repay any loan debts they incurred, and to provide students access to reliable, comparable, and consumer-friendly information about cost and performance.

To that end, we are in strong support of the consumer protections contained in the Pro-Students Act, as well as those in the Protect Students Act of 2019. Please count on the California Community Colleges as a partner in your efforts to correct these abuses and better serve all of our students, veterans and non-veterans alike.

I very much thank you for the opportunity to speak today, and in closing I will just remind us all that our veterans are trained to set aside fear and go directly into the line of fire. I ask us all to set aside the fear that we may have in changing these rules and go directly into the line of fire and make the changes that we need to make to support our students, especially our veteran students. Thank you.

[The statement of Mr. Oakley follows:]

**California Community College Chancellor Eloy Ortiz Oakley
Written Comments**

**Committee on Education and Labor Subcommittee on Higher Education and
Workforce Investment & Committee on Veterans' Affairs Subcommittee on
Economic Opportunity**

**Joint Field Hearing
"Protecting Those Who Protect Us: Ensuring the Success of our Student
Veterans"**

Wednesday, April 24, 2019

10:30 a.m.

Grossmont College Griffin Gate
Building 60, 1st Floor

Introduction

I am Eloy Ortiz Oakley. I am here today as a veteran, a product of public higher education, and as Chancellor of the California Community Colleges. My story is very similar to the nearly 2.2 million students we serve in the California Community Colleges. Coming out of high school, I did not have a clear understanding on how to navigate higher education nor did I have the resources in my family or community to provide me clear direction. While I had the opportunity to attend several quality colleges, I chose not due to the fear that I could not afford to attend. Instead, I proudly joined the U.S. Army on the heels of the Granada invasion. President Reagan was my Commander-in-Chief and I served in Americas Honor Guard, the 82nd Airborne Division for most of my enlistment. By the time I found my way to college, I was a father and the primary provider for my family. I worked full time, attended school part-time, and eventually made it through Golden West College and earned an MBA at the University of California, Irvine. Through hard work, perseverance, the support of committed faculty and staff and a lot of luck, I am here today. My goal as Chancellor of the California Community Colleges is to remove "luck" from the equation for our students, so that all students have the opportunity to benefit from a high-quality, affordable college education.

Veteran Services at California Community Colleges

With an estimated 1.6 million veterans, California has the largest veteran population in the nation. **Each year** approximately 80,000 veterans and active duty service members look to the California Community Colleges as the most accessible and affordable educational option available.

For the men and women who have defended our freedoms, the California Community Colleges provide more than academic and career training – we also assist with the often-difficult transition to life after military service, particularly after combat service. We provide our veterans with access to academic counseling, disability

accommodations, veteran benefits information, as well as referrals to campus, local, state, and federal resources and services. The California Legislature has supported our efforts to expand services to veterans. In the last two years, the California Legislature has provided nearly \$20 million to our system to support the creation and expansion of Veteran Resource Centers.

Here at Grossmont College, these funds have supported a Veterans Resource Center that is integrated with other offices, such as the Accessibility Resource Center, Gizmos Kitchen Food Pantry, and the Veteran Affairs Office. This ensures easy access, effective collaboration, and better service delivery for our student veterans.

Effect of Predatory For-Profit Colleges on Veteran Students

California Community Colleges is the largest and most diverse system of higher education in the nation. We are part of California's postsecondary education structure -- which includes public **and private** university partners -- to provide access to all students in our state. The foundation of this interconnectedness is that, when one sector of higher education is consistently failing protect our students and failing to fulfill its mission, it affects our entire ecosystem of providing meaningful access and high-quality education outcomes for our students.

In recent years, California has been particularly hard hit by the fraudulent practices and abrupt closures of a number of for-profit education providers. The education benefits provided by the Post-9/11 GI Bill, together with the loophole in the federal 90-10 rule, have provided great financial incentive to for-profit colleges to recruit veterans. Our veteran students have been particularly vulnerable in these circumstances.

It has been, and will continue to be, within the mission of the California Community Colleges to serve our students in California affected by these closures. When Corinthian Colleges Inc. closed, my Office of the Chancellor performed direct outreach and worked with our colleges to serve the approximately 16,000 former Corinthian students living in California. Approximately 1,200 of those former Corinthian students were veterans using their GI Bill benefits. We offered trainings and resources, participated in webinars and outreach events, and provided information relating to transfer of credit, federal student loan forgiveness, and California's Student Tuition Recovery Fund. We found that many of these students, unfortunately, had received poor-quality education that could not easily transfer; many faced the expiration of financial aid benefits; and many had massive debt loads.

The California Community Colleges is founded on the belief that all students should be provided with the opportunity to reach their full potential. We provide students a high-quality, low-cost pathway to a meaningful college degree and credential. As indicated previously, we are committed to working as a part of a larger higher education system that includes public and private colleges and universities. However, the abusive and fraudulent practices of bad actors in the for-profit sector continue to harm our ability to fulfill our core mission.

Our system certainly will continue to find ways to help students pick up the pieces of their education goals in the aftermath of college closures. At the same time, we hope Congress will take swift action to support students by providing meaningful oversight, accountability, and student protections. Actions that commensurate with the sacrifices that our veterans have made.

From our perspective, a meaningful accountability structure must seek to ensure (1) that colleges are held responsible for measurable outcomes, (2) that career-training programs result in wage gains that allow students to repay any loan debt incurred, and (3) that students have access to reliable, comparable, and consumer-friendly information about cost and performance.

Congress should ensure that all colleges that participate in the Federal Student Aid program are using public funds appropriately and that a robust, transparent, accountability, and oversight structure protects against the abuses of bad actors. To that end, we also are in strong support of the provisions contained in the PROTECT Students Act of 2019, as proposed by Senator Hassan and Senator Durbin.

Closing Comments

In closing, the 115 colleges in the California Community College system are working hard to support all of our students and provide wraparound services to our veteran students. The ongoing abuses occurring in the for-profit higher education sector unequivocally harm our ability to serve California students. Please count on the California Community Colleges as a partner in your effort to correct these abuses and better serve all of our students, veteran and non-veteran alike.

Thank you for the opportunity to speak to you today. I look forward to answering any questions you might have.

Mrs. DAVIS. Thank you, Chancellor.
Ms. Rodriguez?

STATEMENT OF KRISTYL RODRIGUEZ, OCEANSIDE, CA

Ms. RODRIGUEZ. Thank you so much, Chairwoman Davis, Chairwoman Levin, and Chairman Takano, and all the Members of this committee, for allowing me to share my experience as a student veteran.

My name is Kristyl Rodriguez, and I am currently enrolled at the Bellus Academy campus in Poway, California. My program of study is barbering and cosmetology. This is not a traditional college experience, and that is exactly what I love about Bellus Academy. The programs are very hands-on and apply to the work I eventually want to do professionally.

In our traditional classroom settings, I was rarely a great student. In fact, what pushed me to even attend was just the chance to play sports in school. I was more of a hands-on and visual learner, and I loved to be creative. When I was younger, I used to be very focused on the creative arts, like drawing and painting, then eventually cutting my own hair. Sadly, as I entered my teenage years, I tuned out that creativity and became consumed with just wanting to be accepted. I struggled with an identity crisis, drug addiction, destructive behavior, alcoholism, and so much violence. I pretty much looked at anything to numb me mentally, and at that time my current reality.

Sitting alone in my high school cafeteria one day in my senior year, I decided I needed to take control of my life. This was the beginning of my journey to joining the Marine Corps, but unfortunately I did not get in right away. It took me two years before I could enlist because I kept failing the ASVAB. The ASVAB is the test required to get into the military.

I know I am smart, I am just not a test taker. Academics, the kind you find in most college classrooms, were never my thing. But I was committed to pursuing this goal and becoming a Marine.

Although I stuck with it and eventually received a passing score, I still did not meet the standard required for women. For months, getting a ship date was my only concern.

One random evening I walked into the recruiting office after a night class in the community college I was currently attending at the time, and the Sergeant Majors of the recruiting station happened to be there. My recruiter told me to get up to the pull-up bar and do some pull-ups. I did 15 pull-ups, and the Sergeant Major approved my ASVAB score and waived my access into the military. I qualified for a date, and at the age of 19 I enlisted into the Marines.

This is where my passion for hair cutting started to develop, and I really thought I could turn it into a successful venture. We were doing a field operation in Korea, and every Sunday a barber would come into this rugged tent where she set up and cut Marines. When she left, I would cut my own hair. One day, a Marine Sergeant came up to me and asked me if I could do his haircut. I took the opportunity, knowing I had never cut anybody's hair before. He loved his haircut and eventually told other Marines about me. I got very little sleep between guard duty and cutting hair, but it was worth the experience.

When I decided to get out last year, I immediately asked myself: "What is next?" And the answer was to cut hair and become an entrepreneur through this work. When I transitioned out, I went to a community college and through research I found Bellus Academy. I knew traditional college was not for me.

Personally, I do not believe people should have to get a bachelor's or a master's degree to be successful in life. I knew what I wanted to do, and at this point, when I found Bellus Academy, it has a look and feel of top-tier education in the beauty industry, so I enrolled. The administration staff at Bellus Academy are very knowledgeable about VA benefits. I was not sure what to expect when enrolling, but it was pretty smooth.

I have been at Bellus Academy for about eight months now and expect to graduate around August of this year. I love that it is a focused program that will get me on track to my career very fast. I am also the proud recipient of the Beauty Changes Life Scholarship. Their mission is to empower the next generation of beauty entrepreneurs, influencers, and visionaries, and it aligns perfectly with my mission.

I even have a target date for starting my next venture, a service-disabled, veteran-owned business. I aim to open my own barber salon on May 16th, 2020, which is my mother's birthday.

Finally, I would like to highlight some of the recommendations I made in my written remarks. I did not want to come here today

without sharing some observations from my recent transition out of the military and on using educational benefits.

I suggest that Congress focus on improving the Transition Assistance Program for getting out of the military, as it can be extremely overwhelming.

Also, communications between the VA and veterans should be greatly improved.

My last recommendation is on the timely processing of VA education benefits. Not one veteran should have to wait for benefits like housing allowance to pay rent and bills, as I did. Fortunately, I had my emergency savings fund to help me cover expenses while I waited, but not everyone has money saved up like I did.

Thank you so much for the opportunity to share my story and for allowing me to make a few recommendations at this hearing. I look forward to your questions.

[The statement of Ms. Rodriguez follows:]

**STATEMENT OF
KRISTYL RODRIGUEZ
STUDENT VETERAN ATTENDING BELLUS ACADEMY—POWAY
BEFORE THE
HOUSE COMMITTEE ON EDUCATION AND LABOR SUBCOMMITTEE ON HIGHER EDUCATION
AND WORKFORCE INVESTMENT
AND
THE HOUSE COMMITTEE ON VETERANS AFFAIRS SUBCOMMITTEE ON ECONOMIC
OPPORTUNITY
ON
A JOINT FIELD HEARING ENTITLED “PROTECTING THOSE WHO PROTECT US: ENSURING THE
SUCCESS OF OUR STUDENT VETERANS.”**

April 24, 2019

My name is Kristyl Rodriguez and I appreciate the opportunity to share my story at this hearing. I was born and raised in Queens, NY, but now live in Oceanside, CA. I am a service-disabled Marine veteran. I recently separated from the military last year.

I am currently enrolled at the Bellus Academy campus in Poway, CA. I know this is not a traditional college experience, but that’s exactly what I love about Bellus. I never wanted the traditional college experience. A college degree is not for me.

In fact, I often get frustrated when I hear that veterans, and all students for that matter, must go to a normal university to be successful in life. We should promote other opportunities and paths to success.

I was rarely a great student in a regular classroom. I was more of a hands-on and visual learner. I liked to be creative. When I was a younger, I used to be very focused on the creative arts like drawing and painting. I even cut my own hair. A lot of times, I would feel misunderstood, but when I showed people my work, it would blow them away. In those moments, I felt the most connected.

Sadly, as I entered my teenage years, I tuned out my creativity and became so consumed with wanting to be accepted. I struggled with an identity crisis, drug addiction, destructive behavior, alcoholism and violence. I pretty much looked to anything that numbed me mentally and helped me to escape my current reality.

I remember sitting by myself in the high school cafeteria. I was depressed. I told myself that I needed to take control of my life and fast. That's when I saw the Marine recruiter posted up in a corner. I walked right up to him and asked about joining.

It is funny now thinking about it, because I really didn't know what the Marine Corps was when I was younger. I certainly learned very quickly.

I joined the Marine Corps in 2014, but it took me two years before I could enlist. I kept failing the ASVAB. This is the test required to get into the military. I know that I am smart. I'm just not a great test-taker. Academics, the kind you find in most college classrooms, were never my thing, but I was committed to pursuing this goal. I stuck with it and eventually passed the ASVAB and enlisted at the age of 19.

My first duty station was in Okinawa, Japan. I also did a few months in Korea. It was in a makeshift tent in Korea that I began thinking more about cutting hair and making it into a business.

Every Sunday, a barber would come into this rugged tent where we would workout and do other activities, including getting our haircuts. She would set up on a small table and the Marines would line up. When she left, I would cut my own hair.

One day, a Marine Sergeant came up to me and asked if I cut hair. Of course, I said yes. But I never cut another person's hair, just my own. After I finished giving him a bald fade, which I didn't exactly know what it was at the time, he said it was a great haircut. He asked how much I charged. I had no idea what to say at the time. Eventually, I settled on \$5.

Since he was a Sergeant, he had Marines under him. He would tell other Marines to see me. In that tent in Korea, I began cutting hair for other people besides myself and making a few dollars for it.

In 2018, I decided to leave the Marines. It wasn't an easy decision. I knew I was a very good and successful Marine. I even fast-tracked in rank to Sergeant in just four years. Many people around me encouraged me to reenlist. And I was proud of my service. I still am. But I wanted a new challenge.

When I decided to get out, I immediately asked myself, "What's next?" The answer was always there: cutting hair. And becoming an entrepreneur through this work.

That's when I found Bellus Academy. I did not start at Bellus though. I've been to a community college before and after I joined the Marines. It just wasn't for me. I knew what I wanted to do at this point. After looking at different options for barbering, I found Bellus Academy. It had the look and feel of a top-tier education in the beauty industry.

Also, the staff at Bellus are very knowledgeable about VA benefits. I wasn't sure what to expect when enrolling, but I did not experience challenges in enrolling at Bellus Academy. I was able to get started right away.

I do want you to know that the Bellus Poway campus is great, but it's not perfect. My time in the Marine Corps taught me that everything can be improved, but I feel confident that I can work with the Bellus Academy leadership to make improvements for future students and veterans. Bellus is doing a lot better than other schools. I want to help them be the best and stay the best.

I've been at Bellus Academy for about seven or eight months now. I expect to graduate around August of this year. I like that it is a focused program that will get me on track for my career fast. I eventually want to be in a barber salon that has a more luxury feel to it, and Bellus has that feel.

I am also the proud recipient of the Beauty Changes Lives scholarship. Their mission is to empower the next generation of beauty entrepreneurs, influencers and visionaries. I was happy to be recognized for my creative work and focus in this field.

I even have a target date for starting my next venture: a service-disabled veteran owned business. I want to open my own shop on May 16, 2020. That's my mother's birthday.

Finally, I'd like to close by making a few recommendations on improvements to help future transitioning veterans.

First, the transition assistance program had both positives and negatives. The program overloads veterans with a lot of information. If you don't know what you want to do when you get out, it makes it even more overwhelming. I would recommend simplifying the program but having follow-up options for veterans that want specific information at a later date. Overloading veterans when they get out only makes the transition process, which is already stressful, even more tense.

Second, I would suggest the Department of Veterans Affairs improve their communications with veterans. It should be much easier to connect with someone when there are questions related to the education benefits or any benefits for that matter.

Lastly, I'd like to share with you a challenge I had related to housing benefits. There was a delay in processing for my housing and when I eventually got someone on the phone at VA, they explained that housing allowance was prioritized for those student veterans in immediate need of the benefit. It was kind of odd, because I was burning through my savings and wondering when I would get my housing benefits. But there are also other veterans with no savings likely struggling to pay rent. I had to wait three months while at Bellus Academy for my housing to finally get processed by VA. No veteran should be delayed or prioritized when important benefits like housing are being processed. We should prioritize every veteran and make sure that the timely processing of benefits happens for all veterans.

Thank you for allowing me to testify at this hearing and for the opportunity to use the Post-9/11 GI Bill.

Mrs. DAVIS. Thank you, Ms. Rodriguez, and thank you for sharing your journey with us.

Mr. Shireman, thank you for being with us. Please proceed.

STATEMENT OF ROBERT SHIREMAN, DIRECTOR OF HIGHER EDUCATION EXCELLENCE AND SENIOR FELLOW, THE CENTURY FOUNDATION, NEW YORK, NY

Mr. SHIREMAN. Thank you for the opportunity to testify.

In this country, we have experienced at least four escalations of rampant abuses by for-profit schools fueled by Federal money. The first was after World War II. The 1944 GI Bill is rightly remembered as one of the most effective social policy programs in U.S. history. It gave millions of returning soldiers, including my father, the opportunity to enroll in college. But it also led to systematic abuses at thousands of businesses that sprang up to take advan-

tage of what was essentially a government voucher with no strings attached.

After analyzing what had happened, the Eisenhower Administration, in designing the Korean-era GI Bill, included guardrails that seemed to have worked. But by the 1970s, as the nation prepared for veterans returning from the war in Vietnam, for their return to civilian life, the memories of those abuses seemed to have faded. The head of the VA at the time said, in 1971, that the industry had matured and the bad actors were gone.

Two years later, though, the abuses reappeared. These scams were carried out not only at storefront schools but also in the burgeoning correspondence school market, the precursor to some versions of today's online schools, and this time it was not just the GI Bill that fueled the sketchy schools but also the new grant and loan programs that had been created in the Higher Education Act of 1965.

Congress had initially excluded for-profit schools from the HEA, but lobbyists insisted that if they were held to measureable outcomes, like graduates getting jobs, they would be safe to include for-profits.

The new HEA programs undermined one of the guardrails that had worked with the Korean-era GI Bill, a requirement that the school show that it is charging a fair market price by having at least 15 percent of its students supported by private funds. This is the GI Bill precursor to what is today the 90/10 loophole.

Also, since the Korean-era GI Bill, accreditation was adopted as one component of oversight. But after that, for-profit schools created their own accrediting agencies that they basically controlled, which then weakened the effectiveness of accreditation as an oversight mechanism.

One of the unreliable accreditors in the 1970s was the agency that is now known as ACICS, which in the 2000s gave us Corinthian and other scandals. Secretary King in the previous administration made it clear that inept or corrupt accreditors would not be tolerated. Secretary DeVos has reversed that decision, allowing ACICS to continue as a gatekeeper to the U.S. Treasury.

Reforms that were adopted in the Ford Administration disappeared by the time of the Carter Administration. So when there was an expansion of Federally-guaranteed student loans in the 1980s, the scandals reemerged again, with student loan default rates going through the roof. A bipartisan inquiry by the Senate Permanent Subcommittee on Investigations led to a series of hearings, one of which I attended as a young Senate staffer, and multiple volumes of evidence. Reforms were ultimately adopted in 1992, contributing to the closure of more than 1,200 schools.

With this history, lawmakers should have known better than to believe it would be safe to relax regulations, but that is exactly what happened. As noted, Congress in 1998 weakened the 85/15 rule that had been adopted in the 1992 reforms. In 2002, after testimony from ITT Tech, which has since gone out of business, the administration declared that the abuses in the student aid programs were no longer possible today, and they created loopholes in the ban on commission-paid sales, the incentive compensation rules.

In 2006, after testimony from Corinthian Colleges, Congress adopted a provision that opened the floodgates to unlimited online education. Then we had the return of soldiers from Iraq and Afghanistan, which undermined the effectiveness of 90/10.

All of these things combined created the hundreds of thousands of former students who have now filed for their Borrower Defense, have been blocked from getting that return of funds, and on top of that we have an administration that is pulling back on the oversights that were intended to prevent yet another repeat of these abuses.

