

May 27, 2014

The Honorable Arne Duncan  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Re: Program Integrity: Gainful Employment  
Docket ID ED-2-14-OPE-0039

Dear Secretary Duncan,

Thank you for the opportunity to comment on the proposed regulation of gainful employment programs. Veterans Education Success is a non-profit organization dedicated to protecting the promise of the GI Bill. We were founded at the request of the major veterans' organizations, and our Board of Advisors consists of representatives from the major veterans organizations. Prior to becoming VES's founding president, Carrie Wofford served as a Senior Committee Counsel of the US Senate Committee on Health, Education, Labor and Pensions, during the Committee's 2-year investigation into for-profit education companies.

Veterans Education Success joins the many veterans, civil rights, and education advocates with a strong plea for the Education Department to institute a strong Gainful Employment rule to protect students who are duped into extremely expensive, subpar educations. While the proposed rule is a good first step towards protecting students, it needs to be improved.

Only a strong Gainful Employment rule can turn military education benefits and Title IV programs back into a source of support for our nation's military. The Department must use its authority to restore the promise of educational benefits to those who have served our country – and to all students. Service members and veterans using the GI Bill, as well as Defense Department Tuition Assistance and MyCAA spousal education aid, are counting on you to protect them from wasting their one chance with the GI Bill and its promise of a shot at the American Dream.

#### I. For-Profit Colleges Target Veterans and Service members

For-profit colleges target veterans and service members with high-pressure and abusive sales tactics, incentivized by federal laws that turn military students into cash cows for the schools. The Higher Education Act forbids for-profit education companies from receiving more than 90 percent of their revenues from federal education aid. But neither the G.I. Bill, nor Defense Department tuition assistance, are specifically named in the list of federal education aid. For-profit colleges count the G.I. Bill and military tuition assistance as private, non-federal dollars to help them avoid the 90% cap on

federal aid.<sup>1</sup>

Because of this 90/10 loophole, for-profit colleges are eager to enroll students using the G.I. Bill and Defense Department tuition assistance – so eager that some predatory education companies engage in deceptive and aggressive marketing to sign up veterans and service members.

Federal policymakers are well aware of the problem. As Holly Petraeus, the head of service member affairs at the federal Consumer Financial Protection Bureau explained in her *New York Times* op-ed, this 90/10 loophole “gives for-profit colleges an incentive to see service members as nothing more than dollar signs in uniform, and to use aggressive marketing to draw them in.”<sup>2</sup>

Senate Education Chairman Tom Harkin, who is himself a veteran and who led a Senate investigation<sup>3</sup> into these deceptions, explained: “For-profit schools see our active-duty military and veterans as a cash cow, an untapped profit resource. It is both a rip off of the taxpayer and a slap in the face to the people who have risked their lives for our country.”<sup>4</sup>

The U.S. Senate Committee on Health, Education, Labor and Pensions analyzed several years of federal data from the Departments of Defense, Education, and Veterans Affairs to understand where federal G.I. Bill dollars and Defense Department student aid are going. That federal data revealed the following<sup>5</sup>:

- For-profit colleges have skyrocketed their recruitment of veterans and military students, increasing over 200 percent in just one year.<sup>6</sup>

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<sup>1</sup> Twenty-two state Attorneys General, including the Massachusetts Attorney General, wrote Congress that the for-profits’ practice of counting the G.I. Bill and Defense Department student aid as “private dollars” was a violation of the intent of the federal cap, if not the actual letter of the law. *See* <http://migration.kentucky.gov/NR/rdonlyres/88B3C155-E62F-4355-8D83-FFA9C01DE0DD/0/9010letter.pdf>.

<sup>2</sup> *See* Hollister Petraeus, “For Profit Colleges, Vulnerable G.I.’s,” *New York Times*, September 21, 2011, *available at* <http://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html>.

<sup>3</sup> *See* U.S. Senate Committee on Health, Education, Labor & Pensions Report, “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” July 30, 2012, *available at* [http://www.help.senate.gov/imo/media/for\\_profit\\_report/Contents.pdf](http://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf) [hereinafter “HELP Report”].

