

December 3, 2020

U.S. Senator Jerry Moran  
Chairman  
Senate Committee on Veterans' Affairs  
SR-412 Russell Senate Office Building  
Washington, DC 20510

U.S. Senator Jon Tester  
Ranking Member  
Senate Committee on Veterans' Affairs  
SR-412 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Moran and Ranking Member Tester:

On behalf of the associations listed below, representing two- and four-year, public and private colleges and universities, I write regarding H.R. 4625, the Protect the GI Bill Act. We understand that a revised version of this legislation will be included in a larger package of veteran-related bills that the Senate may vote on in the coming days. While we support much of the revised legislation, which makes important improvements to the earlier bill, we wish to call to your attention several provisions of concern that we believe will create unintended consequences for veterans and the institutions that serve them.

We strongly support the goals of the Protect the GI Bill Act to provide important protections for student veterans and for taxpayer dollars from waste, fraud, and abuse. We also support efforts to ensure veterans can continue to use the valuable Post-9/11 GI bill benefits they have earned through service to their country to pursue and complete a quality post-secondary education.

We thank you for the important improvements that have been made to the legislation since its initial passage by the House in the fall of 2019. Among these improvements, we appreciate the changes to section 3 of the bill on "verification of enrollment" requirements for colleges and universities. The revised version helpfully eliminates a provision that would have required institutions to verify student enrollment to the VA on a monthly basis. Because institutions are already required to notify VA within 30 days of any enrollment changes for students receiving Post-9/11 GI bill benefits, we appreciate the removal of an unnecessary and duplicative reporting burden on school certifying officials.

We also support the addition of new language in section 3 that would require the VA to develop policies for institutions to submit to the VA verification of enrollment of students receiving Post-9/11 GI bill at two specified times, as determined by the Secretary. As we understand it, the legislative intent here is to allow the VA to create policies that will require institutions to use a "dual certification" process whereby the institution first certifies enrollment with tuition and fees reported as "\$0.00 dollars," in order to start the veteran's housing payments, and then amends the certification with the correct tuition and fees amount after the end of the add-drop payment, when course schedules are unlikely to change. Although dual certification is not currently required by the VA, it is strongly encouraged, and many colleges and universities already use this process, particularly those with large student veteran populations. We believe that a carefully crafted policy in this area will significantly minimize or eliminate

overpayments resulting from changes to course schedules at the beginning of a term, which currently accrue as a debt owed by the veteran to the VA.

In designing its policy, the VA should also put an end to the practice of bad actor institutions who verify enrollment after the first day of the term, but keep the entire tuition payment even if the veteran subsequently decides to withdraw entirely from the program in the early days of the term.

We also appreciate the clarifications made to section 7 of the bill regarding the triggers for a risk-based review by a State approving agency (SAA). Requiring a risk-based review only for those institutions subject to the Department of Education's "heightened cash monitoring level 2 payment method," will focus limited SAA resources on institutions at serious risk of a precipitous closure. We also appreciate the clarification regarding the specific instances in which a "notice to show cause" from an accreditor will trigger a risk-based review.

While we appreciate these and other improvements, we wish to call to your attention several areas of the bill that could result in unintended consequences for veterans and will make it more difficult for institutions to effectively serve them. In particular, we are concerned by the language in section 12 of the revised bill, at page 27, lines 6-12,<sup>1</sup> which makes college and universities responsible for repaying the VA for the amount of overpayments of tuition and fees that result from changes to a veteran's enrollment. An overpayment can occur when a veteran drops a course, fails to complete a course with a passing grade, or withdraws entirely from a program.

As we noted earlier, the new VA policies required in section 3 of the bill should hopefully eliminate overpayments resulting from enrollment changes or withdrawals occurring at the beginning of the term.<sup>2</sup> However, in situations where an overpayment occurs as a result of enrollment changes later in the term, section 12 would put colleges and universities in the unreasonable position of becoming the VA's debt collector. Assuming that the amount of the overpayment is in excess of any refund owed to the veteran under the institution's refund policy – which is likely for changes occurring late in the term – an institution may need to turn around and recoup this debt directly from the veteran. Even if an institution elects not to collect on the debt, a debt on a student's account is likely to prevent the veteran from re-enrolling or from obtaining a transcript to continue at another institution, and may end the veteran's pursuit of higher education.