I look forward to your questions.

[The statement of Mr. Shireman follows:]



Written testimony submitted by Robert Shireman
to the

Subcommittee on Higher Education and Workforce Investment,
Committee on Education and Labor
and the
Subcommittee on Economic Opportunity,
Committee on Veterans Affairs
U.S. House of Representatives

Protecting Those Who Protect Us: Ensuring the Success of our Student Veterans

April 24, 2019
San Diego, California

For-profit colleges do not always recruit aggressively; nor do they always shortchange students. But the problem of colleges systematically overpromising and under-delivering, when it does happen, has largely been a for-profit phenomenon. The abuses have been the most widespread and most damaging when they have been fueled by government grants and loans. The Century Foundation has published a series of essays chronicling a cycle in which federal money stokes scandals, then regulations are adopted, then the regulations are relaxed, and the scandals repeat.¹

Why do the scandals keep returning? Some regulations lose their effectiveness over time because the industry finds ways to comply with the letter but not the intent of the rule. A prime example is the cohort default rate, which I describe later in my testimony. In other cases, lawmakers actually relaxed the regulations because the protections worked—as if because it's dry under the umbrella, the umbrella can be ditched. Usually this occurs after industry lobbyists make the case that the “bad actors” are gone and that regulations should be relaxed to allow for more “innovation.” Corinthian Colleges and ITT Tech both played leading roles in pressing Congress to relax the rules that facilitated their subsequent multi-billion-dollar ripoffs of students and taxpayers.

But were these corporate CEOs *bad actors*, in the sense that they were evil people who set out to destroy students' lives? Maybe—but in seeking to prevent further abuses, Congress should assume instead they had no ill will: regardless of intent, the financial incentives in running an education business can easily and somewhat innocently drive a business in the wrong direction. After carefully examining the history, my view is that most predatory schools do not start out as scams. Instead, entrepreneurs launch their schools with a plan to do good by doing well—to earn a profit by providing a service. They follow market indicators that in many

¹ The series of reports, *The Cycle of Scandal at For-Profit Colleges* is available at <https://tcf.org/topics/education/the-cycle-of-scandal-at-for-profit-colleges/>.

industries lead to good outcomes for producer and consumer alike. In education, however, the simplistic and narrow indicators of business "success," such as growth in the number of paying customers, lead for-profit schools astray, especially when federal aid makes the sales job so easy. Lacking the restrictions and oversight of public and nonprofit entities, the business navigation systems steer them into practices that trample students' interests.

Despite the clear history and patterns, the current leadership of the Department of Education is distressingly blind to the problem, reversing important consumer protections and failing to enforce those that are on the books. I am hopeful that pressure and actions from Congress can reduce the damage to come, and bring just compensation to those who have been harmed so far.

State lawmakers are concerned, too, about the direction of the federal government's oversight. At the end of my testimony I will summarize some of the efforts here in California.

Federal Regulatory Levers

My testimony touches on nine of the levers that Congress and the executive branch have attempted to use to root out abuses and to steer colleges toward practices and outcomes that are in the best interests of students and taxpayers:

1. Requiring state approval.
2. Requiring accreditation.
3. Requiring market validation of the value of the education ("90-10 rule").
4. Banning commissions and quotas in recruitment ("incentive compensation").
5. Disallowing federal aid to programs with crushing debt burdens ("gainful employment").
6. Cutting aid to schools with high loan default rates.
7. Protecting taxpayer dollars at financially shaky institutions ("financial responsibility" standards).
8. Differentiating between public, nonprofit, and for-profit control.
9. Providing information to consumers.

Requiring State Approval

- The state role in federal aid began as a result of scandalous abuses by for-profit schools taking advantage of the post-World War II GI Bill.
- The U.S. Department of Veterans Affairs partners with states as contractors administering GI Bill benefits; however, the state role in Title IV operates differently.
- States frequently have taken action to address abuses before the federal government has done so.
- A heightened state oversight role for Title IV aid was adopted in 1992 but never fully implemented (Congress repealed it in 1995).

Current Status of Federal Program Requirements

For the GI Bill, states have a significant role as front-line decision-makers regarding eligibility, but their actual authority is murky. The U.S. Department of Veterans Affairs contracts with states that designate an agency ("state approving agencies", or SAA) to review programs at institutions to determine their suitability for providing veteran training under the terms of the GI Bill. States are allowed to establish guidelines beyond the minimum federal requirements, and some states have done so. However, the VA does sometimes overrule SAAs.² And in an apparent effort to undermine the state role in protecting veterans, recent guidance from the VA has threatened to revoke the contracts of SAAs that rescind the eligibility of any school that still has the approval of its accreditor (a private voluntary entity) or a separate state agency that licenses schools, even if the accreditor has placed the institution on probation or has warned the school that it is at risk of losing its accreditation.³ VA's policy, if it is sustained, has potentially serious ramifications for veterans and taxpayers, a danger worsened by the fact that some accreditors have been shown to provide ineffective oversight, and cannot themselves always be relied upon to adequately protect students.

For Title IV aid, the institution must be "authorized" by any state in which it has a physical presence. That means that, at minimum, there must be an entity responsible for handling consumer complaints, and that the state is able to revoke a school's authorization if it chooses to do so. Because the Higher Education Act (HEA) requires state authorization, state-level consumer protections that go beyond federal rules are generally not preempted by the HEA.

The rules regarding state oversight of online programs participating in the Title IV program are in dispute. On July 1, 2017, regulations went into effect stating that to enroll online students using Title IV aid, the student's state of residence must have a complaint process available to the student, either directly or through a reciprocity agreement with the other state. On July 3, 2017, Secretary DeVos published a notice in the *Federal Register* announcing that these online rules would be delayed until July 2020. The legality of the delay is being challenged in court.⁴

² "Memorandum Re: VA's Failure to Protect Veterans from Deceptive Recruiting Practices," Veterans Legal Services Clinic and Yale Law School, February 26, 2016.

³ Michael Stratford, "VA warns California in for-profit college dispute," *Politico*, January 17, 2019, <https://www.politico.com/newsletters/morning-education/2019/01/17/va-warns-california-in-for-profit-college-dispute-482445>.

⁴ Mary Ellen Flannery, "NEA, CTA Sue DeVos Over Rollback of Protections for Online Students," *NEA Today*, September 12, 2018, <http://neatoday.org/2018/09/12/nea-cta-sue-devos-over-rollback-of-protections-for-online-students/>.

For the GI Bill, each *program* is subject to approval or disapproval. For Title IV grants and loans, the federal government looks to whether the *institution* is authorized by the state (though some states also approve individual programs).

Background and History

The 1944 GI Bill is rightly remembered as one of the most effective social policy programs in U.S. history. Thanks to the GI Bill, millions of soldiers returning from World War II had the opportunity to enroll in college or job-training programs, and had access low-interest loans to buy homes. What has been largely forgotten, however, is that the GI Bill also led to systematic abuses at the hands of for-profit schools—schools that sprang up to take advantage of what was essentially a government educational voucher with no strings attached.⁵

The 1944 GI Bill called on states to assist with the approval of programs suitable for veteran enrollment. However, the states, which had not previously experienced such a flood of schools and programs requiring review, were not up to the task and had little guidance for how to differentiate good from bad programs. The system of VA funding for SAAs, which is still used today, grew out of this initial experience.⁶

The original HEA in 1965 required state authorization as it does today, but also took a creative, risk-sharing approach to state involvement in the student loan program. Under the new law's guaranteed student loan program, states and charities would administer the program, putting in some of their own funds to incentivize state and local-level decisions about the schools and students that deserve support, and under what terms. The state oversight role never really took hold, though. Instead, Congress sweetened the deal, until eventually the federal program became a money-making operation for the states and other guarantee agencies, undermining the gatekeeper role the risk-sharing was designed to produce.⁷ (The guarantee system was eliminated in favor of the direct loan program in 2010).

For a brief moment in the 1990s, the Title IV program included a more robust federal–state partnership aimed at preventing fraud and abuse. Conceived by the George H. W. Bush administration as one response to the student loan scandals of the 1980s and early 1990s, state postsecondary review entities (SPREs) were established in the 1992 reauthorization of the HEA. Financed by the federal government, the SPREs were tasked with conducting reviews of institutions in their states that hit certain triggers, such as heavy use of

⁵ David Whitman, "Truman, Eisenhower, and the First GI Bill Scandal," The Century Foundation, January 17, 2017, <https://tcf.org/content/report/truman-eisenhower-first-gi-bill-scandal/>.

⁶ "The Role of State Approving Agencies in the Administration of GI Bill Benefits," Congressional Research Service, December 29, 2016, https://www.everycrsreport.com/reports/R44728.html#_Toc471289795.

⁷ "High-Risk Series: Government Student Loans," U.S. Government Accountability Office, December, 1992, <https://www.gao.gov/assets/660/659050.pdf>.

federal aid or high default rates.⁸ The SPREs were eliminated before they even got off the ground, a target of then-new speaker of the house, Newt Gingrich, in 1995.

In 2007, California's authorization agency closed after Governor Schwarzenegger and the legislature could not agree on the scope of its powers. The U.S. Department of Education issued an opinion that state authorization was not necessary for schools in California to continue to be eligible for Title IV aid. Rules later adopted by the Obama administration reverse this policy, clarifying the expectations for valid state authorization.

Recommendations

The state role in providing oversight of institutions using the GI Bill and Title IV aid should be continued and enhanced.

Requiring Accreditation

- Accreditors do not have a strong track record in consumer protection because they are self-regulating entities and they lack the law enforcement powers that would be necessary for them to investigate and prevent abuses.
- Deferring to accreditors on issues of academic quality has helped to protect academic freedom and prevent federal meddling in curricula.

Current Status of Federal Program Requirements

For the GI Bill, accreditation is not required, but SAAs may consider accreditation in approving a school's programs. For Title IV aid, accreditation by an agency recognized by the secretary of education is required. To be recognized, the agencies are required to undertake particular types of reviews and procedures.

Background and History

Accreditation has not always been necessary to prevent scandal in major federal student aid programs. At its peak, the nation's first such program, which ran from 1934 to 1943, aided one in eight college students at nearly all of the nation's public and nonprofit institutions.⁹ Yet even without an accreditation requirement, the historical record reveals no indication of any widespread abuses. The scandals arrived a dozen years later, with the next version of federal

⁸ David Whitman, "When President George H. W. Bush 'Cracked Down' on Abuses at For-Profit Colleges," The Century Foundation, March 9, 2017, <https://tcf.org/content/report/president-george-h-w-bush-cracked-abuses-profit-colleges/>.

⁹ Kevin P. Bower, "A favored child of the state: Federal Student Aid at Ohio Colleges and Universities, 1934–1943," *History of Education Quarterly*, volume 44, number 3, 2004, 364–387, doi:10.1111/j.1748-5959.2004.tb00014.x.

aid, the first GI Bill, which offered funding to for-profit school operators in addition to public and nonprofit.

Beginning with the 1952 Korean GI Bill, and repeated in dozens of subsequent federal student aid statutes, Congress required the U.S. commissioner of education, then the nation's top-ranking federal education official, to publish a list of agencies and associations deemed to be "reliable authorities" on the quality of training offered by an educational institution. The approving agencies in each state and the VA could, in turn, rely on the judgments of these private groups to determine which institutions were worthy of training veterans eligible for the GI Bill. Deferring to accrediting agencies seemed like a convenient, low-cost solution that kept the government out of the business of directly setting quality standards.¹⁰

Preventing the federal government from invading academic freedom, or getting involved in debates about curricula, may be the most important enduring benefit of the federal deference to accrediting bodies.

Initially, most for-profit schools were not accredited. However, it did not take long for predatory schools to find ways to claim accreditation. As Terrel Bell, the U.S. commissioner of education in the Nixon and Ford administrations and Ronald Reagan's first secretary of education, later summed up: "Some of the associations were creatures of the owners, and their policies were established in a self-serving way, so that the institutions could qualify for federal assistance."¹¹ One accreditor that Bell's office had grappled with in 1973 was none other than ACICS, then known as the Association of Independent Colleges and Schools (AICS). In transgressions that are eerily similar to the agency's recent scandals, thirteen AICS schools had closed "without delivering the educational services for which a large number of student borrowers have paid in advance from proceeds of federally insured student loans."¹²

Escalating student loan default rates and evidence of abuses in the 1980s led to an extensive investigation by the Senate Permanent Subcommittee on Investigations, led by Democratic senator Sam Nunn and his Republican vice-chair William Roth. They found traditional accreditation for for-profit schools to be severely mismatched. The self-regulatory approach:

is simply not suited to the structure and operations of proprietary schools. The accreditation approach is based almost entirely on principles and assumptions developed over the course of many years for traditional two- and four-year colleges and

¹⁰ Op. cit. David Whitman, January, 2017.

¹¹ Chester E. Finn, Jr., "In Washington We Trust, Federalism and the Universities: The Balance Shifts," *Change*, volume 7, number 10 (Winter 1975-1976), 29.

¹² David Whitman, "Vietnam Vets and a New Student Loan Program Bring New College Scams," The Century Foundation, February 13, 2017, <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/>.

universities. For-profit, business considerations in proprietary school operations were neither part of this traditional approach, nor was it contemplated that they would be included.

The traditional approach assumes that those involved are educators, whose basic concern is not profit, but the welfare of their students, and who can be counted upon to be honest and truthful in all facets of accreditation. It does not recognize certain significant differences between colleges and universities and proprietary trade schools.¹³

In its recommendations, the subcommittee insisted that:

Prior to the commitment of federal funds for student aid, the Department of Education must require strict and credible assurance that recipient institutions provide the students with a quality education. The accrediting bodies recognized by the Secretary of Education, especially in the area of proprietary schools, have to date failed to provide that assurance. Either those bodies, under the leadership of the Department, must dramatically improve their ability to screen out substandard schools, or the government should cease to rely on them in authorizing a school's participation in federal student aid programs.¹⁴

Following on the Nunn–Roth investigation, the 1992 HEA reauthorization established a number of requirements on accreditor standards and procedures. Later reauthorizations further refined the requirements for the federal recognition of accreditors.

In the 2000s, accrediting agencies failed to stop rampant abuses. ACICS was among the worst, and Secretary King ultimately revoked its federal recognition, sending a strong message to accrediting agencies about their need to be vigilant and responsive to leading indicators of fraud abuse. Secretary DeVos, however, reversed that decision, sending the opposite message: accreditors will not be held accountable.

In a further retreat, the department is moving forward on a rulemaking that represents an unprecedented "unraveling of federal oversight of college quality," according to experts.¹⁵ If the rules are ultimately adopted, they will lead to fast-track recognition of new accrediting agencies as well as less rigorous and less transparent approval of agreements between colleges and private companies that provide online classes; will allow schools that are in violation of

¹³ "Abuses in Federal Student Aid Programs," S. Rpt. 102-58, Report made by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, May 17, 1991, 16.

¹⁴ *Ibid.*, 34.

¹⁵ Antoinette Flores, "How the Trump Administration is Undoing College Accreditation," Center for American Progress, April 18, 2019, <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/04/18/468840/trump-administration-undoing-college-accreditation/>.

accreditor standards to retain their eligibility for federal aid for up to four years; and will allow for a fraudulent school's accreditation to be purchased while leaving most liabilities with the likely bankrupt former owner.

Recommendations

In completing their investigation of abuses in 1991, Senators Nunn and Roth said that if the accrediting bodies prove themselves unable to rein in predatory for-profit schools, Congress should stop pretending that a self-regulatory approach fits the for-profit model.

Congress should prohibit for-profit owners and executives from serving on their accrediting agency governing boards—something which New York Governor Andrew Cuomo has proposed.¹⁶ Ensuring educational quality often involves choosing a route that is not financially remunerative: providing more financial aid to low-income students, hiring full-time faculty instead of adjuncts, and advising consumers about other schools that might better fit their interests, among other practices. Accreditors must be able to push schools to do what's right for students and their communities, requiring decisions that are at odds with investor interests.

Accrediting agencies that focus on career training, particularly those that cater to for-profit schools, should shift their boards to be composed not of school officials but instead of employers and others who can reliably vouch for the quality of the training.

Requiring Market Validation of the Value of the Education

- Predatory schools have a history of pricing their programs to maximize the amount of grant and student loan funds that will accrue to the school.
- When the government is funding nearly every student, it is likely propping up a school that is not worth the tuition price.
- Both the GI Bill and Title IV include provisions aimed at validating the market value of a school, but loopholes in those provisions are undermining their effectiveness.

Current Status of Federal Program Requirements:

The GI Bill law requires schools to stop the process of enrolling new veterans in a program if 85 percent of the students in the program are already paying the program's tuition

¹⁶ Yan Cao, "Governor Cuomo Demands Quality from For-Profit Colleges—or Else," The Century Foundation, January 17, 2019, <https://tcf.org/content/commentary/governor-cuomo-demands-quality-profit-colleges-else/>.

using the GI Bill. There are some exceptions to the requirement, including a provision allowing the secretary of the VA to waive it in particular circumstances.¹⁷

Under the HEA, for-profit schools that collect more than 90 percent of their tuition revenue from Title IV aid are essentially put on probation for two years.¹⁸ If the school crosses the 90 percent threshold two years in a row, the school loses access to federal aid altogether for a period of at least two years.

Background and History

When a product or service is paid for by a government program, some attempt is nearly always made to protect against taxpayers being overcharged: for example, competitive bidding in defense contracts, payment schedules in Medicare based on market prices, or requiring purchase from a vendor that has other customers who set the price.

The initial versions of both the GI Bill and Title IV aid did not have any such protection. After the enactment of the 1944 GI Bill, opportunistic entrepreneurs established schools and set their tuition rates at the maximum amount that the VA would pay. Many schools falsified their expenditure data and attendance records, overcharged for supplies, and billed the VA for students who were not even enrolled, all in order to tap taxpayers for every penny they could get.¹⁹

For the Korean-era GI Bill, Congress added the 85–15 requirement as a quality check, a policy which was continued into the Vietnam era and beyond. For a period, the Vietnam version of the GI Bill counted *any* federal grant aid, including Title IV, in the 85 percent. The policy was challenged and ultimately affirmed by the Supreme Court, which upheld the rule as “a way of protecting veterans by allowing the free market mechanism to operate. . . . minimiz[ing] the risk that veterans’ benefits would be wasted on educational programs of little value.”²⁰

In 1992, in response to scandals in the student loan program, Congress adopted an 85 percent cap on the percent of revenue that could come from Title IV aid. At the time, veterans’ aid was not a major component of college enrollment, so the fact that it did not include veterans’ aid was not a major loophole. In fact, the provision may be one reason the University of Phoenix’s quality was not at issue in its first decade of growth: the company’s focus on

¹⁷ See 38 U.S. Code § 3680A, “Disapproval of enrollment in certain courses,” available at <https://www.law.cornell.edu/uscode/text/38/3680A> (accessed April 22, 2019).

¹⁸ They become provisionally certified, a status that reduces the procedural barriers that would prevent the department from ejecting a school from Title IV or imposing other restrictions.

¹⁹ Op. cit. David Whitman, January, 2017.

²⁰ *Cleland v. National College of Business*, 1978, available at <https://caselaw.findlaw.com/us-supreme-court/435/213.html> (accessed April 22, 2019).

employers that supported more than 40 percent of its students prevented the school from promoting low-value programs at high tuition prices.²¹

In 1998, Congress raised the threshold to 90 percent. In 2008, Congress further weakened the rule by applying it only to schools that exceed 90 percent two years in a row. The relaxed requirements allowed for more rapid growth at the lower quality schools, according to Brookings Institution research.²²

In the 2000s, the Iraq and Afghanistan wars created a steady stream of veterans whose GI Bill funds could count toward the 10 percent. The result has been an aggressive pursuit of veterans by predatory schools. Of the ten colleges charging taxpayers the most overall post-9/11 GI Bill tuition and fee payments from fiscal years 2009–17—totaling \$5.4 billion—seven spent less than one-third of students' gross tuition and fees on instruction in 2017 and struggled with outcomes, and only half (52 percent) earned more than a high school graduate.²³

If not for the failure of the current 85–15 and 90–10 rules to account for other federal aid, veterans would not be abused in such high numbers by predatory schools, and the irresponsible growth and poor quality programs, which have enrolled hundreds of thousands of students in recent years, would be far less severe.