<sup>4</sup> *See* Eric Lipton, “Profits and Scrutiny for Colleges Courting Veterans,” *New York Times*, December 8, 2010, *available at* <http://www.nytimes.com/2010/12/09/education/09colleges.html>

<sup>5</sup> *See* “Senators Unveil New Data Detailing Alarming Trend of Misguided Use of America’s Veterans’ Education Benefits: Eight of the Ten Biggest Recipients of Post-9/11 G.I. Bill Education Funds are For-Profit Colleges with Poor Rates of Student Success,” September 22, 2011, *available at* <http://www.harkin.senate.gov/press/release.cfm?i=334149>; *see also* U.S. Senate Committee on Health, Education, Labor, and Pensions, “Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits,” December 8, 2010, *available at* <http://www.harkin.senate.gov/documents/pdf/4eb02b5a4610f.pdf>.

<sup>6</sup> *Id.*

- Eight of the ten schools receiving the most G.I. Bill dollars are now for-profit colleges. The University of Phoenix alone took in more than \$200 million in the two most recent years for which government data is available.<sup>7</sup>
- Those eight for-profit colleges take in \$1 billion dollars in G.I. Bill dollars, but almost half a million veterans dropped out of these eight colleges within the first year – most of them within the first four months.<sup>8</sup>
- For-profit colleges cost taxpayers twice the tuition of public colleges and universities.<sup>9</sup>
- For-profit schools collected more than one-third of all G.I. Bill funds, but trained only 25 percent of veterans, while public colleges and universities received only 40 percent of G.I. Bill benefits but trained 59 percent of veterans.<sup>10</sup>
- While public universities and non-profit colleges sink the vast majority of their funds into educating students, for-profit colleges set aside very little to education – only 17 percent on average.<sup>11</sup> The rest goes to profit (20 percent, on average), to TV ads and call centers to recruit more students (also more than 20 percent, on average) and to CEO salaries of, on average, \$8 to 9 million per year, but with some making up to \$20 and \$40 million dollars<sup>12</sup> (compared to the non-profit college President’s average of less than \$400,000).

As just one example, the University of Phoenix takes in more G.I. Bill dollars than any other college or university in the country, but spends less on education (less than \$900 per student per year) than almost any other college in the country, instead setting aside more than \$1 billion for profit and another almost \$1 billion to the call centers and other marketing and recruiting.<sup>13</sup> (Compare this to more than \$11,000 spent on instruction, per student, by the public University of Arizona.<sup>14</sup>) Because of the low quality education, the University of Phoenix has one of the worst withdrawal rates of schools receiving G.I. Bill (50% withdrawal by its bachelors degree students and 66% withdrawal by its associate students, compared to 13% withdrawal at the University of Maryland and 26% at the University of Texas – the only two public universities among the 10 schools receiving the most G.I. Bill dollars)<sup>15</sup>. Astonishingly, the University of Phoenix has more than 8,000 recruiters promising a bright future to prospective students,

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<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Senate Committee on Health, Education, Labor & Pensions Report, “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” July 30, 2012 (chapter on Apollo), *available at* [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/Apollo.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartII/Apollo.pdf)

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

but zero job placement staff to help students actually achieve that bright future, in the latest government data.<sup>16</sup>

## II. For-Profit Colleges Engage in Abusive Recruitment Tactics

In response to the strong financial incentives created by the 90/10 rule, for-profit colleges target military students with fraudulent marketing and abusive, high-pressure sales tactics. This consumer fraud and criminal misrepresentation have prompted numerous state and federal investigations. The GAO, SEC, FTC, DOJ and CFPB have all opened investigations or filed cases, and 32 state Attorneys Generals have opened investigations.