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<sup>1</sup> The remaining amendments in section 12 of the bill appear generally consistent with current statute in 38 U.S.C. 3685(b). We agree that institutions should be held liable for overpayments resulting from a willful or negligent failure of the institution to report certain enrollment changes, or the willful or negligent false certification by the institution. However, the Committee may want to consider leaving 3685(b) intact so as to avoid any inference that by reorganizing the provision, Congress intended to signify a change in the meaning.

<sup>2</sup> We note that a 2015 GAO report entitled "Post 9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections" found that the median amount of overpayments was about \$570, which could correspond to dropping a single class. This seems to suggest that many overpayments were the result of enrollment changes at the beginning of the term, although the VA was unable to provide this sort of analysis to the GAO.

VA officials raised similar concerns in the 2015 GAO report on overpayments, cautioning that “if VA started collecting all tuition overpayments from schools, schools would still be able to bill veterans for overpayment debts and potentially would not allow veterans to reenroll for class until these debts were repaid. In addition, veterans would have to repay any overpayment debts to their school out-of-pocket, rather than through offsets to their Post-9/11 GI Bill housing payments.”

Given the potential for unintended consequences, we would encourage the Committee to eliminate this section of the bill and instead require the GAO, with assistance from VA, to prepare a follow-up report for Congress further examining this issue upon implementation of the Protect the GI Bill Act. Specifically, the report should determine the impact new VA policies developed under section 3 have had on reducing overpayments, and detail the frequency, amounts, and causes of overpayments that result from enrollment changes occurring later in the term and outside the scope of those policies. The report should also address the effect making institutions, instead of veterans, liable for overpayments would have on current law on “mitigating circumstances,” which allows a veteran to petition VA to have a debt waived in certain situations, such as when an illness or injury prevents the veteran from completing coursework. Armed with this information, the Committee would be in a better position to evaluate the potential implications of this policy change.

In addition, it may be helpful to clarify the phrasing of some requirements contained in section 11 of the bill. We strongly support ensuring that student veterans have the information they need to make informed decisions about how best to use their GI bill benefits, but we believe that the bill’s requirement to provide estimates of costs and aid for the entire duration of the student’s program, while well-intentioned, could be confusing and/or misleading to veterans. Understanding that getting notifications of cost and aid eligibility on an annual basis is not ideal, the Title IV student aid system is only designed to make annual awards. Even with a FAFSA, in many cases the institution will be offering nothing more than guesses for costs and aid beyond the first year – achieved by adding a fixed percentage for each year or simply multiplying the first year’s costs and aid times the number of years in the course. For example, “estimates” of non-VA federal aid and the total amount of borrowing over the course of a degree program, “personalized” to an individual student, will be dependent on many variables that could change significantly from year to year over the course of the program and would be difficult to estimate with any accuracy prior to enrollment, particularly before a student veteran has submitted a FAFSA for the appropriate year. Additionally, we are concerned by the requirement in section 11(f)(1)(C) for institutions to have policies to inform students of federal aid eligibility prior to packaging loans. As written, institutions could be forced to delay making financial aid offers in order to comply since federal loans are typically awarded at the same time as federal grants.

Finally, we are unclear about the rationale behind the language in section 13 that imports Department of Education regulations on “misrepresentation” and “incentive compensation” directly into VA statute. Because colleges and universities participate in Department of Education’s student financial aid programs under Title IV of the Higher Education Act, they are already subject to these regulations. As you know, these

regulations have changed through the years and are likely to continue to evolve, setting the stage for inconsistencies between VA and ED's requirements. A cleaner policy approach might be to simply require an institution to participate in Title IV as a condition of eligibility for GI bill benefits. If the goal is to ensure that non-accredited programs also comply with these important program integrity requirements, we would suggest limiting the applicability of section 13 to those specific programs. Alternatively, at a minimum, incorporating a reference to the relevant sections of the code of federal regulations, as opposed to the actual text, would reduce the chance for inconsistencies should these regulations change.

Thank you for your continued work on behalf our nation's veterans, especially during these challenging times. We look forward to working with you to address these issues and to ensure that veterans may continue to use their GI bill benefits to pursue a high-quality post-secondary degree.

Sincerely,



Ted Mitchell  
President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
Council for Christian Colleges and Universities  
Council for Higher Education Accreditation  
Council for Opportunity in Education  
NASPA – Student Affairs Administrators in Higher Education  
National Association of College and University Business Officers  
National Association of Independent Colleges and Universities  
National Association of Student Financial Aid Administrators