Recommendations

Returning to an 85 percent cap for Title IV eligibility, and including all types of federal aid in the calculation, would go a long way toward protecting veterans and other students from being aggressively recruited for fraudulent programs.²⁴ The GI Bill cap, too, could be adjusted to account for students using all types of federal aid.

²¹ John D. Murphy, *Mission Forsaken: The University of Phoenix Affair With Wall Street* (Cambridge, Massachusetts: Proving Ground Education, 2013), citing Apollo Group, Apollo Group Prospectus, Smith Barney Inc., and Alex. Brown & Sons, December 5, 1994, 3.

²² Further, eliminating the 90–10 rule, as some have advocated, would “increase enrollment at low-quality institutions and increase default rates.” Vivien Lee and Adam Looney, “Understanding the 90/10 Rule: How reliant are public, private and for-profit institutions on federal aid?” Brookings Institution, January, 2019,

<https://www.brookings.edu/research/does-the-90-10-rule-unfairly-target-proprietary-institutions-or-under-resourced-schools/>.

²³ “Should Colleges Spend the GI Bill on Veterans’ Education or Late-Night TV Ads?” Veterans Education Success, April, 2019,

https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5cb7ab40e2c4838d6c42eb31/1555540809463/VES_Instructional_Spending_Report_FINAL.pdf.

²⁴ Industry complaints about the difficulty of predicting 90–10 ratios, while exaggerated, could be addressed by using prior-year figures for the 85 percent numerator (in this way the cap would function as a limit on total revenue/enrollment rather than the less predictable proportion of federally-aided students). Additional adjustments that mirror the GI Bill approach could do a better job assuring student and taxpayer value in specific programs.

Banning Commissions and Quotas in College Recruiting

- Commission-paid or quota-driven college advising encourages predatory recruiting tactics.
- The Higher Education Act prohibits the use of incentive compensation, but current enforcement under Secretary DeVos is uncertain.
- Loopholes in the current ban threaten to undermine its effectiveness.

Current Status of Federal Program Requirements

The HEA prohibits institutions using Title IV aid for providing “any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance.”²⁵ The GI Bill law includes a similar provision.²⁶ In the Title IV law an exception is made for recruiting foreign students, and additional clarifications are made in the Department of Education’s regulations.²⁷

Further guidance provided by the Department of Education declares that colleges *can* pay contractors a percentage of tuition for their recruitment activities if those activities are bundled along with other services, such as operating the college’s platform for online courses.²⁸

Background and History

Sales quotas and commissions, or similar practices, are a central element of most predatory college scams, including Trump University.²⁹ Incentivizing advisors to do whatever is necessary to make a sale is a way of getting employees to use psychological tricks or shade the truth to enroll students, without the company getting its hands dirty. Then, when unethical or illegal tactics are revealed to regulators or law enforcement, the company can claim ignorance, blaming the problems on rogue employees or contractors.

²⁵ 20 U.S. Code § 1094, “Program participation agreements,” available at <https://www.law.cornell.edu/uscode/text/20/1094> (accessed April 22, 2019).

²⁶ Section 3696 of title 38, United States Code (as amended by Public Law 112-249). The provision says that the VA shall, “to the extent practicable,” carry out the incentive compensation ban “in a manner that is consistent with the Secretary of Education’s enforcement” of the ban in Title IV.

²⁷ See (22) in “34 CFR § 668.14 - Program participation agreement,” available at <https://www.law.cornell.edu/cfr/text/34/668.14> (accessed April 22, 2019).

²⁸ U.S. Department of Education guidance, GEN-11-05, March 17, 2011 (<http://ifap.ed.gov/dpccletters/GEN1105.html>),. See also “Program Integrity Questions and Answers - Incentive Compensation,” U.S. Department of Education, last modified February 2, 2012, accessed April 22, 2019, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html>.

²⁹ Robert Shireman, “Selling the American Dream: What the Trump University Scam Teaches Us about Predatory Colleges,” in Arien Mack, editor, “Cons and Scams: Their Place in American Culture,” *Social Research*, volume 85, number 4 (winter 2018), <https://www.socres.org/single-post/854-winter-2018-cons-and-scams>.

In response to the 1980s student loan scandals, several officials, including Senator Bob Dole and then-secretary of education Lamar Alexander, proposed prohibiting schools using federal aid from using any “commission, bonus, or other incentive payment” to secure enrollments. The ban was adopted as part of the 1992 reauthorization of the Higher Education Act.

In 2001, ITT Tech, claiming that its predatory abuses were all in the past, hired a powerful lobbying firm to seek changes that would weaken the incentive compensation ban.³⁰ Despite warnings from counselor and consumer groups, the George W. Bush administration plowed forward with the industry request, adopting regulations that created loopholes in the law, and promising only small sanctions for any violation.³¹ With relaxed oversight, ITT Tech reverted into a company where, according to a former executive, "students were viewed as potential sales targets" and every employee was threatened with termination if they did not meet recruitment quotas.³²

Tempted by the loopholes, schools revved up the recruitment engine, promising high salaries to enrollment advisors not with a background in education but instead with experience in sales. The University of Phoenix was particularly aggressive in its expansion efforts, serving as a model that other schools emulated. An audit by career staff at the Department of Education found the company was operating in a “duplicious manner” to evade the ban, with employees told that “heads were on the chopping block” if enrollment numbers were not reached.³³ A University of Phoenix ad for counselors, shown below, openly admitted that the job was about sales.

- \$\$\$ - No limit on income
- Highest paid people in the world are salespeople
- Never have to worry about \$\$\$ again
- Top 20% Enrollment Counselors @ UOP = ave. \$75,000 +/yr
"other" 80% ave. \$25,000 +/yr.
- Top 20% = never worry about \$\$\$

The Winning Edge

³⁰ Gretchen Morgenson, "A Whistle Was Blown on ITT; 17 Years Later, It Collapsed," *New York Times*, October 21, 2016, https://www.nytimes.com/2016/10/23/business/a-whistle-was-blown-on-itt-17-years-later-it-collapsed.html?_r=0.

³¹ David Whitman, "Vietnam Vets and a New Student Loan Program Bring New College Scams," The Century Foundation, February, 2017, <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/>.

³² Thomas Corbett, "Opening a Dangerous Floodgate," *Inside Higher Ed*, February 12, 2019, <https://www.insidehighered.com/views/2019/02/12/former-profit-college-executive-says-education-department-shouldnt-weaken>.

³³ Dawn Gilbertson, "Student-recruitment tactics at University of Phoenix blasted by feds," *Arizona Republic*, September 14, 2004, <http://archive.azcentral.com/families/education/articles/0914apollo14.html>.

After promising to reform its practices, another review just four years later found that Phoenix had again violated the ban.³⁴ The promise of weak enforcement had prompted many for-profit colleges to test the boundaries of the restriction on incentive compensation,³⁵ contributing to an explosion of abuses that peaked in the recession.

The Obama administration reversed these Bush administration policies, and worked with the Justice Department to support several whistleblower lawsuits that alleged violations of the incentive compensation ban.³⁶ Despite evidence of violations,³⁷ the Trump administration has not announced any enforcement actions.

The incentive compensation rule, when enforced, has been an extremely important measure in preventing some of the worst abuses. However, loopholes and lax enforcement are threatening its effectiveness. That the department's 2011 sub-regulatory guidance allowed "bundled services" providers to be paid incentive compensation, even though their services include recruitment, has proven to be problematic. Contracted recruiting operations, packaged in bundles, have become a big business, with some taking as much as 60 percent of tuition, elevating the cost of online education.³⁸

Recommendations

Bundled service providers, being paid a large percentage of tuition, are re-creating the hazards of incentive-paid recruiters at contractor operations off-campus. To reduce the cost of online education and prevent predatory recruiting, the Department of Education should revise the 2011 guidance to remove the bundled services provision as inconsistent with the HEA prohibition.

Disallowing Federal Aid to Programs with Crushing Debt Burdens

- Congress allowed for-profit participation in Title IV only for programs that paid off financially for students: i.e., programs that led to "gainful employment" (GE). However, no regulatory standard was established to define what constituted "gainful employment."
- The Obama administration worked to correct this defect by establishing specific debt and earning standards for these gainful employment programs.

³⁴ "University of Phoenix Settles False Claims Act Lawsuit for \$67.5 Million," U.S. Department of Justice, December 15, 2009,

<https://www.justice.gov/opa/pr/university-phoenix-settles-false-claims-act-lawsuit-675-million>.

³⁵ See Doug Lederman, "For-Profits and the False Claims Act," *Inside Higher Ed*, August 14, 2011, <https://www.insidehighered.com/news/2011/08/15/profits-and-false-claims-act>.

³⁶ *Ibid.*

³⁷ For example, there is a current whistleblower case against Academy of Art University, *United States ex rel. Rose v. Stephens Inst.*, that has survived a motion to dismiss.

³⁸ Kevin Carey, "The Creeping Capitalist Takeover of Higher Education," *HuffPost Highline*, April 1, 2019, <https://www.huffpost.com/highline/article/capitalist-takeover-college/>.

- The Trump administration is failing to implement the GE rule, and has proposed repealing the regulations.

Current Status of Federal Program Requirements:

To be eligible for Title IV, all programs at for-profit schools and certificate programs at public and nonprofit schools must prepare students for “gainful employment in a recognized occupation.” Regulations stipulate that a program passes unless more than half of its graduates on federal aid have excessive student loan debt burdens when weighed against their incomes after completing school.³⁹ The regulation also required certain information to be provided to prospective students regarding program outcomes.

The rule was scheduled to begin having consequences in July 2017, with some programs losing access to Title IV, and some that would need to warn their students. The Department of Education, however, delayed the reporting requirements, and gave schools more time to appeal the department’s findings regarding graduates’ earnings. A group of state attorneys general has challenged the department’s delay in enforcing the rule.⁴⁰ Meanwhile, Secretary DeVos has proposed repealing the rule; a final decision is expected imminently.⁴¹

Background and History

As enacted in 1965, the Higher Education Act did not allow for-profit schools to participate at all in the Title IV program. Congress was well aware of the hazards of for-profit schools because of their abuses of the post-World War II GI Bill, so Congress instead created a separate, capped program to support vocational education, including programs run by for-profit schools. Unlike the HEA, the vocational legislation was targeted at training that would prepare students for gainful employment in a specific job, a requirement that is not consistent with liberal arts education.

³⁹ A program passes if the annual loan repayment of the median graduate is below 20 percent of their discretionary income, or 8 percent of their total earnings. Programs above 30 percent/12 percent fail, and those in between are in a “zone” and must warn students and show improvement in order to remain eligible for Title IV aid. Robert Shireman, “What Does the Gainful Employment Rule Mean for Career Schools Seeking Access to Federal Aid?” The Century Foundation, March 17, 2017, <https://tcf.org/content/facts/gainful-employment-rule-mean-career-schools-seeking-access-federal-aid/>.

⁴⁰ Press release, Maryland Attorney General Brian E. Frosh, October 17, 2017, <http://www.marylandattorneygeneral.gov/press/2017/10/17/17.pdf>.

⁴¹ A further complication has also arisen regarding the department’s access to earnings data. See Andrew Kreighbaum, “Agencies at Loggerheads Over Gainful-Employment Data,” *Inside Higher Ed*, December 6, 2018, <https://www.insidehighered.com/news/2018/12/06/education-department-says-data-dispute-behind-failure-enforce-gainful-employment>.

Later, the vocational bill was folded into the HEA, still stipulating that for-profit school participation be on an exception basis: for-profit schools were, and remain, ineligible as a general matter, but they may participate *if a program fits the GE requirement*. The Department of Education left that requirement undefined. If a school told the agency that its program was somehow related to a job, and if the accreditor did not challenge that assertion, the program became eligible for federal grants and loans.

In effect, the intent of the congressional requirement was thoroughly undermined: students would borrow tens of thousands of dollars to in career training programs they believed would lead to a job that would repay their loans, only to discover—and too late—that they have unmanageable debt with no return on investment. In an effort to address this problem, the department engaged experts and stakeholders over the course of several years to develop the "gainful employment" regulation, finalized in 2014. The GE rule was an effort to measure career education programs' performance in "prepar[ing] students for gainful employment in a recognized occupation," and to prevent programs that leave students with debt and no means to pay it back from continuing to receive federal financial aid.

The rule is targeted, not draconian. Based on the single year of data released by the department, at a majority of for-profit schools, *all* of the programs passed.⁴² At the rest of the schools, particular programs needed improvement. Companies reported that the rule led them to reduce tuition or cut program lengths to come into compliance, exactly the sort of pro-student changes that were intended.

Recommendations

Despite the GE rule's positive impact for students and for taxpayers—and for quality for-profit schools—the Trump administration and education secretary Betsy DeVos have proposed to rescind the rule completely, leaving these programs free to continue enrolling students without being held accountable for their poor performance.⁴³ The department estimates that eliminating the gainful employment rule will cost taxpayers \$5.3 billion in financial aid because of increased spending on programs that fail to meet established standards.⁴⁴

Congress has an opportunity to stop this deregulation by codifying meaningful rules defining gainful employment for the purposes of receiving Title IV aid.

⁴² Ibid, footnote 17.

⁴³ "Notice of proposed rulemaking, Office of Postsecondary Education, Department of Education," *Federal Register*, August 14, 2018, <https://www.federalregister.gov/documents/2018/08/14/2018-17531/program-integrity-gainful-employment>

⁴⁴ Ibid.

Cutting Off Aid to Schools with High Loan Default Rates

- The cohort default rate was a very effective tool in eliminating problem schools from the federal aid programs in the early 1990s.
- This three-year measure is still useful. However, due to gaming by institutions, it is not as meaningful as it used to be.

Current status of federal program requirements:

The cohort default rate is an annual measure of the percentage of a school's borrowers who have defaulted on their loans within three years of leaving school. A school loses its Title IV eligibility if more than 40 percent of the borrowers default in any single annual cohort, or if more than 30 percent default in three consecutive cohorts.

Background and History

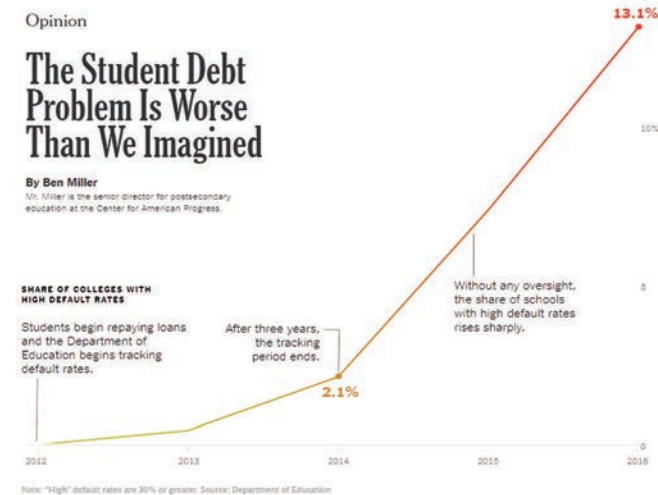
When Congress first decided to cut off federal aid to schools with high default rates in 1992, it did so because such a default rate was a strong indicator of a predatory school. Former students who were not making enough money to repay their loans, or who felt they were poorly treated or misled, would default, producing a high default rate associated with the school.

The idea behind the default rate cutoff was that schools at risk of hitting the maximum would have a strong incentive to make their recruiting more honest, their pricing more fair, their offerings better targeted for good jobs, and/or their instruction and student support more robust. Predatory schools, however, rather than improving their education offerings in response to a high default rate, discovered that they could avoid the reduction in profitability that would come from improving their offerings by instead manipulating the default rates more directly. By monitoring former students' loans and filing paperwork for them, they could ensure that students that receive little value from the education they received and earn too little to repay their loans instead enter temporary forbearance for the first three years after leaving the school—the interval that Congress uses to measure default rates.⁴⁵ The practice has become so common that I have found that some school leaders misunderstand the *purpose* of the default rate cutoff itself, believing it exists to spur them to put resources into what is euphemistically called "loan counseling."

Because the original two-year default rate was so undermined by gaming on the part of schools and by other changes in the HEA's default definition, Congress in 2008 changed the rule to a three-year measure using revised definitions (and changed the threshold to 30 percent

⁴⁵ See "Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates," GAO-18-163, U.S. Government Accountability Office, April, 2018.

from 25 percent).⁴⁶ But the manipulation to keep the rate temporarily lower was simply extended to the third year. A *New York Times* article about default rate manipulation includes the telling chart, below, showing that defaults spike dramatically after the regulatory snapshot at the three-year point.⁴⁷



Source: *New York Times*.

Recommendations

The cohort default rate is not completely meaningless: a high rate at a school where a large proportion of students borrow is a major red flag. However, a low rate is not the green flag it used to be. Going forward, Congress should retain the cohort default rate as an indicator but limit the ways that schools can manipulate the rates.

⁴⁶ For details, see "Cohort Default Rates," FinAid, last updated December 21, 2010, accessed April 22, 2019, <http://www.finaid.org/loans/cohortdefaultrates.phtml>.

⁴⁷ Ben Miller, "How You Can See Your College's Long-Term Default Rate," Center for American Progress, August 30, 2018, <https://www.americanprogress.org/issues/education-postsecondary/news/2018/08/30/457296/can-see-colleges-long-term-default-rate/>.

Protecting Taxpayer Dollars at Financially Shaky Institutions

- The Higher Education Act requires that schools have the financial wherewithal to manage federal funds responsibly.
- Theoretically, "financial responsibility" formulas developed by the Department of Education would protect against calamitous closures that saddle taxpayers or students with liabilities.
- Numerous unanticipated school closures, particularly at for-profit institutions, are evidence that the current financial responsibility standards are not adequate.⁴⁸

Current Status of Federal Program Requirements

The Higher Education Act requires schools receiving Title IV funds to demonstrate that they are not fly-by-night shell companies, but rather financially responsible entities with adequate asset reserves, cash flow and so forth to receive and administer Title IV funds. Public institutions that are backed by the full faith and credit of the state are assumed to be financially safe for the investment of federal funds. For-profit and non-profit Institutions that participate in the federal student aid programs are required to meet a set of tests of financial health. These tests are essentially three ratios: a primary reserve ratio, an equity ratio, and a net income ratio. After computing all three ratios, a composite score is derived that reflects the overall relative financial health.⁴⁹

Institutions with low scores are subject to additional oversight, including greater attention to the amount of funding they are drawing from the U.S. Treasury. In some cases schools may be required to post a letter of credit, essentially a bond that sets aside funds that would be available to compensate the federal government even in the case of bankruptcy.

Background and History

The 1992 reauthorization of the HEA required the department to develop regulations to determine the financial responsibility of institutions participating in Title IV. Initial regulations were adopted in 1994. Today's general approach was adopted in 1997, based on recommendations from a study commissioned by an accounting firm.⁵⁰

⁴⁸ Of 1,230 campus closures impacting over 500,000 students in the last five years, 88 percent of closures occurred at for-profit colleges. Michael Vasquez and Dan Bauman, "How America's College-Closure Crisis Leaves Families Devastated," *Chronicle of Higher Education*, April 4, 2019, <https://www.chronicle.com/interactives/20190404-ForProfit>.

⁴⁹ See "Financial Responsibility Composite Scores," Office of Federal Student Aid, U.S. Department of Education, accessed April 22, 2019, <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.

⁵⁰ "Financial Ratio Analysis Project: Final Report," KPMG Peat Marwick, prepared on behalf of the U.S. Department of Education, August 1, 1996, <https://www2.ed.gov/finaid/prof/resources/finresp/ratio/full.pdf>.