The recruitment tactics are founded on emotional manipulation and blatant deception. Training manuals explicitly teach recruiters to dig for the “pain” in prospective students’ lives and then manipulate that pain: “Pain is the greatest motivator.”<sup>17</sup> Massive call centers are deliberately designed to harass veterans until they agree to sign up. Veterans frequently receive, literally, several hundred phone calls and e-mails by for-profit college “recruiters,” whose job performance is graded by how many veterans they can sign up.<sup>18</sup>

When Daniel Elkins at Veterans of Foreign Wars (VFW) wanted to see for himself what the recruiting and marketing targeting veterans was like, he entered his name in one of the websites that promises to help veterans access their GI Bill dollars, but which was actually just a “lead generator” service for the for-profit colleges. Elkins was overwhelmed by the response. He told National Public Radio (NPR) in an interview: “Within three to four days, I got in the excess of 70 phone calls and I got well over 300 e-mails.” And the emails and phone calls are still coming, a year later -- he even got a call during a meeting with for-profit schools who were denying their aggressive recruiting!<sup>19</sup>

In addition, for-profit college salesmen are recruiting on military bases and VA hospitals. As *Business Week* reported, Ashford University even signed up a Marine with traumatic brain injury convalescing in a military hospital. “U.S. Marine Corporal James Long knows he’s enrolled at Ashford University,” *Business Week* reported. “He just can’t remember what course he’s taking.”<sup>20</sup> For profit colleges like Ashford continue to

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<sup>16</sup> *Id.*

<sup>17</sup> HELP Report at 46-72.

<sup>18</sup> *Id.*; Eric Lipton, “Profits and Scrutiny for Colleges Courting Veterans,” *New York Times*, December 8, 2010, <http://www.nytimes.com/2010/12/09/education/09colleges.html>.

<sup>19</sup> NPR radio interview about the aggressive recruiting of veterans returning from Iraq and Afghanistan, *available at* <http://www.npr.org/2012/04/09/150148966/for-profit-schools-under-fire-for-targeting-veterans>; [http://www.huffingtonpost.com/2011/10/14/goldman-sachs-for-profit-college\\_n\\_997409.html](http://www.huffingtonpost.com/2011/10/14/goldman-sachs-for-profit-college_n_997409.html).

<sup>20</sup> See Daniel Golden, “For Profit Colleges Target the Military,” *Business Week*, December 30, 2009, *available at* [http://www.businessweek.com/magazine/content/10\\_02/b4162036095366.htm](http://www.businessweek.com/magazine/content/10_02/b4162036095366.htm)

have “office hours” on military bases<sup>21</sup>, and Kaplan operates recruiting sites fronted as “study centers” inside military and VA hospitals, including Walter Reed National Military Medical Center outside Washington, D.C.

Former for-profit college recruiters have detailed more abusive practices:

- “We’re selling you that you’re gonna have a 95 percent chance that you are gonna have a job paying \$35,000 to \$40,000 a year by the time they are done in 18 months,” Brooks College (Career Education Company) salesman Eric Shannon told CBS’ 60 Minutes. “We later found out it’s not true at all.”<sup>22</sup>
- “Get asses in classes” through “the military gravy train,” even if service members are not ready or are being deployed to heavy fighting zones, DeVry University instructed its salesmen, according to Christopher Neiweem, a veteran of Operation Iraqi Freedom and DeVry salesman, who was assigned specifically to target military students.<sup>23</sup> Neiweem told Congress he was instructed to pose as a “military advisor” affiliated with the Pentagon. Following his testimony, four additional DeVry military salesmen wrote Congress to say they were told to do the same.
- “Everything here is about the numbers. You make your numbers, or you are out of a job,” recruiters at Colorado Technical University – housed in an office building with no classrooms and no professors, but row upon row of salesmen – told *The New York Times*.<sup>24</sup> Salesmen from Ashford and Westwood reported the same.
- “You’d probe to find a weakness,” said Brian Klein, a former admissions employee at Argosy University Online, one of four major colleges operated by EDMC, whose recruiters filed a whistleblower lawsuit against EDMC, which the U.S. Department of Justice has joined on behalf of deceived students and taxpayers. “You basically take all that failure and all those bad decisions, and you spin it around and put it right back in their face as guilt, to go to this shitty university and run up all of this debt.”<sup>25</sup>

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<sup>21</sup> See [http://www.nctimes.com/news/local/columnists/rogers/rogers-bridgepoint-has-a-troubling-record/article\\_f2452442-589d-50ca-acf0-d4e8f6dd7431.html](http://www.nctimes.com/news/local/columnists/rogers/rogers-bridgepoint-has-a-troubling-record/article_f2452442-589d-50ca-acf0-d4e8f6dd7431.html).