The formulas and consequences, and the way they have been implemented, have been criticized for being inadequate to prevent precipitous closures or to provide adequate compensation when closures occur. The abrupt and harmful closure of a number of schools support that criticism:

- From 2006 to 2010, schools owned by Corinthian Colleges grew rapidly, fueled largely by federal student loans and grants.⁵¹ In the wake of evidence the school was systematically misleading consumers, the chain collapsed, leaving students and taxpayers with enormous liabilities and harm.⁵² The company's financial responsibility scores provided no warning. Corinthian produced *passing* financial responsibility scores through 2010, while enrollment was growing.⁵³
- Westwood College, now closed, was in the top financial-score range for each of the eight years for which data are available.
- ITT Tech, now closed, had passing financial responsibility status for eight of the nine years for which data are available.
- EDMC's Art Institutes, currently collapsing after a sale, had passing scores in eight of the nine years for which data are available.
- Globe University had passing scores for eight of the nine years before its closure.

The 2016 borrower defense regulations linked the financial responsibility rules with reporting on liabilities stemming from consumer fraud suits. A school may have great cash flow one day—while it grows enrollment based on false promises—and face bankruptcy the next, once those deceptions are revealed. In these instances, more effective early warning signs may come from reports of arbitration activity and consumer litigation. The 2016 borrower defense rules require reporting on both arbitration and litigation indicators, but both warnings systems are in jeopardy in the face of Secretary DeVos's efforts to rewrite this rule.

⁵¹ Enrollment grew from 67,445 students in the fall of 2007 to 113,818 just three years later. "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," Committee on Health, Education, Labor and Pensions, U.S. Senate, July, 2012, https://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf.

⁹² Matt Hamilton, "Corinthian Colleges must pay nearly \$1.2 billion for false advertising and lending practices," *Los Angeles Times*, March 23, 2016, <http://www.latimes.com/local/lanow/la-me-in-corinthian-colleges-judgment-false-advertising-20160323-story.html>. See also Danielle Douglas-Gabriel, "Feds Found Widespread Fraud at Corinthian Colleges, Why Are Borrowers Still Paying the Price," *Washington Post*, September 19, 2016, https://www.washingtonpost.com/news/grade-point/wp/2016/09/29/feds-found-widespread-fraud-at-corinthian-colleges-why-are-students-still-paying-the-price/?utm_term=.88813386d76b.

⁵³ Automatic approval is assured when a school has scores from the U.S. Department of Education of at least 1.5. From 2006 to 2010, the scores for Corinthian's Everest Colleges (its other schools' scores were not reported separately) were 1.7, 1.9, 2.6, and 1.6, according to data posted by the department at "Financial Responsibility Composite Scores," Office of Federal Student Aid, U.S. Department of Education, accessed April 22, 2019, <https://studentaid.ed.gov/sa/about/data-center/school/composite-scores>.

Recommendations

The financial responsibility triggers established by the 2016 borrower defense regulation should be implemented.

The online regulatory reciprocity agreement joined by forty-nine states relies almost completely on financial responsibility ratios as a consumer protection tool. Given the failure of these ratios to identify failing schools, states should insist that their reciprocity agreement adopt different or additional approaches to protect consumers.

Differentiating Public, Nonprofit, and For-Profit Colleges

- Public and nonprofit control of institutions has proven to be a powerful consumer protection tool that provides useful, simple indicators for consumers.
- The collapse of the IRS's oversight of nonprofit status has led some for-profit operators to claim to be nonprofit while failing to adopt the requisite financial controls.
- Restoring the integrity of public and nonprofit status is critical to protecting consumer and taxpayer interests.

Current Status of Federal Program Requirements

Under federal and state laws, for-profit entities are subject to far more lenient financial controls and oversight than are public or nonprofit entities. Those differences explain for-profit schools' greater inclination to take unfair advantage of students or taxpayers. Rather than exclude for-profits completely from Title IV on this basis, the HEA attempts to account for the greater hazards by imposing some compensating additional requirements on for-profit schools. These include the 90–10 rule, ineligibility for aid during pre-accreditation, and broader coverage of the gainful employment rule, as discussed above.⁵⁴

The HEA defines a nonprofit institution as a corporation or association "no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual."⁵⁵ While there is no definition of a "public" institution in the HEA, the law effectively creates one by allowing the secretary of education to exempt from the financial responsibility

⁵⁴ There are also some differences in the application of the financial responsibility standards, and a requirement that an institution operate for two years before it can gain Title IV eligibility.


⁵⁵ 20 USC § 1003(13). The regulations use a three-part test: no private inurement, considered a nonprofit by states in which the institution is physically located, and "determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code." 34 CFR 600.2

standards an institution that “has its liabilities backed by the full faith and credit of a State, or its equivalent.”⁵⁶

In the past, the Internal Revenue Service (IRS) did a respectable job of policing nonprofit status, so the Department of Education could rely on its determinations. However, in recent years, the IRS enforcement operation has been virtually eliminated, undermining the integrity of nonprofit status in the United States.⁵⁷

Background and History

Rampant deceptive or unfair treatment of students is rare at legitimate nonprofit and public colleges because financial restrictions make it difficult for school leaders to profit from bad behavior. Being a nonprofit has traditionally required an institution to devote all of its revenues to its educational purpose, and prohibit any form of profit-taking, so that those in control are not tempted to take advantage of students or the public.



Regulatory Differences Define Whether an Entity Is Public, Nonprofit, or For-Profit

| | PUBLIC | NONPROFIT | FOR-PROFIT |
|---|---------------------------------------|---|--|
| Who is responsible for governing the institutions, including setting tuition rates and budgets? | Elected and appointed state officials | Trustees | Owners |
| What are they allowed to spend money on? | Education or another public purpose | Education or a charitable purpose ⁵⁶ | Anything, including distributions of profit for owners |
| Can top-level decision-makers personally profit from the operations of the institution? | Generally no | Generally no ⁵⁶ | Yes |
| Do colleges have access to equity markets to invest and expend? | No | No | Yes |
| Is there a financial backstop if something goes wrong and the college is bankrupt? | Taxpayers | No | No |

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Source: The Century Foundation.

Restrictions on public and nonprofit institutions have been so effective in protecting students that state and federal laws frequently provide funding only to them, or apply stricter guidelines if for-profit colleges seek access to taxpayer funds.

⁵⁶ See 20 U.S. Code § 1099c, “Eligibility and certification procedures,” accessed April 22, 2019, available at <https://www.law.cornell.edu/uscode/text/20/1099c>.

⁵⁷ Robert Shireman, “The Covert For-Profit: How College Owners Escape Oversight through a Regulatory Blind Spot,” The Century Foundation, September 22, 2019, <https://tcf.org/content/report/covert-for-profit/>.

Because of the reputational benefits of claiming to be nonprofit, and the differing regulations, some for-profit operators have sought ways to claim nonprofit status while not actually adopting the financial restrictions that protect consumers. The decline in IRS enforcement is increasingly allowing these covert for-profit entities to operate, fooling consumers and threatening the integrity and reputation of nonprofit institutions.

More recently, cracks have appeared in the integrity of the “public” label as well.⁵⁸

Recommendations

With the labels of “nonprofit” and “public” becoming less reliable, one instinct is to abandon the distinctions. But doing so would be like repealing an effective regulation because of a debilitating loophole. The right response, given the demonstrated value of valid nonprofit and public control, is to *close the loopholes*. Congress can restore the integrity of public and nonprofit status by establishing review procedures for conversions of for-profit institutions, and more robust oversight of nonprofit and public institutions that have conflicts of interest in their governance.

Providing Consumers with Information

- A school’s eligibility for federal grants and loans is viewed by consumers as an endorsement by the government.
- Attempts to counteract the federal endorsement through warnings or data are undermined by unavoidable complexity, psychological factors, and creative marketing practices.
- In the context of a financial aid program, replacing responsible regulation with consumer information is misguided.

Current Status of Federal Program Requirements

The fact that a school is eligible for federal aid is specific, simple information with enormous power to recruit students and overcome doubts or suspicions. The school, meanwhile, must accept a vague responsibility to provide “adequate” counseling to prospective students,⁵⁹ and to “act with the competency and integrity necessary to qualify as a fiduciary [of

⁵⁸ Robert Shireman, “These Colleges Say They Are Nonprofit. But Are They?” The Century Foundation, updated regularly, <https://tcf.org/content/commentary/colleges-say-theyre-nonprofit/>.

⁵⁹ 34 CFR 668.16 (h): “Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding -

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student’s account; and

the Department of Education]. . . in accordance with the highest standard of care and diligence."

⁶⁰ The department also requires schools to provide various types of specific information on their web sites or in school catalogs, and data is submitted that the department makes available on College Navigator and the College Scorecard. The VA operates a GI Bill Comparison Tool that includes information about veterans complaints, and has caution flags when colleges are facing heightened regulatory scrutiny.⁶¹

Recent regulations have required schools to make specific disclosures to students, though some have not been implemented. The GE rule requires schools to disclose to prospective students certain facts about their career programs. The requirement has been delayed until July 1, 2019 (and the department has proposed repealing the rule).⁶² A new requirement under the 2016 Obama administration's borrower defense rule requires for-profit schools with low loan repayment rates to include a warning in their promotional materials.⁶³ New rules (also delayed) relating to online education across state borders include individualized warnings that a program does not meet state professional licensing requirements or prerequisites, and warnings regarding the loss of accreditation or state approval.⁶⁴

Background and History

Legally, schools in Title IV have a responsibility, as noted above, to counsel students adequately and to protect the interests of taxpayers. Those vague general requirements, however, are no match for a predatory school's drive to maximize enrollments of students using federal aid. The first weapon in the school's arsenal is the federal aid itself: for example, the parent of an ITT Tech student says school officials told her daughter that "since the government sponsored the loan, the education it bought would be great. After all, the government doesn't make loans for homes that are about to fall down."⁶⁵ The Federal Trade Commission cited this problem of implied government endorsement in its major study years ago: "[I]n claiming that the

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package. . ."

⁶⁰ 34 CFR 668.82.

⁶¹ A list of the conditions that have led to caution flags can be found at "Caution Flags," GI Bill Comparison Tool, U.S. Department of Veteran Affairs, accessed April 22, 2019, https://www.benefits.va.gov/gibill/comparison_tool/about_this_tool.asp#CF.

⁶² Paul Fain, "Gainful Employment Disclosures Delayed Again," *Inside Higher Ed*, June 18, 2018, <https://www.insidehighered.com/news/2018/06/18/education-department-delays-disclosures-under-gainful-employment-while-working>.

⁶³ The requirement applies to schools at which fewer than half of borrowers had paid down at least \$1 of their loans three years after leaving school. Clare McCann, "The Ins and Outs of the Borrower Defense Rule," *New America*, July 10, 2017, <https://www.newamerica.org/education-policy/edcentral/ins-and-outs-borrower-defense-rule/>.

⁶⁴ Op. cit. Mary Ellen Flannery.

⁶⁵ Comment of Ruth Bullock of Bellingham, Washington, on the U.S. Department of Education's proposed rule on "Program Integrity: Gainful Employment, submitted August 31, 2018, accessed April 22, 2019, <https://www.regulations.gov/document?D=ED-2018-OPE-0042-8342>.

school is 'approved' for VA training, or 'approved under the GI Bill,'" schools "use the aura of the federal stamp of approval."⁶⁶

It is against that backdrop of a federal stamp of approval that Secretary of Education Betsy DeVos wants to eliminate school responsibility and federal oversight in favor of an "informed choice" scheme. Her perspective is that borrowers who feel they were defrauded in fact just "regret the choices they made," and that the solution is to be sure that when students borrow "they have explored their options carefully and weighed the available information to make an informed choice."⁶⁷ Previously, Republicans have rejected this simplistic thinking. In the wake of rising defaults after the expansion of federal loan programs in the 1970s, the Nixon administration created an interagency committee to examine the problem and propose solutions.⁶⁸ The committee found that the government, as financier, has a responsibility to the student made necessary by the consumer's "educational inexperience coupled with the expensive and intangible nature of the services he is purchasing, and in light of the potential for consumer abuse in 'future service contracts' used by most schools." When these rights are not respected, the student should be protected and should have redress mechanisms available to them.⁶⁹

In a recent review of relevant research, seven leading economists who specialize in education found that "information provision alone is not enough to alter the enrollment choices of less-resourced students," nor is information adequate to "incentivize higher performance among institutions." For example, they point to research showing that the launch of College Scorecard, a federal consumer information resource, had "no impact . . . on the college applications of students in less-affluent high schools, those with lower levels of parental education, and underserved minority groups."⁷⁰

⁶⁶ "The clear implication of advertising of this nature is that the United States Government has examined these institutions and is vouching for them." See *Proprietary Vocational and Home Study Schools, Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule*, Federal Trade Commission, December 10, 1976, 69 and 143.

⁶⁷ U.S. Department of Education, proposed rule, borrower defense, July 31, 2018, (Page 37243 of the *Federal Register* notice) <https://www.federalregister.gov/documents/2018/07/31/2018-15823/student-assistance-general-provision-s-federal-perkins-loan-program-federal-family-education-loan>

⁶⁸ "Toward a Federal Strategy for Protection of the Consumer of Education. Report of the Subcommittee on Educational Consumer Protection," Office of the Assistant Secretary for Education, Department of Health, Education and Welfare, July, 1975, accessed April 22, 2019 <https://files.eric.ed.gov/fulltext/ED115173.pdf>.

⁶⁹ "Toward a Federal Strategy for Protection of the Consumer of Education. Report of the Subcommittee on Educational Consumer Protection," Office of the Assistant Secretary for Education, Department of Health, Education and Welfare, July, 1975, accessed April 22, 2019, <https://files.eric.ed.gov/fulltext/ED115173.pdf>.

⁷⁰ Sandra E. Black et al., "Comment on FR Doc # 2018-17531," September 12, 2018, accessed April 22, 2019, <https://www.regulations.gov/document?D=ED-2018-OPE-0042-13499>, citing Hurwitz, Michael and Jonathan Smith, "Student Responsiveness to Earnings Data in the College Scorecard," *Economic Inquiry*, volume 56, number 2, 2018, 1220–43.

Because of the complexity involved, most prospective students ultimately rely not just on data they have been provided, but on recommendations from people they feel are more knowledgeable than they are. When those people are recruiters posing as advisors, they can easily use known psychological tricks to gloss over any inconvenient disclosure. The Federal Trade Commission cited how a school's low job placement rate can be dismissed by putting the onus on the prospective student: "Of course, no school—not even ICS—can guarantee you a better job. We can't make you smarter than you already are, and we can't make you ambitious if you're lazy."⁷¹ DeVry University trained its recruiters to use the same tactic to move past students' doubts: "Replace the fear of trying with a greater fear of not succeeding."⁷²

California State Legislators Respond to Federal Inaction

Concerned about the federal retreat from oversight, seven members of the California state legislature introduced a package of bills to bolster the state's oversight of for-profit education. I have been involved in developing and supporting these efforts. Several of the bills aim to establish state versions of federal rules for schools not exempt from oversight by the state Bureau for Private Postsecondary Education (BPPE).

Gainful employment. AB 1340, by Assemblymember David Chiu of San Francisco, would apply the Obama administration's GE rule by doing the following:

- Prohibiting the enrollment of new California students in programs that fail the GE debt-to-earnings standard.
- Capping the number of new California students enrolled in a program that is in the GE rule's debt-to-earnings probationary zone.

If earnings and student debt data are not forthcoming from the U.S. Department of Education, state-level data will be used.

Covert for-profit colleges. AB 1341, by Assemblymember Marc Berman of Palo Alto, would address the problem of for-profit operators claiming to be "public" or "nonprofit" institutions as follows:

- An institution claiming to be nonprofit would be subject to review by the attorney general's office for private inurement or inappropriate for-profit control of core functions.

⁷¹ *Proprietary Vocational and Home Study Schools, Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule*, Federal Trade Commission, December 10, 1976, 61. The FTC described the strategy as a "highly developed and successful sales pitch . . . undermining the natural sales resistance and forcing the individual to prove his or her worth to the salesperson, instead of the salesperson proving the worth of the course to the prospect." See 148.

⁷² *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, U.S. Congress, Senate, Committee on Health, Education, Labor, and Pensions, 112th Congress, 2nd Session, 2012, S. Prt., 2648.

- An institutions claiming to be public would need to show that (a) its employees are government employees; (b) its liabilities are fully payable by the state or local government to which it is affiliated; and (c) it is subject to the same financial oversight and public records laws as the state or local government.

Protecting nonprofit assets and students. AB 1342, by Assemblymember Evan Low of Cupertino, would require the attorney general's review and approval for any sale of a nonprofit educational institution to a for-profit entity, to prevent unjust enrichment and protect student and community interests.

Closing the 90–10 loophole. AB 1343, by Assemblymember Susan Eggman of Stockton, would require schools to either derive no more than 85 percent of their tuition revenue from state and federal grants and loans, or dedicate not less than 50 percent of tuition revenue to student instruction.

Oversight of out-of-state online colleges. AB 1344, by Assemblymember Rebecca Bauer-Kahan of Orinda, would require any out-of-state institutions enrolling California residents to inform the BPPE about certain law enforcement or accreditor actions. If the BPPE, in consultation with the Attorney General, determined that the school posed a substantial risk to Californians, the BPPE could revoke the school's authorization to enroll California residents.

Incentive compensation. AB 1345, by Assemblymember Kevin McCarty of Sacramento, prohibits commission-paid recruiting by schools, expanding on the federal prohibition by clearly prohibiting the use of sales quotas, and preventing schools from evading the ban by paying contractors a percentage of tuition for bundled services that include recruiting.

Helping students when schools close. AB 1346, by Assemblymember José Medina of Riverside, provides for the state's tuition recovery fund to restore victims' economic losses beyond the cost of tuition.

Stop the Repeating Cycle

Schools that are operated as for-profit businesses can provide a quality education at a fair price, respecting their students' needs and legal rights, and counseling prospective students honestly and responsibly. Unfortunately, when federal entitlements are the source of funding, for-profit schools frequently trample students' interests instead. Called to task, the companies sue, claiming a property right to a continuing flow of tax dollars into their coffers. Investors make out like bandits, while student loan borrowers discover their training did not pay off.

Every decade or two lawmakers learn about the hazards of dangling nearly unlimited government funding in front of for-profit colleges. When the abuses occur, lawmakers are shocked and outraged, and eventually they take action. Then, when the abuses are less severe, they relax the oversight, often despite warnings from consumer advocates. Abuses return with a vengeance, and the cycle repeats.

President Trump and Secretary DeVos are in the process of repealing important guardrails and weakening enforcement. I urge you to do all you can to protect veterans and other consumers from predatory schools by strengthening the guardrails that steer for-profit colleges to do what's best for students, not just what inflates the stock price or maximizes short-term profits. I have laid out a number of policy directions that you could consider, and you may have additional ideas. I look forward to your questions and to the discussion.

Mrs. DAVIS. Thank you very much, Mr. Shireman.

Under Committee Rule 8(a), now we are going to question our witnesses under the five-minute rule. I will start, and then followed by Chairman Levin, Chairman Takano, and Representative Lee.

Chancellor Oakley, if I could start with you, please, we greatly appreciate that you are joining us. The California Community Colleges is the largest system of higher education in the country, serving 2.2 million students, and our institutions like Grossmont here ensure that our students, in particular our student veterans, have the supports that they need to achieve academic success.

As Chancellor for all 115 community colleges in California, we know you have a lot to share with us.

Could you start by just talking—and anytime you say “history,” you know it is going to be more than just a quickie. But I wanted you to talk just a little bit about the California Community Colleges system, why it was founded and what is its mission.

Mr. OAKLEY. Well, thank you for the question. The California Community Colleges were founded—originally, our first college was Fresno City College in the early 1900s, and it was founded to provide greater access for students throughout the state, throughout the country.

The history of the community colleges in California is very similar to the history of the community colleges in the nation. It was founded to provide greater access to more Californians and more Americans more broadly. Many Americans, particularly those who were coming to California, still had very limited access to higher education institutions, and then more broadly when the master plan for higher education was created in the 1960s, the California Community Colleges were given a direct mission to serve the workforce needs of California, to serve as a preparatory place to transfer students to our four-year university systems, the CSU, the UC, and our private non-profits.

Today, it provides the greatest access possible. We have the great privilege because of our mission to serve the top 100 percent of students. You do not have to buy your way into the California Community Colleges. You do not have to take a picture on the crew team to get into the California Community Colleges.

[Laughter.]

Mr. OAKLEY. You get to be in the California Community Colleges regardless of what your background is. That is the greatest part of our mission, is to provide access in places like Grossmont, to provide access to a community, whether it is your first time going to college or it is your third or fourth attempt to go to college.

Mrs. DAVIS. Could you then speak to the oversight of the community college system? What does that look like? Do you have to meet state and Federal requirements?

Mr. OAKLEY. Yes. The oversight has many layers. Because we are a public system of higher education, we are subject to all the rules and regulations of any public institution in the state of California.

So, for example, here in the Grossmont Community College district, there is direct oversight by the community through the elected members of the Board of Trustees. Each of our 73 districts has

members who are either appointed in one case, or in 72 others elected directly by the members of the community that the colleges serve. That is direct accountability and oversight.

We also have my office and the Board of Governors for the California Community Colleges, which oversees regulation, appropriation for the community colleges. We work with the governor and the legislature to ensure that our colleges have the greatest access possible and the highest quality education possible through promulgating regulations and supporting legislation.

Our fees are set by the California state legislature. They are not set locally. We have the lowest tuition in the country—\$46 per unit—by far. And Federally, we fall under the same rules as any other public system of higher education. We access Pell for our students and follow all the rules and regulations regarding Pell, as well as all of the other—well, formerly some of the gainful employment regulations as well, as well as Title 9 and every other regulation promulgated by either Congress or a state legislature.

Mrs. DAVIS. Thank you. I appreciate that.

Mr. Shireman, could you just talk to us a little bit about for-profit institutions and whether or not they follow the same oversight at the Federal and state level as community colleges?

Mr. SHIREMAN. Yes. The oversight is very different at for-profit institutions. There is no public body, no elected or appointed entity that actually controls that budget. The control of the pricing, spending, any revenue generated that might be above and beyond what is spent, where that can go, they have complete freedom with that money. That is a positive word, freedom. That is a good thing about capitalism. It also is what creates these dynamics where the less you spend on the education, the more you as an owner of that college, the person that controls it, can pocket for themselves. I am sure that Mr. Oakley could make a lot of money if he could do that at the community colleges, but that is not allowed at public institutions or at non-profit institutions, and it is those totally different rules about how you can use your money, the fact that at non-profit institutions the money all has to go back into the institution and cannot be extracted, that is what causes the behavior to be so different, why we have the bulk of the abuses in the for-profit sector.

Mrs. DAVIS. And we know that the state assembly recently passed a series of bills, a package of bills really, on the gainful employment rule, and certainly to close the 90/10 loophole.

Just to follow up with you, Mr. Shireman, for a second, why did the state legislature see the need to increase that accountability for for-profit institutions? I think in many ways we have already talked about that, but specifically why did they feel a need to really

Mr. SHIREMAN. So, a year or so ago there were some discussions about some legislation like that, and they decided to wait and see what is happening at the Federal level. There was some indication that this Administration might roll back rules and regulations at the Federal level. That has now become very, very clear that most of the guardrails at the Federal level are being pulled back, the enforcement.

So the California legislature feels that it is time, that if the Federal Government is not going to do its job in terms of overseeing

student loans, the GI Bill, that the state needs to step in and have its own version of a gainful employment rule, make sure that we do not have fake non-profit and public institutions, that we close the 90/10 loophole, strengthen incentive compensation.

Mrs. DAVIS. Thank you. We will probably be talking a little bit more about that.

Mr. Muth, are the veteran groups supporting that legislation?

Mr. MUTH. They are, and I think the reason is pretty clear, that these kinds of protections implemented by the state are going to take the target off the backs of veterans to some extent. I think that is one of the driving problems, that we have incentivized bad behavior at the Federal level. So some of these schools are going to engage in that bad behavior, and so the purpose of, I think, this legislation is to try to curtail some of that.

Mrs. DAVIS. Thank you very much.

I do have a letter from Assembly Member Chu and other Members just taking a look at that and why they felt it was necessary to create that.

And, if I may, for those of you in the audience, we usually go along with this five-minute rule, so you are trying to talk very fast and ask all of your questions, and they kind of extended me. So I wanted to just get very quickly to Ms. Rodriguez, briefly.

You have shared some of your transition to civilian life, but I just wanted to ask you as well about how you decided to go back to school, and you touched on this a little bit. But maybe just share with us, in addition to what you mentioned, which is some homework for us actually, what the greatest challenge is, and what is it about your experience that helped you to address it.

Ms. RODRIGUEZ. Thank you for the question. My transition was more mental. When you are transitioning out, you literally have to recreate yourself. When you are trying to find what school you fit in or what fits for you, you do not really know how to choose, and you are going about the counselors and the employees at the school to help you and guide you, but sometimes not everybody knows exactly what they want to do. So then they go and they do these four-year routes, and then they change their minds.

But for me in particular, I did not know I wanted to make hair cutting a profession. It was fun for me, and I knew that the traditional college experience was not for me, it was not speaking to me. For me, I want to follow my intuition and my passion, so I said, why not? And that is when I found—for me, high quality is very important, and I did a lot of extensive research on which schools to go to, what schools offered what programs, and then I found that Bellus offered a wide variety. And I said, why not? Instead of just choosing one thing, they have more things that I can choose from. Who knows?

Mrs. DAVIS. Right, and they absolutely fit your need.

Thank you so much, all of you.

I am going to turn now to Chairman Levin for his questions. Thank you.

Mr. LEVIN. Thank you, Chair Davis.

Thank you all for sharing your testimony with us this morning. I really appreciate it.

I wanted to dig into several items that you raised, Professor Muth, both in your written testimony and then that you reinforced here.

The Colmery GI Bill included funding to make veterans impacted by school closures whole, at least that was the idea. But because of unscrupulous actors, U.S. taxpayers paid more than \$300 million. That is a pretty stunning figure. And even this funding does not truly make up for the closures, as you stated in your written testimony, and I quote: "We cannot give them back the time and effort they have wasted in pursuit of a worthless degree." And I certainly agree with that.

You also stated that part of the reason for this trend of school closures is variability in oversight across state approving agencies.

So my question for you, my first question for you is: what standards do you think state approving agencies should meet in order to ensure uniformity across the country, and how should those standards be enforced?

Mr. MUTH. Thank you very much for your question. It is a wonderful question. It is a complicated problem.

I think right now the way in which the VA is conducting oversight over which schools will be approved to receive GI Bill education dollars is fraught with problems, and it is specifically in the way they have out-sourced this oversight capacity to state approving agencies, as you alluded to in your question, which allows the VA to point at the state approving agencies to say it is their fault when a bad school is allowed to continue enrolling student veterans, and the state approving agencies turn around and point back at the VA and say, "You have not given us good guidance." And also when you have state approving agencies such as here in California that have a reputation for being more aggressive in protecting the rights of student veterans, the VA has come back and undercut those attempts and essentially allowed those schools to continue enrolling student veterans.

So I think the first step would be we need more uniformity with respect to what are the expectations that the VA is going to set for the state approving agencies. They need to do a better job supporting those state approving agencies. Right now, I believe that they are underfunded. When you look at the tasks of what they are expected to do with respect to approving schools, they are doing it on a shoestring budget, and in reality I think it is a case of an ounce of prevention will solve us a pound of problems later on down the road in the sense that, as you alluded to, \$300 million just for that specific bill to try to solve an issue where veterans were going to schools that they should not have been attending in the first place. If we expand that budget on the front end, hopefully we will be able to ensure that taxpayers are not footing the bill after we have to deal with a devastating loss of a school on the back end.

Mr. LEVIN. Thank you for that.

I wanted to follow up. In your written testimony, I was struck by your discussion of a situation in which a state approving agency performed an audit on a school, and then based on the audit's findings the state retroactively disapproved a school that one of your veteran clients attended, and then the VA informed him that he

would be responsible for paying back his benefits. I know you alluded to that this morning as well.

That is a completely unacceptable situation, a horrible circumstance when you burden a veteran with the cost of their education benefits in this way, and particularly after the failures that you pointed to from the VA and the approving agency at the state level to move forward initially.

So my questions are as follows. Should there be a ban on retroactive denial of benefits to ensure a similar situation does not happen to another veteran in the future?

Mr. MUTH. It is a great question, and actually I described it in the context of that one specific veteran, but this is actually a pretty widespread problem. I have multiple clients who are in this situation where they were enrolled in a school, it was approved at the time they were enrolled, and then all of a sudden the VA comes back after the fact and says you should never have been allowed to enroll in that school. I have had clients who only picked that school because it was approved at the time they enrolled by the VA.

So then the VA has a situation: how do we go back and recover those benefits? And they have a choice, I think. They have a choice. They can either go after the school, which is where I think they should be. Why should the school get to keep its ill-gotten gains? But instead, time and time again, they go after the veteran. Why? Because many of my veteran clients are also receiving disability compensation, so you can simply garnish that benefit, which is designed to ensure they are able to meet their living expenses. And instead, the veteran then at that point essentially has to fight through the interminable process of the VA appeals game.

So the veteran I mentioned in my oral statement, and also in my written testimony, is still in the appeals process that has been going on now for probably roughly two years. We have been able to negotiate with the VA a payment plan so they take less of his 100 percent disability compensation for his traumatic brain injury, but he is still on the hook as of now for those benefits.

Mr. LEVIN. Unbelievable. If they live in my or Susan's district, maybe we can work on that.

Last question for you, and hopefully we will have another round for the others.

Mrs. DAVIS. Yes.

Mr. LEVIN. There was a recent audit conducted by the VA's Office of the Inspector General which reviewed the Veterans Benefits Administration's oversight of state agencies charged with ensuring the quality of education and training programs. The findings estimated that 17,000 students who enroll in the GI Bill program within the next five years will attend more than 5,400, and I quote, "ineligible or potentially ineligible programs due to poor oversight." The VA disputed those numbers, arguing that the data from the IG was flawed.

So my question for you is, given your experience working with student veterans affected by poor quality programs, how would you respond to the VA's assessment?

Mr. MUTH. I think, broadly speaking, the IG got it right. I think if you look at the examples I have laid out just here today where

you had veterans attending schools that should never have been approved, and instead that money has gone to those for-profit schools, and at the back end the VA has then tried to recoup that money from the individual veterans. So I think the IG is correct, and they also identified just broader oversight issues that I think go directly to the heart of this problem. If we do not solve it before the veteran enrolls in the first place, we are going to end up paying for it on the back end. Either it is going to be the taxpayers or it is going to be the individual veteran, and neither one of those options is acceptable.

Mr. LEVIN. Well, I really appreciate your testimony. I yield the balance of my time and look forward to working with you on this for many months and years to come.

Mr. MUTH. Thank you.

Mrs. DAVIS. Thank you.

Chairman Takano?

Mr. TAKANO. Thank you, Madam Chair.

Ms. Rodriguez, can you share with us what you like most about what you are studying?

Ms. RODRIGUEZ. What I like most about where I am currently at with Bellus Academy is the diversity and the culture. For me, being a part of something much bigger than yourself, and then their out-source, so their relationships with other salons, other barbershops are very strong. A lot of those shops are aware of Bellus students and are very accepting for Bellus students to start working at their shops and salons.

And to add, I would say just the passion that everyone carries in that school. Again, it makes you feel like it is not just traditional. This is something that we are all a part of and we are making it better, and they are really invested in their students and their future. The biggest thing for me is providing opportunity. You can talk a good game, but if you can provide opportunity, that is where you catch my attention. So, I love where I am at.

Mr. TAKANO. Thank you.

Mr. Oakley, are you aware of any of your community college districts spending—what percentage would you say their marketing budgets are to market?

Mr. OAKLEY. Well, the California Community Colleges, fortunately, have such an exceptional reputation in their communities that they have to spend very little on marketing relative to their overall budgets. Typically, you know I'll take for example my last college, with a general fund budget of about \$80 million, we are probably spending around \$200,000 to \$250,000 specifically on marketing. This is primarily on marketing to communities within the area that have a hard time gaining information about going to college. So it is relatively small in comparison to other institutions.

Mr. TAKANO. Mr. Shireman, can you comment on the marketing budgets of typical for-profit colleges?

Mr. SHIREMAN. Yes. Typically, a for-profit college's marketing is easily 20, 30, sometimes 40 percent of their total budget, frequently spending more on marketing than on instruction, for example.

Mr. TAKANO. Mr. Oakley, I understand that—I was a Trustee for many years, and California has a 50 percent law, which actually prohibits by law spending more than 50 percent of the college's

funds on administration. Fifty percent at least has to be spent on instruction. Are you aware of any case in the California Community Colleges where more money is spent on marketing and advertising than instruction?

Mr. OAKLEY. No, I am not aware of any situation where that would even come close.

Mr. TAKANO. What would be the reaction of, say, the Board of Trustees or the public if they found out that a college president was doing that?

Mr. OAKLEY. It would be a very difficult reaction for the college president.

Mr. TAKANO. Do you think that if the American taxpayer knew that this is what for-profit colleges typically do, that they would be similarly outraged?

Mr. OAKLEY. I think they would. Clearly, there is a need to communicate with families and students, but to the extent that they are marketing with the budgets that they have just means that they are not putting their resources toward supporting students.

Mr. TAKANO. Thank you.

When Secretary DeVos testified in front of the Education and Labor Committee a few weeks ago, I asked her about the Department's failure to process Borrower Defense applications despite a court order to do so. It was revealed that the Department has failed to process any claims since that court order in October. We know that at least 160,000 applications are pending and that some of these applications are from student veterans who took out loans on top of their GI Bill to pay for their education.

Mr. Muth, you mentioned in your testimony that you have worked with defrauded students whose institutions took out loans in their name unbeknownst to them. How does this happen, and what recourse does a student have to address this?

Mr. MUTH. That is a great question. I think it happens in two ways. One is just out and out fraud, where the student veteran will discover after the fact that there were loans and they had no idea that this was going on, and the challenge there oftentimes is by the time they figure it out, the school might have already declared bankruptcy and there is really not somebody we can go after. And then in that period of time, the other potential way that happens is the student will be induced to sign promissory notes and told these loans are not really going to ever be due to you, it is just a matter of a bridge until the GI benefits come in. So the veteran is signing paperwork, is not paying attention to the dense words, and ends up walking into something they did not have any idea that they were acquiring.

Mr. TAKANO. Have you worked with students who are waiting for their Borrower Defense applications to be processed?

Mr. MUTH. Absolutely. There are dozens upon dozens of those 160,000 that you mentioned that are veterans that our clinic has assisted with filing those applications, and none of them have heard anything back, positive or negative. They are just simply waiting.

Mr. TAKANO. Madam Chair, may I ask one more question?

Mrs. DAVIS. Sure, go ahead.

Mr. TAKANO. Thank you.

Mrs. DAVIS. We have been a little more flexible with this because we are all here and we want you to hear everything that is available to you.

Mr. TAKANO. I am still rapidly trying to say these things.

[Laughter.]

Mr. TAKANO. In the House, we try to move things along.

The VA did not have the authority to restore the GI Bill benefits to defrauded veterans, and so Congress passed the Forever GI Bill to grant that authority. Secretary DeVos already has the authority to process these applications and has failed to do so.

Chancellor Oakley, how does the Department of Education's failure to process these applications affect your ability to serve students who want to pursue their education at a California community college?

Mr. OAKLEY. In California, we have the great fortune of being able to waive fees, waive tuition for needy students, and that is a great benefit. However, the cost of attending college is not the cost of tuition. So access to Federal financial aid is critically important for any of our students to be able to attend college and be able to be successful in college. So this particular challenge makes it much more difficult for student veterans to be able to meaningfully participate in their education.

Mr. TAKANO. Mr. Shireman, as a follow-up, beyond granting relief to students, what other protections were included in the Borrower Defense rule to better monitor institutions?

Mr. SHIREMAN. The Borrower Defense rule in addition included prevention efforts. Some of those had to do with warnings to accreditors and the Department of Education when there are lawsuits, other kinds of actions that are indicators of problems at schools; also some warnings to students. But I think one of the most important in there had to do with students' legal rights. Mr. Muth mentioned all that fine print that a student signs when they are enrolling in a school at that moment when they are excited about this education that they are going to take, about this future that they are planning for themselves. They sign all those pages and pages. Usually at for-profit schools, but not at public and non-profit schools, hidden in that fine print is something called a forced arbitration clause, a pre-dispute arbitration clause and other provisions that basically say if you have a complaint, you have to come to us first, you cannot complain jointly with other students, and you have to arbitrate and not go to court.

All of this means that when there are complaints and problems, students do not get the benefit of knowing that other students have had similar situations where they felt misled, and then regulators do not get information about what is actually happening at the school until it has been going on for years and somebody finally finds a lawyer who is willing to try to challenge the arbitration provisions.

So prohibiting that kind of pre-dispute arbitration with regard to Federal aid I think is one of the most important elements of the Borrower Defense rule, and that is threatened by this current administration that does not agree with that.

Mrs. DAVIS. Yes. Thank you very much.

Representative Lee?

Mrs. LEE. Thank you, and thank you all for your testimony.

I come from Las Vegas, Nevada, where in Nevada we have 220,000 veterans, in my district alone 50,000. I am also the product of, the daughter of my father, who was a veteran who got his education quite successfully with the GI Bill and went on to raise a family of eight. So the GI Bill and its intent does produce great results when it is used the way it was intended.

Mr. Shireman, I wanted to talk to you a little bit about governance issues, particularly when it comes to for-profit colleges, as well as the accrediting agencies. So many times I have found that the accrediting commissions end up having a majority representation of for-profit presidents, vice presidents, people who have a fiduciary responsibility to their for-profit institution. They then serve on these accrediting agencies.

I wanted to ask you, my concern is how can we mitigate against any individual accrediting agency or commission whose boards are comprised of these individuals, especially if they are attempting to oversee pretty much themselves? Is it your recommendation that we should have stricter standards or guidelines on who sits on these boards?

Mr. SHIREMAN. I think with regard to for-profit schools, as you said, they are very different when it comes to who they have a responsibility to, and we know that in education sometimes the thing that brings in the most money or the most students is not what is right for the community and not what is right for students. So it becomes very difficult, maybe impossible, for a board of an accrediting agency made up of school owners to impose requirements that will undermine the bottom line of the institutions by suggesting, for example, that maybe they should spend more on instruction, maybe they should have more full-time faculty rather than adjuncts, maybe they should give the faculty a voice in the academics even though that involves some process and some academic freedom, maybe they should spend less on instruction, maybe the owners should take less of the profits, all of those kinds of things that are a direct conflict of interest of the people who are running the accrediting agency.

You do not have that situation with public and non-profit institutions. It would be far better if the accrediting agencies for for-profit career schools had employers that were on the boards that were running them, who could vouch for, we are getting great employees trained by these schools, we as employers are putting money into these schools, we believe in them. That would be, I think, a powerful change, and it is up to Congress to decide.

The national accrediting agencies that we have were created because of what is allowed by the Federal Government. They did not pre-exist the Federal use of accrediting agencies. So if Congress were to change what qualifies to be an accrediting agency, they would follow suit and I think we would have better oversight from accreditors.

Mrs. LEE. So is it your recommendation that you have no representation of for-profit schools on these agencies?

Mr. SHIREMAN. I think the nature of boards is they tend to kind of operate in a—they tend to kind of defer. They do things unanimously. And when someone has a fundamental conflict of interest

like that, I think it makes sense to bring input from for-profit investor schools' owners, but I am not sure that being on the board is the right way to have that input because of that fundamental conflict of interest.