<sup>22</sup> See “For Profit College: Costly Lesson: Steve Kroft Reports Whether or Not Career Colleges Pay Off,” CBS 60 Minutes, August 11, 2005, available at <http://www.cbsnews.com/news/for-profit-college-costly-lesson-11-08-2005/>.

<sup>23</sup> See Testimony of Christopher Neiweem, U.S. Senate Committee on Appropriations, “Hearing on Voluntary Military Education Programs,” June 12, 2013, available at: <http://www.appropriations.senate.gov/ht-defense.cfm?method=hearings.view&id=3f3ad71e-2ee7-4e14-b4f9-8b67aea4c947>.

<sup>24</sup> See Eric Lipton, “Profits and Scrutiny for Colleges Courting Veterans,” *New York Times*, December 8, 2010, available at <http://www.nytimes.com/2010/12/09/education/09colleges.html>.

<sup>25</sup> See Chris Kirkham, “With Goldman’s Foray into Higher Education, A Predatory Pursuit of Students and Revenues,” *Huffington Post Business*, October 14, 2011, available at: [http://www.huffingtonpost.com/2011/10/14/goldman-sachs-for-profit-college\\_n\\_997409.html](http://www.huffingtonpost.com/2011/10/14/goldman-sachs-for-profit-college_n_997409.html).

- "It just got to the point where I felt like I was lying to these people on a regular basis," said Patrick Flynn, a recruiter at EDMC's South University online from 2006 through 2009, when he quit. "Honestly, I just felt dirty doing the things I was doing. It's almost like they were trying to make me take advantage of people's belief in what this education was going to get them, when I didn't buy into it myself."<sup>26</sup>

Listeners can hear for themselves how aggressive and deceptive the recruiting phone calls are. PBS Frontline reporters recorded the calls, as part of research for a documentary<sup>27</sup> about how veterans are specifically targeted by predatory for-profit colleges.<sup>28</sup>

As recently as October, the California Attorney General brought suit against Corinthian for misleading students on several fronts, including for improper use of Pentagon military seals to imply affiliation with the Pentagon.<sup>29</sup> In addition, in June, the U.S. Senate Committee on Appropriations heard testimony from a former military recruiter for DeVry, who testified that he was instructed to pose as a military advisor and to sign his emails "Pentagon Advisor".<sup>30</sup> Following his testimony, five other former military recruiters for DeVry wrote the Senate Committee to report they were similarly instructed.

"All they hear from these schools is, 'This won't cost you a thing,'" explained Robert L. Songer, a retired Marine colonel who served as the lead education adviser at Camp Lejeune in North Carolina.<sup>31</sup> Songer said for-profit colleges hound Marines at Camp Lejeune to enroll in classes of limited educational value and even sign them up for high-interest-rate loans. He cited numerous complaints he received from Marines.

President Obama summed up the deceptions targeting veterans and service members when he spoke at Fort Stewart in Georgia in April 2012, as he signed Executive

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<sup>26</sup> See Chris Kirkham, "With Goldman's Foray into Higher Education, A Predatory Pursuit of Students and Revenues," *Huffington Post Business*, October 14, 2011, *available at*: [http://www.huffingtonpost.com/2011/10/14/goldman-sachs-for-profit-college\\_n\\_997409.html](http://www.huffingtonpost.com/2011/10/14/goldman-sachs-for-profit-college_n_997409.html).

<sup>27</sup> See PBS Frontline, "Educating Sergeant Pantzke," *available at* <http://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/>

<sup>28</sup> Recorded calls are available at <http://www.pbs.org/wgbh/pages/frontline/educating-sergeant-pantzke/recruiters-sales-pitch/>

<sup>29</sup> See, e.g., CBS News, "California AG Sues Corinthian, Heald College Group For False Advertising," October 10, 2013, *available at*: <http://sanfrancisco.cbslocal.com/2013/10/10/california-ag-sues-corinthian-heald-college-group-for-false-advertising/>

<sup>30</sup> See Testimony of Christopher Neiweem, U.S. Senate Committee on Appropriations, "Hearing on Voluntary Military Education Programs," June 12, 2013, *available at*: <http://www.appropriations.senate.gov/ht-defense.cfm?method=hearings.view&id=3f3ad71e-2ee7-4e14-b4f9-8b67aea4c947>.