Mrs. LEE. Yes. It is like a self-regulating issue.

Mr. SHIREMAN. Exactly, yes.

Mrs. LEE. Just one other question about your work on what you call the covert for-profits, for-profit institutions that then have converted to non-profit tax status. I represent the Art Institute in my district, and there has been a lot of confusion about whether or not this is going to become a non-profit institution.

Can you expand on your work and elaborate how the incentive structures are different for for-profit institutions in comparison to public and private non-profit institutions?

Mr. SHIREMAN. Sure. The two fundamental differences between a for-profit and non-profit is at a non-profit you have to put the money back into the institution. It cannot be extracted. And secondly is the control. The control has to be in the hands of what we think of as trustees who are there acting on behalf of the community and the students. Those differences completely change how the—I think some people think, well, what is the big deal if you take 8 or 10 percent off the top for some profit? But that is not the point. The point is that the DNA of the institution is different, so the behavior is different, in much the same way that the behavior of a bobcat is different from the behavior of a tomcat. They are both cats, but one is much more dangerous than the other one, and that is because of that fundamental difference in their control mechanisms.

What we have seen happen with these covert for-profits is that they are basically taking a shell non-profit and inserting the DNA of a for-profit. The folks who had been in control of the prior for-profit have a contract or they own the property. They figure out how they can have people on the boards who basically are funneling money back to them, and it is undermining the integrity of non-profit control.

The reason we call it tax status is that we had this good situation in the country where it just so happened that it was the IRS that was the one doing a good job of enforcing the integrity of non-profit status, and that has been undermined by budget cuts at the IRS, so they are basically not doing it anymore. So we have to figure out something else so that we can use non-profit and public status as the effective guardrail that it has been.

Mrs. LEE. Thank you.

Before I yield my time, I just would like to ask unanimous consent to enter into the record a letter from 20 Attorneys General, including the AGs from Nevada and California, on the role that Attorneys General play in consumer protection and their deep concerns about these for-profit conversions.

[The information referred to follows:]



**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

April 22, 2019

Chairman Bobby Scott
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

Dear Chairman Scott:

We, the undersigned Attorneys General of Maryland, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nevada, New York, North Carolina, Pennsylvania, Oregon, Virginia, and Washington write to thank you for your Committee's interest in the important topic of protecting our student veterans. We also write to bring your attention to two issues: first, the role of State Attorneys General in protecting students, including student veterans, from abuses by for-profit colleges, and second, the growing problem of for-profit schools converting into purportedly "non-profit" institutions while maintaining profit-making arrangements with the former for-profit company.

The Role of State Attorneys General

In recent years, State Attorneys General have investigated and brought enforcement actions against multiple for-profit schools. These investigations have revealed widespread abuses in the sector. Despite clear evidence of predatory conduct, the Department of Education has actively dismantled federal regulation of for-profit colleges, including regulations that guarded against abuses and ensured that schools did not receive federal funds for low-quality programs. Moreover, the Department has refused to help defrauded students obtain federal loan forgiveness, failed to institute protections for students of for-profit schools that abruptly close, and limited the sharing of student loan information with Attorneys General, which had been vital to state efforts to protect consumers from illegal, unfair, abusive, or deceptive practices in the higher education industry.¹

Attorney General investigations and enforcement actions have revealed that veterans are a special target of for-profit schools' marketing due to the "90/10 Rule," a federal law that prohibits for-profit schools from relying on federal student aid funds for more than 90% of revenues. Because of a loophole in the 90/10 Rule, GI Bill and other veterans' benefits are not considered federal student aid funds. This provides a strong financial incentive for for-profit schools to enroll

¹ On April 4, 2019, twenty-one Attorneys General wrote a letter to Secretary DeVos renewing their call to the U.S. Department of Education to reverse the limitations imposed on the Department's routine disclosure of student loan information to state law enforcement agencies.

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veterans.² As a result, for-profit schools often target veterans with high-pressure and deceptive sales pitches, leading veterans to enroll in for-profit schools at disproportionate rates. Veterans are also disproportionately harmed by the widespread abuses, low-quality programs, and frequent abrupt closures plaguing the sector. For example, thousands of veterans' educations were disrupted by the abrupt closures of for-profit chains in recent years.³

Some recent examples of Attorneys General actions include:

1. Career Education Corporation – Forty-nine Attorneys General settled in January 2019 after an investigation revealed that the school deceived students about the total cost, transferability of credits, potential to get the necessary license for certain jobs, and the number of students who got jobs in their field of study. The school agreed to provide \$493.7 million in nationwide debt relief and to make substantial reforms to its recruiting and enrollment practices.
2. Dream Center Educational Holdings, LLC ("DCEH") (operator of the Art Institute, Argosy University, and South University) – In March 2019, DCEH announced that it was immediately closing all Argosy University campuses and many of its South University and Art Institute campuses, disrupting the education of thousands of students. Prior to the closure, Attorneys General discovered, and the school later admitted, that it deceived students and prospective students about the loss of accreditation by its Illinois Institute of Art and Art Institute of Colorado campuses, resulting in students paying for worthless credits. Attorneys General were also some of the first to learn and raise awareness about DCEH's misappropriation of \$13 million dollars of federal student loan money and veterans' benefits that the school should have distributed to students. State Attorneys General are negotiating with the school to create a corrective action plan to remedy the accreditation misrepresentations and have played an integral role in providing direct, timely outreach to former Argosy students, via both email and regular mail, regarding their ability to receive discharges of their federal loans. Because veterans are heavily recruited by many for-profit colleges, they, too, are disproportionately hurt by closures.⁴
3. Education Corporation of America ("ECA") – In December 2018, ECA, after its accreditation had been withdrawn, suddenly closed its 75 campuses in 18 states that enrolled approximately 20,000 students. The school had a history of poor student outcomes, including high debt and low earnings of its graduates (only 30 of the 193 programs evaluated under the Gainful Employment Rule passed) and loan default rates that in some cases were double or triple the

² In fact, for-profit colleges have been among the top recipients of military educational benefits. In the 2012-2013 academic year alone, for-profit educational institutions received \$1.7 billion in GI Bill benefits. See Senate HELP Committee; <https://www.help.senate.gov/ranking/newsroom/press/two-years-after-harkin-report-revealed-questionable-business-practices-in-for-profit-college-industry-new-analysis-shows-for-profit-colleges-are-top-recipients-of-post-9/11-gi-bill-dollars>

³ See *Why ITT Closing Hits Veterans Hardest*, James Briggs, IndyStar, Sept. 6, 2016;

<https://www.indystar.com/story/money/2016/09/06/why-veterans-have-most-lose-if-itt-tech-closes/89710280/>

⁴ One example is Kendrick Harrison, a disabled Army veteran who fought in Iraq, who was encouraged by the recruiter at Argosy University to quit his job so he could focus on his studies. He relied upon GI Bill benefits to cover rent and other living expenses while attending school and is now being evicted from his home because of DCEH's misappropriation of the stipend money. See *Abrupt Closures, Upended Lives: When colleges shut down, families are devastated*, The Chronicle of Higher Education, April 12, 2019, at A17; located at <https://www.chronicle.com/interactives/20190404-ForProfit> (also stating that about 22,000 GI Bill recipients were enrolled at for-profits when the colleges shut down between 2014 and 2018).

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national rate. State Attorneys General are in communication with the individuals tasked with the wind-down of the business to improve the process and outcome for students.

4. Ashford University – The California Attorney General sued Ashford and its corporate parent, Bridgepoint Education, Inc.⁵ in November 2017 for violations of the state’s unfair competition and false advertising laws and for its illegal debt collection practices. The complaint alleges that the school’s salespeople made a wide variety of false and misleading statements to prospective students. Those statements related to how much financial aid its students would receive, how many prior academic credits would transfer into the school, and the school’s ability to prepare students for careers in fields like social work, nursing, medical billing, and teaching. In 2014, Ashford and Bridgepoint agreed to pay \$7.25 million in a settlement with the Iowa Attorney General to resolve claims that the school made false and misleading statements to prospective students.
5. ITT Technical Institute – A group of Attorneys General investigated ITT for recruiting and financial aid abuses, which included ITT misrepresenting the true cost of attendance and hiding the total amount of student loan debt that its students would incur. ITT abruptly closed its 139 campuses and filed for bankruptcy in September 2016. The Attorneys General continue to work with the estate to obtain debt relief for the tens of thousands of students affected by the school’s collapse.
6. Corinthian Colleges, Inc. (“CCI”) – In March 2016, the California Attorney General obtained a \$1.1 billion judgment against CCI related to its targeting of low-income, vulnerable students and veterans through deceptive and false advertisements and aggressive marketing campaigns that misrepresented job placement rates and the outcomes related to the school’s programs. Although the Department of Education determined that tens of thousands of CCI students deserve cancellation of their federal student loans and restoration of their veterans educational benefits, Secretary DeVos has refused to meaningfully implement that relief.
7. Education Management Corporation (“EDMC”) (prior operator of the Art Institute, Argosy University, and South University) – In November 2015, forty Attorneys General settled allegations that recruiters misled prospective students about the cost of attendance, used deceptive and high-pressure recruitment tactics, and promised that graduates would earn substantially higher incomes than graduates earned. In the settlement, EDMC agreed to revise its recruitment practices and cancel \$103 million in debt nationwide. Also, in 2013, the Colorado Attorney General’s Office settled its law enforcement action with Argosy for deceptive practices tied to its education graduate program. Argosy promised the degree would prepare students to become licensed psychologists in Colorado, when it did not. Under the settlement, Argosy reimbursed 100% of tuition paid by the affected students in Colorado.
8. Westwood College – In 2015, the Illinois Attorney General’s Office settled its lawsuit with Westwood College for various deceptive practices, including misrepresenting the accreditation and cost of its criminal justice program. Under that settlement, Westwood forgave \$15 million in private student loan debt, affording more than 3,600 former Westwood College students an average of more than \$4,200 in relief. Westwood College closed soon after the settlement. In 2012, the Colorado Attorney General’s Office settled its law enforcement action with Westwood for various deceptive practices, including misrepresenting job placement rates to prospective students, which resulted in Westwood forgiving \$2.5 million in private student loan debt.

⁵ In an apparent attempt to rebrand itself, Bridgepoint Education, Inc. announced on April 2, 2019 that it was changing its name to Zovio, Inc.

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9. QuinStreet, Inc. – In 2012, twenty state attorneys general settled with QuinStreet regarding its operation of GIBill.com, a lead generation website that falsely gave the appearance of an official website for the Department of Veterans Affairs that purportedly offered advice to veterans on how to use their educational benefits but included a short list of for-profit schools as the only choices. As part of the settlement, QuinStreet was required to turn the website as well as 18 other domain names, including GIBillAmerica.com and ArmyStudyGuide.com over to the VA.

The Need for Accountability in For-Profit School Conversions into Faux Non-Profits

There is a troubling trend of for-profit colleges converting to non-profit status while enabling the individuals on the non-profit governing bodies and/or the owners of the for-profit companies to continue profiting from the schools. This arrangement maintains the incentive for the non-profit company to use the same predatory recruitment and retention tactics that it used as a for-profit company, while allowing it to evade state and federal laws that are aimed at curtailing those practices. These schools are non-profit in name only but use that name to shed the self-created marketing stigma associated with for-profit colleges. Although there are many examples of such conversions, one recent and one pending conversion are described here.

Grand Canyon Education, Inc. (“GCE”) and Grand Canyon University (“GCU”)

In 2018, GCE, a publicly traded for-profit company, created a new non-profit entity that purchased GCU for \$800 million. To finance the purchase, the non-profit GCU took out an interest-only loan from the for-profit GCE and signed a contract with GCE for it to provide services such as “recruiting, counseling, human resources and marketing” to the non-profit GCU in exchange for 60% share of the tuition, fees, and other revenue earned by the school. The non-profit is locked into this contract because it can only terminate if it pays off the entire \$800 million loan balance plus pays one year of service fees. The CEO of the non-profit GCU is also the CEO of the for-profit GCE, thereby ensuring that the school is operated in a way that maximizes profits for the owners of the for-profit company.

Bridgepoint Education, Inc./Zovio, Inc. and Ashford University

In March 2018, Bridgepoint/Zovio announced its intention to convert Ashford University, its large national online school, into a non-profit company. Bridgepoint/Zovio has announced to its investors that following the conversion, the company will serve as Ashford’s “program management vendor” with a revenue sharing agreement that provides at least 60% to 65% of Ashford’s income to Bridgepoint/Zovio. All of the decision makers who approved this deal are employed by Bridgepoint/Zovio. Furthermore, Bridgepoint/Zovio has no prior experience providing services of any kind to a non-profit entity and there is no bid or competition process to allow any other companies to compete to provide services to Ashford at a cheaper rate. This arrangement ensures that the school will continue to operate for the financial benefit of Bridgepoint/Zovio, not for the benefit of the non-profit school’s educational mission or for the benefit of its students. On September 5, 2018, fifteen Attorneys General wrote a letter to Ashford’s accreditor urging it not to approve the conversion, which is still under consideration.

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We appreciate the opportunity to convey our concerns, and we urge the Committee to consider these issues in negotiations related to the reauthorization of the Higher Education Act. We would be happy to provide any additional information or answer any questions.

Sincerely,



Brian E. Frosh
Maryland Attorney General



Karl A. Racine
District of Columbia Attorney General



Xavier Becerra
California Attorney General



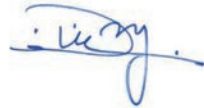
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Joshua H. Stein
North Carolina Attorney General



Dana Nessel
Michigan Attorney General



Ellen F. Rosenblum
Oregon Attorney General



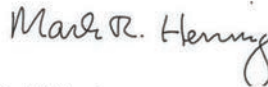
Keith Ellison
Minnesota Attorney General



Josh Shapiro
Pennsylvania Attorney General



Aaron D. Ford
Nevada Attorney General



Mark R. Herring
Virginia Attorney General



Letitia A. James
New York Attorney General



Bob Ferguson
Washington State Attorney General

Mrs. DAVIS. Thank you very much.

Mrs. DAVIS. We are going to do hopefully a no more than five-minute second round here. Actually, it is nice not to feel so rigorously watching the clock, because there is a lot to say, and you all have been terrific.

We know that students at for-profit institutions are likely to take on more debt, default on that debt, and not complete their degrees. We also know that the Obama Administration took an important step to provide more information to students about student outcomes at institutions across the sector, and that is important for any student and any family that is looking at the opportunities for their son or daughter. So this is important information, I think, to students about student outcomes at institutions across a number of sectors.

So I think we can do a lot in this area, and you have talked a little bit about how much money some of the for-profits spend on advertising versus on instruction and those issues.

Mr. Shireman, would removing the ban on collecting student-unit record-level data, would that help students make more informed choices? And how could that help Congress provide better oversight of for-profit institutions as well?

Mr. SHIREMAN. I think removing the ban would help produce a lot of useful data. In some ways it may not be directly helpful because there is so much information that students get that they have a hard time processing it all and comparing everything. But when those kinds of data are available to counselors and experts who can study it and look at what are the patterns, what is working, what is not working, what are the signs that you have churning going on at a school, students borrowing and then replacing, we would get much earlier warnings on those kinds of problems and be able to better analyze what is happening and take action sooner. So it would absolutely help students directly, and also indirectly by helping the field of advisers and educators and researchers.

Mrs. DAVIS. Would anybody else like to comment on that? This is important information. Sometimes you can put so much information into one of these so-called report cards that maybe confuse people, but there are certain things that are really critical and important. What would you say?

Mr. MUTH. Yes, Chairwoman. Thank you for the opportunity. I agree with Mr. Shireman that I think this increased access to consumer protection information is important for individuals who are trying to make a wise decision as to how to use their GI benefits, although I do think there is an important role for regulators because there is a danger that somebody who is leaving active duty, particularly in the context of a student veteran, is going to be simply overwhelmed by the volume of data.

And also I think it is important to understand what that data means in context. So we can provide all the data we want, but if we do not help provide tools for young students or student veterans who are going to try to use that data, I am afraid there could be a danger that it is just simply too much. But I do think, at the end of the day, it would be an important piece of information for consumer advocates, and also for students trying to make a wise investment.

Mrs. DAVIS. Thank you.

Ms. Rodriguez, we certainly again appreciate your personal story today, and we also know—I think, Mr. Muth, you mentioned it, and I think everybody did—that we have students attending today for-profit and not-for-profit schools that are not necessarily traditional students. They may be married, they may be needing housing in a different way, taking care of children, needing child care. So when they lose benefits, when they put out their GI benefit and it has not done what they needed it to do, and, in fact, it has really hurt them, what are the supports that are needed for those students? How should we best address that?

Ms. RODRIGUEZ. That is a great question. I think when—my personal opinion, when I was in the military, I have always tried to put input on Marines, or just in general service members that are transitioning, more that mentorship, and I feel like a lot of active-duty military, they are so—hey, stay in, stay in, stay in, and then you forget about you. You forget about what you want and what you need. And then what happens is you are so committed to finishing your term or your enlistment, and literally days before you are about to get your EAS, it is like, okay, now it is me, and you

really do not know what to do, you do not know what choices to make.

So what I think is on both ends, active-duty sector and leadership in general, be more in-depth and more one-on-one with each and every service member as far as what they want to do, maybe providing options as far as, hey, this is who you are, I see that you are very strong in this, and I see that you are pretty weak in this, but maybe this would be better for you, and really setting out a plan instead of pushing them.

I took the Transition Assistance Program two times because of how overwhelming it was, and because I wanted to be prepared. I wanted—who does not want to be successful? But I think just being more intact and who am I leading and how can we get them to the next step. That is what I would say.

Mrs. DAVIS. Thank you very much.

I want to thank all of you again.

We are going to go to Chairman Levin now.

I personally just greatly admire the fact that you have all been here and doing the work that you do today. Thank you.

Mr. LEVIN. Thank you.

Ms. Rodriguez, I wanted to say I am honored that you are one of our constituents in the 49th district in Oceanside. I hope that when you open your barbershop next year, I hope that you open it in the 49th district, and I would like to be there to cut the ribbon. I would also like to introduce you and all the veterans in our district—that applies to Professor Muth as well—to Andy Ortega from our Oceanside district office. It is really important to me that we had a veteran in the district office to serve the veterans in our community, and I am grateful that Andy is doing that for us.

I think I speak for everyone here when I hope that all veterans have the opportunity to do what they want to do, as you are doing. In your testimony you expressed that the Transition Assistance Program can be overwhelming, to the point where you did it twice, and stressful given the volume of information.

Our committee, the Veterans' Affairs Committee, is working on legislation to create off-base transition assistance programs, and I wanted to ask you about that. The goal of the legislation is to make the transition process easier for service members by giving them more time to access resources and to digest the information while living in their new community off base.

So in your mind, with the option of attending off-base transition assistance, would that have benefitted you or your peers in similar situations? And what advice can you share with us as we work to develop this program?

Ms. RODRIGUEZ. I think off base or on base would be effective, and then I think the biggest thing is digesting the information. The amount of information that is given is valuable, very valuable. There are tons of resources that are offered, if you know what you want to do. But when you do not, it is not.

I would say yes and no to off and on, because it is not a matter of making more. It is how can we make better what we have now, and kind of switching that up maybe, and how effective that is. But whether there is more or less, it can equally be effective, in my opinion.

Mr. LEVIN. Fair enough. I appreciate that.

Mr. Shireman, I wanted to get to a couple of things that you said in your written testimony where you detailed how predatory schools manipulate the cohort default rate by placing students into temporary forbearance during the three years in which defaults are monitored, really unbelievable.

How can we prevent this gaming of the system, and should the cohort default rate be altered so that students in forbearance are included?