<sup>31</sup> See Eric Lipton, "Profits and Scrutiny for Colleges Courting Veterans," *New York Times*, December 8, 2010, *available at* <http://www.nytimes.com/2010/12/09/education/09colleges.html>

Order 13607<sup>32</sup> to combat the scam:

“There are some bad actors out there. They’ll say you don’t have to pay a dime for your degree, but once you register they’ll suddenly make you sign up for a high-interest student loan. They’ll say that if you transfer schools, you can transfer credits, but when you try to actually do that, you suddenly find out that you can’t. They’ll say they’ve got a job placement program, when, in fact, they don’t. They’re trying to swindle and hoodwink you. They don’t care about you; they care about the cash. It’s not right.”<sup>33</sup>

Republican Congressman Walter B. Jones of North Carolina, a member of the Armed Services Committee, told *The New York Times*: “I think it is a sin. Here we are telling these young men and women they can get a higher education, and they get cheated.”<sup>34</sup>

Veterans are starting to speak up about their experiences being deceived:

“I believe that the University of Phoenix is using deceptive practices in order to lure students into the school, the enrollment counselors tell students that they should be complete with their course of studies in a short period of time fully knowing how long it is going to take. . . . I have talked with other students at the University of Phoenix and this appears to be a common tactic used by University of Phoenix enrollment counselors.”<sup>35</sup>

- Another military student who was billed by the University of Phoenix for a class he never took wrote: “As a marine of 19 years, I’ve served in Desert Storm, Somalia, and Operation Iraqi Freedom x2. You cannot imagine the emotional battle this has taken on me after dealing with this for nearly TWO years!! An education institution such as yours earns millions of dollars each year, and yet you punish those who are willing to risk their lives and fight for your freedoms, you should be ashamed.”<sup>36</sup>

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<sup>32</sup> See Executive Order 13607 of April 27, 2012, Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, available at <http://www.veteranseducationsuccess.org/resources/Executive-Order-13607.pdf>.

<sup>33</sup> See Remarks by the President and First Lady at Fort Stewart, Georgia, April 27, 2012, available at <http://www.whitehouse.gov/the-press-office/2012/04/27/remarks-president-and-first-lady-fort-stewart-georgia>.

<sup>34</sup> See Eric Lipton, “Profits and Scrutiny for Colleges Courting Veterans,” *New York Times*, December 8, 2010, available at <http://www.nytimes.com/2010/12/09/education/09colleges.html>.

<sup>35</sup> Student complaint to the U.S. Senate, U.S. Senate Committee on Health, Education, Labor & Pensions Report, “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” July 30, 2012 (chapter on Apollo), available at [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/Apollo.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartII/Apollo.pdf)

<sup>36</sup> Student complaint to the U.S. Senate, U.S. Senate Committee on Health, Education, Labor & Pensions Report, “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” July 30, 2012 (chapter on Apollo), available at

- Jonathan Ngowaki, a Marine Corps radio operator in Afghanistan, said a for-profit college signed him up for a \$15,000 loan without his knowledge. “I went into the military so I wouldn’t have college debt, but now I have this debt and I have a family and it’s taken that money away from my family. It’s all about the money. It’s all a money game. It really bothers me.”<sup>37</sup>
- Marine Corporal Anselm Caddell: “When I attempted to transfer my units from Brown Mackie to Pasadena City College in California, I found out that none of my units transferred because they didn’t have the right level of accreditation. Not only did Brown Mackie lie about their accreditation level but they lied about (the) level of education they offer... I have a debt with nothing to show for it and am struggling to stay afloat.”<sup>38</sup>
- Air National Guard Corporal Chad Putnam: “I was told that the Art Institute had a 93% job placement rating and since the Art Institute had campuses all over the U.S., that I would have access to a nationwide network of employers... It wasn't until near the end of my schooling that I began to realize that a lot of the training I was getting was outdated, in some instances by a few years, and that I had a long way to go until I was up to par with the industry standards. I also found out that... my program had a success rate of only 38%. I have student loans that I am going to be paying off for years and really I have nothing to show for it.”<sup>39</sup>
- Marine Specialist Bryan Babcock: “I specifically asked ITT Tech before signing up whether their degree was the same as any other public 4-year university and was told YES. I found out while applying at NYPD, LAPD, Seattle PD and 23 other police departments that NONE of them accepted ITT Tech credits. Once I found out that my time and money spent at ITT Tech was worthless, I tried to transfer my credits to a community college. I was told I have to start completely over as a freshman.”
- Marine Corporal Thomas Dickson: “While searching for colleges, I entered my information in a search engine for military friendly schools. I received a phone call from a member of the CTU staff who wanted to speak with me about enrolling and all that CTU could do for me. I told him I wanted to explore all my options. That same admissions representative called me everyday until I submitted my application. In July 2005 I learned I was going to be deployed on a month long field operation. During that time I would have no phone and no

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[http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/Apollo.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartII/Apollo.pdf)

<sup>37</sup> See “Lawmaker Accuses Some For-Profit Colleges of Unfairly Targeting Vets,” NBC News, November 11, 2013, *available at* <http://www.nbcnews.com/business/lawmaker-accuses-some-profit-colleges-unfairly-targeting-vets-8C11566148>

<sup>38</sup> See Statement of Anselm Caddell, Veterans Student Loan Relief Fund, November 2013.

<sup>39</sup> See Statement of Chad Putnam, Veterans Student Loan Relief Fund, November 2013.

internet access. I contacted my advisor and was told I could put my classes on hold and finish them when I returned. I was instructed to email my professors to alert them of my situation and my advisor would take care of the rest. When I returned from the field-op on 17 August 2005, I learned that I had failed my classes and was signed up for another session, which I was currently failing. Obviously, my classes were not put on hold nor was I withdrawn for a military leave of absence. I immediately called my advisor to inquire as to why I was still enrolled. He informed me that I could not withdraw from classes because it was school policy to not allow withdraws during the first year of attendance. When I informed him that this was not what he said during our prior conversation he asked for proof. I went to retrieve our email correspondence to find that my entire inbox had been erased. Not a single email from before my deployment was present. The university destroyed all the evidence of their betrayal. I tried to withdraw completely from the school and obtain a refund on unattended classes. I was informed once again that I could not withdraw until I completed a year's worth of courses. I refused to sign into my courses, as the academic policy that was in place stated that students who did not sign in to their courses within the first 7 days of class would be administratively withdrawn. For me, however, this did not happen. I was not fully withdrawn from the university until 16 February 2006, after I was enrolled long enough to keep a year's worth of tuition. Although I was not attending classes, before this point I received two emails thirteen days apart encouraging me to take out another loan in the amount of \$14,099 for the next year."

In addition to these examples, we attach the personal stories of dozens of veterans who have written within this past year about the deceptions they faced from predatory education companies.

Sadly, the deception is widespread. The U.S. General Accounting Office ran two undercover investigations, sending undercover agents to pose as students. Every single one of 15 large for-profit colleges deceived federal undercover officers about the quality of education, cost, and likely job and salary for graduates.<sup>40</sup> Four colleges engaged in actual illegal fraud. The undercover officers then registered as students at those colleges, and found the "education" of such low quality that students were encouraged to cheat and received top grades for submitting photos of celebrities in lieu of a required essay.<sup>41</sup> As just one example, The University of Phoenix had to pay the federal government \$78.5 million in 2009 and another \$9.8 million a few years earlier, for violating a law that tries to protect students from recruiter lies by forbidding schools from paying recruiters by the

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<sup>40</sup> See U.S. General Accounting Office, "For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices," GAO-10-948T, August 4, 2010, *available at*: <http://www.gao.gov/products/GAO-10-948T>. Note that although for-profit college lobbyists objected to the tone of the GAO's conclusions, they did not dispute the undercover recordings of deceptive recruiting, because those are indisputable.