Mr. SHIREMAN. Yes, this is one of those situations that seems to happen a lot where you create a measure, and then the industry responds to the measure by finding ways to kind of figure their way around it. We started with a two-year default rate, basically a snapshot after two years of how many people had defaulted, and discovered that it was a bit too easy for schools to kind of push students, because default takes 270 days, and they just push them a bit further, push them past that two years. Then a few years after that two years, Congress recognized we need to change that, changed it to three years, and now we are seeing the same thing happen again. So I think we do need to see some underlying changes to the default rate to prevent some of the gaming count forbearance.

The Institute for College Access and Success has made a number of recommendations about improvements to the default rate measure. I think that is important.

I think at the same time we should not reject it. I have heard some people say, well, it has not caught many schools recently, but I think a high default rate at a school with a lot of borrowers is still a warning sign. I think we need to know right now that a low three-year rate is not a green light. Until we fix it, we need to keep that in mind, but maintain it and improve it as a measure.

Mr. LEVIN. Thank you.

I have one final question, with forgiveness in advance.

Mr. Oakley, House Veterans' Affairs is committed to reducing veteran suicides, something we take very seriously, to ensure all service members have the access to mental health services that they need. We have a variety of legislative proposals in that regard. Prevention not only consists of comprehensive health care but also setting veterans up for a successful transition as they leave the service.

A 2011 survey found that almost half of veterans at colleges and universities in the U.S. reported thinking about suicide.

So my question for you, Chancellor, is: how is suicide prevention a top priority for you, and how do your colleges address suicide risk for students, and in particular veterans?

Mr. OAKLEY. Thank you for the question. It is an unfortunate state of the situation that we find ourselves in, but I think there are several things we are doing as a system and as a state.

First and foremost, it is important to remember that our veterans were driven by mission, the opportunity to understand what their mission is on a daily basis, on a weekly basis. They are driven by mission. So when we separate them from that mission and they are trying to figure out what is the next mission, that is a hard transition. We need to do more to ensure that we capture those vet-

erans early, get them into our institutions, give them the support that they need, and help them understand what their next mission in life is.

The second thing is we have created veteran resource centers throughout our system. The California state legislature has provided funds to our system to provide specifically mental health services, which are sorely needed by our veterans. Many of them are coming from combat situations. They are trying to make a very difficult transition, and they need access to quality mental health services. So we are trying to provide that.

In addition, our veteran resource centers are providing them guidance, support, camaraderie, helping them ensure that we can keep moving them forward.

So those are some of the ways we are working with our state legislature. We need more support for mental health services. This is just a drop in the bucket considering the issues that our veterans come with, so we would certainly continue to advocate for more resources to help our veterans with mental health issues. Thank you.

Mrs. DAVIS. Thank you.

Chairman Takano?

Mr. TAKANO. Thank you, Madam Chair.

Secretary DeVos is actively reducing oversight of higher education institutions. In my opinion, this threatens veterans and non-veterans alike.

Mr. Muth, if the 90/10 loophole is not closed and Secretary DeVos does not uphold gainful employment regulations, what would it take for an educational institution to lose eligibility to receive Federal dollars?

Mr. MUTH. It is a great question. I think the major problem with not having gainful employment and a 90/10 loophole still in existence is it puts a target on the backs of veterans, particularly with respect to the 90/10 rule. It incentivizes recruiters to go seek out veterans to be able to offset that 10 percent of the 90/10 that they need to fix.

So at that point, if you stop enforcing any of these regulations, it makes it almost impossible for a school to actually be precluded from receiving GI Bill benefits, especially when that is combined with the current Administration's Department of Education's unwillingness to hold accreditors accountable. That was something that was taken into affect at the end of the previous administration, where they were going to hold accreditors such as ACICS, who has been responsible for accrediting a number of these schools that have been problematic. And now, by letting them off the mat to continue to accredit schools, it creates a scenario where it is really the wild west. There is no reason for these schools —

Mr. TAKANO. Well, I see it as a vicious circle, an unvirtuous circle. It would incentivize targeting of veterans, so it would count toward the 10 percent. It would increase and enlarge that institution's ability to then begin to prey upon low-income students on Pell grants. It just means the mal-education of a wider swathe of people.

Mr. Shireman, if gainful employment protections are not kept in place, do you expect more for-profit institutions to target prospec-

tive veteran students without concern about the quality of education they are offering?

Mr. SHIREMAN. I think that is what happened. We saw a lot of schools said the gainful employment rule did help them to pay more attention to the actual outcomes of their students rather than just the ones they were using in their marketing and advertising, and that prompted them to analyze how they were helping students get good jobs and the amounts that they were charging and the links of their programs, and they revamped a lot of that. I think without the gainful employment rule, we would see the recruitment of veterans into programs that then become more like they were before GE, with longer programs, higher costs, and lower quality. It is that quality that helps people get the jobs that bring financial security.

Mr. TAKANO. Thank you.

Madam Chair, I ask unanimous consent to enter a letter for the record from the National Student Legal Defense Network about the need for Secretary DeVos to fully implement the gainful employment rule to better protect students and taxpayers.

Mrs. DAVIS. So ordered.

[The information referred to follows:]



1015 15th St. NW, Suite 600
Washington, DC 20005
www.nsldn.org

April 3, 2019

The Honorable Susan Davis
House Committee on Education and Labor
Subcommittee on Higher Education and Workforce Development
2176 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Davis,

On behalf of the National Student Legal Defense Network (“NSLDN”), I write today to thank you for holding a hearing on the important issue of strengthening accountability in higher education. NSLDN is a non-partisan, non-profit organization that works, through litigation and advocacy, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. This Congress has a vital role to play in ensuring that existing accountability measures are not dismantled and that all arms of the federal government serve the best interests of students and taxpayers.

With over \$1.5 trillion in outstanding student loan debt in this country, the scope of issues plaguing student loan borrowers is wide. For that reason, I’d like to focus the Committee’s attention on three areas of particular concern: (1) the Department of Education’s refusal to enforce the existing Gainful Employment regulations; (2) the Department’s proposed rescission of the debt-to-earnings eligibility metrics of the 2014 Gainful Employment regulations; and (3) the Department’s careless disregard for taxpayer interests in connection with its oversight of the Title IV student aid programs.

I. Secretary DeVos has refused to enforce the federal law requiring certain programs to “prepare students for gainful employment in a recognized occupation.”

A student who enrolls in a career-oriented higher education programs deserves a program that will actually prepare that student for career success. For that reason, federal law requires that career programs offered by non-profit or public institutions and all educational programs offered at for-profit institutions must prepare students for “gainful employment in a recognized occupation.” *See, e.g.,* 20 U.S.C. 1002(b)(1)(A)(i).

In October 2014, the Department finalized what is now known as the “Gainful Employment” or “GE” rule to implement that statutory mandate. *Program Integrity Gainful Employment*, 79 Fed. Reg. 64,890 (Oct. 31, 2014) (“2014 Final Rule”). As stated by the Department at the time of publication, the regulations were “intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation ..., but instead are leaving students with unaffordable levels of loan debt in relation to

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their earnings, or leading to default.” *Id.* At that time, the Department also expressed “concern” that “a number of GE programs: (1) [d]o not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to provide training, (2) provide training for an occupation for which low wages do not justify program costs, and (3) are experiencing a high number of withdrawals or ‘churn’ because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default.” *Id.* The Department also expressed “concern” about the “growing evidence, from Federal and State investigations and qui tam lawsuits, that many GE programs are engaging in aggressive and deceptive marketing and recruiting practices. As a result of these practices, prospective students and their families are potentially being pressured and misled into critical decisions regarding their educational investments that are against their interests.” *Id.*

To address these and other concerns, the Department adopted a rule with two key “frameworks”: accountability and transparency. The accountability framework “define[d] what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department will evaluate whether a GE program remains eligible for title IV, HEA program funds.” *Id.* The transparency framework was designed to “increase the quality and availability of information about the outcomes of students enrolled in GE programs” which the Department believed would benefit “[s]tudents, prospective students, and their families, as they make critical decisions about their educational investments; the public, taxpayers, and the Government, by providing information that will enable better protection of the Federal investment in these programs; and institutions, by providing them with meaningful information that they can use to help improve student outcomes in their programs.” *Id.*

As part of the accountability framework, the 2014 Final Rule created the “debt-to earnings (D/E) rates measure that will be used to determine whether a GE program remains eligible for title IV, HEA program funds.” 79 Fed. Reg. 64,890 64,891 (Oct. 31, 2014). That measure “evaluates the amount of debt ... students who completed a GE program incurred to attend that program in comparison to those same students’ discretionary and annual earnings after completing the program.” *Id.* “[T]o pass the D/E rates measure, the GE program must have a discretionary income rate less than or equal to 20 percent or an annual earnings rate less than or equal to 8 percent.” 79 Fed. Reg. 64,890, 64,891. The 2014 Final Rule also established “a zone for GE programs that have a discretionary income rate greater than 20 percent and less than or equal to 30 percent or an annual earnings rate greater than 8 percent and less than or equal to 12 percent.” *Id.* The regulations established that “GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent will fail the D/E rates measure [and] a GE program becomes ineligible for title IV, HEA program funds, if it fails the D/E rates measure for two out of three consecutive years, or has a combination of D/E rates that are in the zone or failing for four consecutive years.” *Id.* The regulations also set forth a detailed process for challenging the information used to calculate the D/E rates and for institutions to use in order to appeal that determination.

The 2014 Final Rule took effect on July 1, 2015. And in January 2017, the Department of Education, under the leadership of then-Secretary John B. King, Jr., released the first set of D/E rates for career programs. At the time, the Department noted:

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The release of these rates builds on the Department's ongoing efforts to promote college completion and increase accountability in the postsecondary education marketplace by setting standards for career training programs, including programs offered by for-profit institutions, to ensure they are serving students well. The data show that, while many postsecondary programs offer value to students, there are a significant number of career training programs—specifically for-profit programs—that do not provide their graduates with a reasonable return on investment.²

The data released in 2017 indicated “that over 800 programs serving hundreds of thousands of students fail the Department's accountability standards with an annual loan payment that is at least greater than 30 percent of discretionary income and greater than 12 percent of total earnings.” *Id.* The Department also noted that “[n]inety-eight percent of these failing GE programs are offered by for-profit institutions.” *Id.* In addition, the Department highlighted that “[a]n additional 1,239 programs received a ‘zone’ rate, with an annual loan payment that is between 20 and 30 percent of discretionary income or between 8 and 12 percent of total earnings.” *Id.* Simply put: the 2017 data release strongly suggests that the Department's GE regulations were working.

But since taking office in February 2017, Secretary DeVos has steadfastly refused to implement the rule. As a result, many institutions continue to receive federal Title IV funding for programs they offer that do not “prepare students for gainful employment in a recognized occupation.” And countless students continue to use Pell Grants and incur student debt to attend these programs, with little likelihood of future economic success or ability to repay the debt incurred.

II. Without legal basis, Secretary DeVos has arbitrarily proposed to rescind the debt-to-earnings eligibility metrics

In addition to her refusal to enforce current regulations, Secretary DeVos has also proposed to completely rescind the Gainful Employment regulations, including the Debt-to-Earnings eligibility metrics. Her proposal is ungrounded in factual or evidentiary basis – and NSLDN filed a detailed Petition for Correction and Disclosure in accordance with the Information Quality Act (“IQA”), the information and quality guidelines issued by the Office of Management and Budget, and the IQA Guidelines issued by the Department.¹ The Petition asserts that the Department's Notice of Proposed Rulemaking (“NPRM”) failed to comply with the IQA insofar as it includes an abundance of factual claims without disclosing the underlying sources or methodologies. Unfortunately, the Department has not provided a substantive response to our Petition.

¹ The Information Quality Act Challenge is available here: <https://www.nsldn.org/blog/nsldn-challenges-information-quality-in-the-department-of-education-s-proposed-2018-ge-rule>

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If the Department goes forward with its proposal, it will not only be putting students at risk, but it will send an estimated \$5.3 billion in federal Pell Grants and Direct Loans to support programs that would have likely been ineligible under the 2014 rule.² Congress must ensure that the Department follows the Higher Education Act; career and for-profit college programs must only be allowed to participate in the federal student aid programs if they prepare students for gainful employment. The Department's existing debt-to-earnings metrics is a common sense regulation to ensure that students only receive federal funding to attend programs that, writ large, leave students with sufficient earnings potential to back federal student loans.

III. Secretary DeVos' administration has displayed a wanton disregard for the interests of American taxpayers.

Under the HEA, the Department is required – as a precondition to allowing institutional participation in the Title IV programs – to ensure that an institution has the “financial responsibility” to do so. 20 U.S.C. § 1099c(a). Among other factors, this means that the Department must determine whether an institution has “is able ... to meet all of its financial obligations,” including refunds and repayments to the Secretary for “debts incurred in programs administered by the Secretary.” 20 U.S.C. § 1099c(c)(1)(C). Thus, as a condition of ensuring institutional eligibility, the Department of Education has a fundamental responsibility to ensure that an institution “is able” to satisfy any liabilities owing to the Secretary that arise out of an institution's participation in Title IV programs.

On a practical level, the statute requires the Secretary to ensure that institutions are able to satisfy any debts owed to the Department as a result of discharges of debt for students who attended an institution. The Department has a broad responsibility to seek repayment from an institution or corporate entity following the discharge of debts due to, for example, institutional closure, borrower defense, or false certification of eligibility by an institution.

One mechanism for ensuring this “financial responsibility” is by requiring institutions to post a “letter of credit,” *i.e.*, a financial instrument that acts in the form of a surety to guarantee that adequate funds are available to repay liabilities owing to the Department. And while there are certain situations that *require* a letter of credit, *see, e.g.*, 20 U.S.C. § 1099c(c)(3), the Department has historically required a letter of credit, or increased the amount of a letter of credit, in instances in which the Department believed that there was an additional risk of liabilities owed to the government. This is a common-sense step to protect taxpayer interests.

Unfortunately, the Department has been troublingly lax in its approach to letters of credit, in ways that likely have increased taxpayer liabilities by tens of millions of dollars. For example, consider the Education Corporation of America (ECA). Until its sudden collapse in December

² The Department noted in its 2018 NPRM that “the total estimated net budget impact from the proposed regulations is \$5.3 billion cost in increased transfers from the Federal government to Pell Grant recipients and student loan borrowers and subsequently to institutions, primarily from the elimination of the ineligibility provision of the GE regulations.” 83 Fed. Reg. at 40,190.

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2018, ECA was one of the nation's largest operators of for-profit colleges. When it announced its closure, it reportedly had nearly 20,000 students enrolled at its properties including Virginia College, Brightwood College, Brightwood Career Institute, Ecotech Institute and Golf Academy of America. ECA had warning signs for a number of years; for example, according to information made public by the Department, ECA failed the Department's Title IV financial responsibility standards for the Fiscal Year ending 12/31/2014.³ In response, the Department required ECA to post an irrevocable LOC in the amount of \$27,149,122 and put it on provisional certification for a period of up to three complete award years. For the fiscal year ending December 31, 2014, the school had a passing score. So in March 2017 the Department apparently released ECA from its LOC requirement, meaning that taxpayers' protection against an ECA failure evaporated.

After March 2017, the financial condition of ECA apparently did not improve. Indeed, ECA's composite score for the fiscal year ending December 31, 2016 – a figure only recently released by the Department – was not passing. And in October 2018, ECA sued the Department of Education, demanding that the Department approve a restructuring plan that would allow it to close and spin off a number of campuses without entering bankruptcy.⁴ In that lawsuit, ECA noted that it had experienced years of "falling" enrollment, had over \$46.3 million in unsecured debt, and a prohibitively large "lack of liquidity."⁵ It was only then that the Department reversed course and demanded a new letter of credit – of course, by that point it was far too late, and the Department will not be able to use the LOC to offset the loan discharge costs that ECA's closure will incur over time. To be clear, if the Department had maintained the original LOC requirement imposed under the previous Administration, the sum of \$27,149,122 would have been available to offset the almost inevitable taxpayer expenses associated with the closure of this company.

* * *

We thank you for your attention to these issues and for the work of this Committee in defending students.

Sincerely,



Aaron Ament
President
National Student Legal Defense Network

³ <https://studentaid.ed.gov/sa/sites/default/files/final-award-year-16-letter-of-credit.xlsx>

⁴ <https://www.insidehighered.com/news/2018/10/19/profit-college-chain-sues-feds-keep-federal-aid-amid-restructuring>

⁵ https://www.insidehighered.com/sites/default/server_files/media/ECA-complaint_0.pdf

Mr. TAKANO. A common argument we hear against the 90/10 loophole is that it would limit a student's choice because for-profit institutions might not be able to admit as many student veterans. However, I really disagree with that premise because I think closing the loophole would protect students from fraudulent and aggressive practices such as the ones that Mr. Muth mentions in his testimony.

Mr. Muth, do you think that closing the loophole would better protect student veterans? Would it limit their educational choices?

Mr. MUTH. I am in complete agreement with you, Chairman Takano. I think that it absolutely would not limit veterans' choices, and I think the framing of the question that is raised by those who are opposed to closing this loophole is really the problem. No one is saying that a veteran cannot go to that school. It is a question really of should we as the taxpayers be paying for inferior education to be provided to veterans.

So nobody would seriously say we should not have some limits on the types of schools that you can go to, and I think closing that 90/10 loophole is really just one of those metrics to ensure that the veterans are receiving a quality education.

Mr. TAKANO. Thank you for that.

Chancellor Oakley, research from Cellini, Darolia and Turner found that students attend public institutions after a shutdown of a for-profit school, and that borrowing and default rates declined as students shifted to higher-quality institutions.

Do you think that closing the 90/10 loophole would help community colleges better recruit student veterans?

Mr. OAKLEY. Yes. The California Community Colleges provide high-quality, low-cost pathways for students to post-secondary education. We are the largest workforce education providers. So we feel the 90/10 loophole has made our student veterans a target for predatory colleges. And in closing the loophole, we stand ready to serve those students in our system.

Mr. TAKANO. Madam Chair, before I yield back, I would like to ask unanimous consent to enter a letter for the record from Stephanie Cellini highlighting her work on outcomes in the for-profit sector.

Mrs. DAVIS. So ordered.

[The information referred to follows:]

April 22, 2019

The Honorable Susan Davis, Chair
The Honorable Lloyd Smucker, Ranking Member
Higher Education and Workforce Investment Subcommittee
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Levin, Chair
The Honorable Gus Bilirakis, Ranking Member
Economic Opportunity Subcommittee
Committee on Veterans' Affairs
U.S. House of Representatives
B234 Longworth House Office Building
Washington, D.C. 20515

Dear Chair Davis, Chair Levin, Ranking Member Smucker, and Ranking Member Bilirakis:

Thank you for addressing the important issue of the success of our student veterans in this subcommittee hearing. As an economist who has spent more than a decade studying higher education and for-profit institutions specifically, I would like to draw your attention to a few papers I have authored that speak to some of the topics that this subcommittee will address.

Notably, my studies show: 1) that students leaving for-profit institutions when schools lose eligibility for federal student aid can and do re-enroll in public institutions, 2) the employment and earnings outcomes of students in for-profit institutions are worse than the outcomes of students in public institutions, 3) for the average student, the earnings gains of a for-profit certificate program are not high enough to pay off the debt incurred, 4) that the broader economics literature consistently finds worse outcomes for students in for-profit institutions than for students in other sectors. I review these findings and the associated studies in order below.

In recent work, my coauthors Lesley Turner and Rajeev Darolia and I, ask where students go when for-profit colleges lose federal student aid.¹ We look back at the 1990s when about 1,200 institutions were threatened with the loss of Title IV aid under the cohort default rate (CDR) regulations. We show that the enrollment losses in sanctioned for-profit institutions were nearly completely offset by enrollment gains in public institutions. We further find evidence that borrowing and default rates declined as students shifted to higher-performing programs in the public sector. Our findings suggest that accountability policies targeting low-performing institutions are unlikely to lead to substantial declines in college enrollment overall and may improve student outcomes.

Much of my work has focused on student outcomes in the for-profit sector and how these outcomes

compare with those of similar students in similar programs in the public sector. In all of my work in this area, I go to great lengths to ensure that I can control for differences in the types of students (by race, sex, income, age, etc.) who enroll in different types of institutions. Using advanced econometric techniques, carefully matched control groups, and very large sample sizes, my studies come very close to generating a causal estimate of the impact of the school itself on earnings and employment, outside of any influence of demographics or student characteristics. These types of value-added estimates—generated by each student’s own earnings before attending to earnings after for each student and then comparing those gains to those of a matched control group—can credibly measure gains in earnings that a student gets that are solely attributable the classes, skills, or services that the student obtained during the course of their educational program.

Using these methods, Nicholas Turner and I recently published a paper in the *Journal of Human Resources* that we believe to be the credible and comprehensive estimates of for-profit student outcomes to date.ⁱⁱ We draw on the Department of Education’s Gainful Employment data on more than one million students matched with tax records from the U.S. Treasury. Two important findings emerged from this paper.

First, comparing outcomes of for-profit and public sector certificate students, we find that certificate-seeking students in for-profit institutions are 1.5 percentage points less likely to be employed and, among those who are employed, have 11 percent lower earnings after attendance than students in public institutions. These results hold for both men and women and for seven of the top ten fields of study. We find that earnings and employment outcomes are particularly poor for students attending for-profit colleges that offer the majority of their courses online and for multicampus chains.

Second, we ask whether for-profit students are better off after attending, relative to not attending any college at all. To do this, we compare for-profit students matched control group of young individuals who do not attend any college. We find that for-profit students experience very small, statistically insignificant gains in annual earnings after attendance relative to the no-college group. A back-of-the-envelope comparison of these earnings gains to average debt burdens suggests that for-profit certificate programs do not pay off for the average student: the cost of attending exceeds the benefits for these students by about \$1,200.

Finally, in a paper with Cory Koedel in the *Journal of Policy Analysis and Management*, we survey the academic literature on for-profit student outcomes.ⁱⁱⁱ We describe two random assignment experiments and nine quasi-experimental studies that compare the labor market outcomes of for-profit students to a control group of students in other sectors and can reasonably control for demographics, socioeconomic status, and location. A consistent pattern emerges from these studies: the effects of for-profit attendance on earnings range from negative to null.

Summing up, my own work and the work of others in the field consistently show that for-profit colleges generate smaller benefits for students than similar programs in the public sector. When coupled with the much higher debt incurred for for-profit education relative to public, the literature clearly indicates that the average student would be better served in public institutions. Even relative to individuals attending no college, my research finds that the earnings gains from attending a for-profit certificate program are not enough to pay off the student loan debt accrued by the average student. Finally, my work on the impacts of previous accountability policies suggests that the loss of eligibility for federal student aid for low-performing institutions induces students to switch sectors, and is

therefore unlikely to lead to substantial declines in college enrollment overall and may improve student outcomes.

I would be happy to answer any question you may have on these studies, my other work on the economics for-profit higher education, or my (enclosed) comments on the NPRM on Gainful Employment. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,



Stephanie Riegg Cellini
Associate Professor of Public Policy and Public Administration, and of Economics
George Washington University
scellini@gwu.edu

Enclosures:

- Cellini, S.R., Comments on Gainful Employment NPRM, ED-2018-OPE-0042.
- Black, S.E., S.R. Cellini, D. Deming, S. Dynarski, A. Looney, J. Matsudaira, J. Rothstein, Comments on Gainful Employment NPRM, ED-2018-OPE-0042.

ⁱ Cellini, S.R., R. Darolia, and L.J. Turner. 2016. "Where Do Students Go When For-Profit Colleges Lose Federal Aid?" NBER Working Paper No. 22967. <http://econweb.umd.edu/~turner/research.html>

ⁱⁱ Cellini, S.R. and N. Turner. 2019. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data," *Journal of Human Resources*, 54(2): 342-370. <http://jhr.uwpress.org/content/early/2018/01/25/jhr.54.2.1016.8302R1.abstract>

ⁱⁱⁱ Cellini, S.R. and C. Koedel. 2017. "The Case for Limiting Federal Student Aid to For-Profit Colleges," *Journal of Policy Analysis and Management: Point/Counterpoint*, 36(4): 934-942. <https://onlinelibrary.wiley.com/doi/10.1002/pam.22008>

Mr. TAKANO. I yield back.

Mrs. DAVIS. Thank you.

Before I go to Representative Lee, we keep talking about 90/10. I think the legislature looked at 85/15. That has been in the law before. What is ideal? What creates the incentive and yet is not perhaps burdensome?

Mr. SHIREMAN. The 85/15 that is in the GI Bill was actually very different from the 90/10 that the Department of Education uses. Not only is it a different number, but it is actually program based. So one downside of the 90/10 measure is it is the entire institution. If you have a huge institution, you might have programs that are not really proving themselves, but in the context of the entire institution they pass 90/10. The program-based, that is one benefit of the program basis of the 85/15 rule in that it still exists in the GI Bill but does not really have much impact because of the loopholes that are included in it.

But I think examining some of the possibilities for perhaps looking at both, perhaps looking at an institution-wide and a program-based could be useful guardrails as we go forward.

Mrs. DAVIS. Great, looking at the facts.

Mr. SHIREMAN. Yes.

Mrs. DAVIS. Representative Lee?

Mrs. LEE. Thank you.

Ms. Rodriguez, I just wanted to ask you a quick question listening to your recounting of the Transition Assistance Program. One, I heard you try to express that there is a need for it to become service-member-centered. And secondly, I wanted to ask you, do you think that maybe splitting it up—I mean, it seems like right now it is all condensed into one week, or I do not know what the timeframe is. Is it your opinion that maybe splitting it up into segments might offer a better retention for you?

Ms. RODRIGUEZ. That is a great question. I do think separating, kind of having some brackets where it is maybe two days here on one week, and then two days another week, because it is five days long, and it is from 7:00 in the morning until 4:30 p.m., and you get an hour lunch. But it is all, again, very repetitive, and it is so much information. I think we look at statistics, and the average span of our attention is, what, 3 seconds? And then I am sitting there and listening to all this and I am like trying to get everything down.

Yes, I think separating it up. They do have options where if you feel like you are more the entrepreneur type, you have a two-day course of that. If you want more information about education, higher education, it is more constructive with that as well, but like I said, still vague. It is still information, but it is not constructive. It is not specific to the student, or to the veteran, the service member and their mission and what they want to do. So I would say separating it out.

Mrs. LEE. Great. Thank you.

Fortunately for you, it seems like your educational experience has worked out, or is working out, but for so many veterans and, sadly, their families, it is not, with over 1,200 college campuses that have closed in the last five years alone. It makes me think of Kendrick Harrison, who is a Nevadan. He was a veteran who fought in Iraq. He was recruited, encouraged to quit his job and then was recruited by a pretty aggressive Argosy University recruiter, and as we know, Argosy closed. During his enrollment, Mr. Harrison was deprived of the critical stipend check to cover rent and other expenses as a result of Argosy illegally keeping nearly \$13 million of stipend funds that were originally intended for students.

Another example, NBC just aired a story about Andres Figueroa, who is an Army drill sergeant enrolled at Full Sail University to study film, and he was told he was virtually guaranteed employment. However, he found out that jobs never materialized, and it will take him about 10 years to pay off his debt from that experience.

I wanted to ask Mr. Muth, Full Sail University ranks fourth on a list of nearly 1,600 schools with official complaints filed at the Department of VA. Is there more the VA could be doing to monitor these institutions?

Mr. MUTH. That is a great question. The answer is absolutely, yes, there is. I think right now it gets back to that problem in the way the VA is trying to do oversight with essentially out-sourcing it to that state approving agency. Some are going to be better than others. And also, I think right now when you look at it, when a veteran makes a complaint to the VA, it essentially gets dumped into

the consumer database, which is great. It allows the FTC and other agencies to potentially take action. But there is nothing being done by the VA to actually investigate those beyond just simply taking in that information and trying to resolve the problem. When you have a school like you described where there are so many complaints—people have been hearing about Full Sail for years, quite frankly, as far as some of the challenges veterans have had there—it seems obvious that would be a great place for the VA to start, those kind of schools that are at the top of the peak as far as students having bad experiences at those institutions.

Mrs. LEE. Thank you.

I just want to really hit very quickly on cost. Full Sail University costs almost five times as much as a comparable program at a local community college. Chancellor Oakley, can you just expand on why you think there is such a discrepancy in the cost between comparable programs at a school like Full Sail and a community college?

Mr. OAKLEY. Well, first, the California legislature has a specific interest in keeping costs affordable in the State of California. This is true not just of community colleges, which it sets tuition for, but the California State University, the University of California. We have some of the lowest debt levels in the country. That is a good thing.

The flip side to that is a university like Full Sail can raise a lot more money per student than we can at times. So it is important that the public continue to invest in higher education, particularly public higher education. Otherwise, we fall victim to the challenges we face today, which is being able to compete on a per-student funding basis with some of these for-profits.

There is a reason why veterans are attracted to for-profits. For-profits are offering them something that they want and that they feel that they need. Our colleges, our publicly-funded colleges need to do a better job of responding to that need, and I think greater emphasis on public investment would help us do that, as well as a specific call to action to our colleges to do a better job of responding to the needs of veterans.

Mrs. LEE. I yield back.

Mrs. DAVIS. Thank you very much.

I guess I would add to that is convenience as well.

Mr. OAKLEY. Absolutely.

Mrs. DAVIS. We need to be very responsive to that.

Thank you. Thank you all again.

I want to remind my colleagues that pursuant to committee practice—I am going to give a little boilerplate right here, if you do not mind—materials for submission for the hearing record must be submitted to the Committee Clerk within fourteen days following the last day of the hearing, and they must follow the subject matter of the hearing. Only a Member of the committee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an Internet link that you must provide to the Committee Clerk within the required timeframe, but please recognize that years from now that link may no longer work.

Again, I wanted to thank all of our witnesses here today. We know that what we have heard is very valuable, and Members of the committee may have some additional questions for you, and we ask the witnesses to please respond to those questions in writing, and the hearing record will be held open for about fourteen days in order to receive those responses.

I also wanted to remind my colleagues that pursuant to committee practice, witness questions for the hearing record must be submitted to the Majority Committee Staff or Committee Clerk within seven days. Questions submitted must address, again, the subject matter of the hearing.

I now want to just close, and so that you all know where we are as a committee in addressing these issues. Nearly two years ago, I voted to pass the Forever GI Bill to ensure that our nation's veterans can access the benefits of the social mobility that come with a high-quality post-secondary education. But we know, for too many student veterans, that is just not the case. As our witnesses laid out, loopholes in Federal law and weak enforcement have allowed unscrupulous for-profit institutions to aggressively recruit student veterans and then defraud them all on the taxpayer's dime.

Despite this, the Department of Education under this Administration has failed to protect students against low-performing institutions, abdicating its responsibility to hold predatory institutions accountable and left students and veterans to fend for themselves. We believe that these consequences are devastating and we want to note that for-profit institutions have continued to treat veterans, as some have chosen to put it, as dollar signs in uniforms to take in tens of billions of Federal aid dollars.

Three major for-profit chains have suddenly closed, leaving thousands of student veterans without vital housing assistance, transferrable credits, or degrees, and the victims of these abrupt closures have grappled with the Department of Education unwilling to provide the basic consumer protections and loan relief that they are entitled to.

Congress must provide student veterans access to institutions and empower them to succeed in civilian life, not defraud them. In the 116th Congress, the House Education and Labor Committee will pursue reforms of the following: closing that 90/10 loophole to prevent for-profit colleges from aggressively recruiting vulnerable student veterans at the taxpayer's expense; protect students from low-performing institutions that leave graduates worse off than before they enrolled—that is quite a statement, worse off than before they enrolled; ensure loan relief for students impacted by abrupt for-profit closures; prevent for-profit schools from skirting accountability rules by seeking non-profit status; and most importantly, holding the Department of Education accountable for working on behalf of student veterans, not for-profit schools.

All of us here today know that our nation's veterans deserve not just our thanks, and certainly that, but a true commitment towards improving their access to higher education and well-paying jobs. So our discussion today, we believe, is an important step. There will be many more discussions and hearings of this nature towards ensuring that no institution can jeopardize the future of its students, like Argosy University did, to the 181 defrauded student veterans

who once took classes only 20 minutes away from here. After all, as Mr. Muth reminded us, and I quote, "We must do more to protect and defend the rights of those who have answered the call to protect and defend their fellow citizens."

Thank you all so much for believing in this shared goal.

If there is no further business, without objection, the committee stands adjourned. Thank you all.

[Applause.]

[Additional submissions by Chairwoman Davis follow:]



The Voice of Community College Leaders

April 2, 2019

Chairman Robert C. "Bobby" Scott
House Committee on Education & Labor
2176 Rayburn House Office Building
Washington, DC 2015

Dear Chairman Scott:

On behalf of the Association of Community College Trustees (ACCT), I write to provide comments regarding the House Committee on Education & Labor review of the Higher Education Act as it relates to accountability and oversight.

ACCT represents the governing boards of over 1,100 community, technical, and junior colleges in the United States. As a sector, community colleges are leaders in providing high quality and affordable higher education and workforce training for all individuals to achieve economic self-sufficiency and security.

In the wake of closures of many for-profit higher education institutions—including Corinthian Colleges, Inc., ITT Technical Institute, Education Corporation of America, Argosy University, and the Art Institutes—many community colleges have stepped in to enroll students of shuttered for-profit colleges and support them to continue their postsecondary education. It is central to the open access mission of community colleges to welcome and enroll these students; however, the resources needed to properly advise and support these students places a financial strain on our institutions.

Students impacted by the closure of a for-profit college face a number of financial hardships and challenges to continuing their postsecondary education. A top concern for impacted students seeking to enroll at a community college is their eligibility to receive federal financial aid to finish their studies. Many low-income students seeking to transfer have used up or close to their lifetime limit of Pell eligibility. Community colleges have worked to ease the transition for affected students and identifying additional sources of financial aid. However, the federal government must do more to limit students' financial hardships and ensure their ability to complete a degree or credential.

This problem is magnified by the challenge in transferring academic credits from the closed for-profit institutions to an equivalent course of study at the community college. The potential loss of credits results in many challenges, including increasing a student's time to degree completion and thus further using up their Pell Grant eligibility, increasing their expenses for attending college, and increasing their need to borrow student loans. Ultimately, these consequences create additional risks for students to ultimately default on their student loans. The federal government must help students avoid default and ensure that community colleges are not penalized if they face difficulties to repayment.

Many students of closed for-profit colleges carry significant federal loan debt when they choose to continue their postsecondary education at a community college. Community colleges can offer support to students on how to navigate the loan discharge process; however, the U.S. Department of Education's process has proven to be lengthy and burdensome for those who seek relief. The uncertainty of loan discharge places financial harm on students and distrust of the ability of postsecondary education to lead to greater financial security.

It is imperative that students impacted by the closures of for-profit colleges receive proper financial and academic support to continue their postsecondary education. We encourage Congress to enact policies to provide greater assistance to these students. Additionally, ACCT encourages Congress to take action to provide greater oversight of for-profit colleges, such as lowering the threshold that prevents for-profit colleges from receiving in excess to 90 percent of their revenue from federal student aid and requiring the institution's share of non-federal student aid revenue come from sources outside the federal government.

Thank you for your attention to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Noah Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

J. Noah Brown
President & CEO
Association of Community College Trustees

California Legislature

STATE CAPITOL
SACRAMENTO, CALIFORNIA



April 22, 2019

The Honorable Susan Davis, Chair
The Honorable Lloyd Smucker, Ranking Member
Higher Education and Workforce Investment Subcommittee
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Levin, Chair
The Honorable Gus Bilirakis, Ranking Member
Economic Opportunity Subcommittee
Committee on Veterans' Affairs
U.S. House of Representatives
B234 Longworth House Office Building
Washington, D.C. 20515

Dear Chair Davis, Chair Levin, Ranking Member Smucker, and Ranking Member Bilirakis:

As seven California State Assemblymembers joint authoring a comprehensive accountability and reform package to protect California students, veterans, and taxpayers, we write to submit the following comments regarding the House Committee on Education and Labor's Subcommittee on Higher Education and Workforce Investment and the House Committee on Veterans Affairs' Subcommittee on Economic Opportunity's hearing on "Protecting Those Who Protect Us: Ensuring the Success of our Student Veterans."

In particular, we write to express our deep concern about recent actions taken by President Donald Trump and Secretary of Education Betsy DeVos to dismantle key protections for students and veterans attending higher education institutions. It is difficult to overstate the extent to which these policy rollbacks will hurt everyday Americans. Federal deregulation will open the floodgates to low-quality, high-cost programs at schools that receive billions of dollars in

taxpayer funding and will put an entire generation of students at risk of abuse by schools that put profit over student success.

President Trump and **Secretary DeVos** are proposing to remove critical guardrails at a time of unprecedented student **debt** levels and rapidly increasing tuition. The Trump administration has attempted to dismantle **commonsense** protections for students, including the Borrower Defense to Repayment Rule, the Gainful Employment Rule, and a special division at the U.S. Department of Education tasked **with investigating fraud** at for-profit colleges, among others.

The impact of this **federal** abdication of responsibility will be felt strongly in California. California is home to the most veterans – nearly 2 million – of any state in the country, and they are frequently sought out by bad actors in the for-profit college sector as a result of their G.I. Bill benefits and existing loopholes in federal law allowing over 90% of a school's revenue to come from these benefits. The veteran students, low-income students, and students of color that are overwhelmingly targeted by this sector are precisely the ones who stand to lose the most from this extreme agenda – and make up a significant portion of California's students overall.

As policymakers and lobbyists in Washington, D.C. empower predatory colleges and eliminate meaningful oversight, we in Sacramento are seeking to fill the void. We are authoring seven bills in the California Legislature to build a bulwark of protection for our students and veterans in response to this dereliction of duty by the Trump administration. These bills include:

AB 1340 (Asm. David Chiu, D-San Francisco) – Enacting a California version of the Gainful Employment Rule recently scrapped by the Trump administration to protect students from low-quality programs offered by for-profit schools that seek to load them with unaffordable debt and worthless degrees.

AB 1341 (Asm. Marc Berman, D-Palo Alto) – Exposing covert for-profit colleges that have begun using shell corporations and other financial maneuvers to pose as nonprofit or public institutions, misleading consumers and allowing them to dodge oversight.

AB 1342 (Asm. Evan Low, D-Cupertino) – Prohibiting unjust enrichment from school conversions when nonprofit schools are purchased or converted into for-profit entities, so that charitable assets are not converted to private gain.

AB 1343 (Asm. Susan Eggman, D-Stockton) – Preventing taxpayer funding from propping up otherwise failing schools by closing the “90-10” loophole, which perversely encourages schools to target veterans aggressively for their G.I. Bill benefits.


AB 1344 (Asm. Rebecca Bauer-Kahan, D-Orinda) – Including online colleges in state oversight so that key student protection laws also extend to California residents enrolled at online colleges operating from outside the state.


AB 1345 (Asm. Kevin McCarty, D-Sacramento) – Stopping kickbacks and sales quotas in college marketing so that school marketers are not compensated in ways that reward deception and are not in the best interests of students.


AB 1346 (Asm. Jose Medina, D-Riverside) – Restoring victims' losses by expanding the Student Tuition Recovery Fund to cover expenses incurred by students beyond simply the cost of tuition at shuttered for-profit institutions.

If the federal government steps back, California must – and will – step in. Our veterans, our students, and our taxpayers deserve nothing less.

Sincerely,


DAVID CHIU
 Assemblymember, 17th District


MARC BERMAN
 Assemblymember, 24th District


EVAN LOW
 Assemblymember, 28th District


SUSAN EGGMAN
 Assemblymember, 13th District


REBECCA BAUER-KAHAN
 Assemblymember, 16th District


KEVIN McCARTY
 Assemblymember, 7th District


JOSE MEDINA
 Assemblymember, 61st District

[Whereupon, at 12:21 p.m., the subcommittees was adjourned.]