<sup>41</sup> See U.S. General Accounting Office, "For-Profit Schools: Experiences of Undercover Students Enrolled in Online Classes at Selected Colleges," GAO-12-150, October 31, 2011, *available at*: <http://www.gao.gov/products/GAO-12-150>.

number of students they enroll.<sup>42</sup>

Among students who do sign up, too often they find out, after the fact, that they've also been signed up without their permission for a private student loan (directly from the for-profit college) at exorbitant interest rates (upwards of 18%) – even though they were promised by recruiters that their GI Bill dollars would cover the whole cost of attendance. Interest rates are so high that they are illegal in some states (e.g., in Colorado where the Colorado Attorney General successfully sued for-profit college Westwood for interest rates that were illegally high under Colorado consumer protection laws).

Students who do graduate from some predatory for-profit colleges are finding they cannot get a job. Veteran job placement services, such as VetJobs, advise veterans to remove from their resumes the names of certain predatory for-profit colleges because those school names are only hurting the veterans on the job market.

### **III. Recommendations.**

#### **A. The rule should be stronger than the 2011 Gainful Employment rule**

The Department should promulgate a stronger rule than the 2011 Gainful Employment rule. Since that rulemaking process, a flood of additional information about for-profit colleges has emerged, along with countless new investigations and lawsuits. This includes:

- The two-year Senate investigation and 2,000 page report with indisputable facts and data.<sup>43</sup>
- Senate Committee report on military and veterans: “Benefitting Whom?: For-Profit Education Companies and the Growth of Military Educational Benefits.”<sup>44</sup>
- Six Senate HELP Committee Hearings.<sup>45</sup>
- A Senate Government Affairs Committee Hearing specifically on military and veteran students at for-profit colleges. Please read the testimony and watch the hearing video at: <http://www.hsgac.senate.gov/subcommittees/federal-financial-management/hearings/improving-educational-outcomes-for-our-military-and-veterans>.
- A Senate Appropriations Committee Hearing on “Voluntary Military Education

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<sup>42</sup> See, e.g., U.S. Senate Committee on Health, Education, Labor & Pensions Report, “For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,” July 30, 2012 (chapter on Apollo), available at [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/Apollo.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartII/Apollo.pdf).

<sup>43</sup> Available at <http://www.harkin.senate.gov/documents/pdf/4eb02b5a4610f.pdf>.

<sup>44</sup> Available at <http://www.harkin.senate.gov/documents/pdf/4eb02b5a4610f.pdf>.

<sup>45</sup> Available at [http://www.harkin.senate.gov/help/video\\_hearing.cfm#1](http://www.harkin.senate.gov/help/video_hearing.cfm#1);  
[http://www.harkin.senate.gov/help/video\\_hearing.cfm#5](http://www.harkin.senate.gov/help/video_hearing.cfm#5)

Programs” focused on abuses by for-profit colleges.<sup>46</sup>

- GAO Report “Educational Experiences of Undercover Students.” Undercover students at 15 for-profit colleges found that all the colleges accepted subpar work, including the submission of photos of celebrities in lieu of essays, and that faculty encouraged cheating.<sup>47</sup>
- GAO Report: “Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices.”<sup>48</sup> Undercover tests at 15 for-profit colleges found that 4 colleges encouraged illegally fraudulent practices and that all 15 made deceptive or otherwise questionable statements to GAO's undercover applicants.
- DoJ lawsuit against EDMC.<sup>49</sup>
- CFPB complaints.<sup>50</sup>  
Hollister Petreaus’ testimony before Congress.<sup>51</sup>
- Investigations by 32 state AGs – and some have already achieved settlements.<sup>52</sup>

Data from the first Gainful Employment rule also shows that it was too weak. Because the rule carried repercussions only if a program failed *all three metrics in three out of four years*, subpar programs were able to continue without having to make any improvements, such as the nursing aid certificate program at the Everest Institute in Miami with a 7% repayment rate and a 100% debt-to-discretionary income ratio; the health aid certificate program at Kaplan College in San Antonio with repayment rates below 10% and debt-to-discretionary income ratio of 100% or more; and the plumbing certificate program at Vatterot College in Missouri with the same numbers.

### **B. Institute strong certification requirements to ban aid to programs whose graduates are not eligible for employment**

The proposed rule would require that all existing and new programs meet accreditation and occupational licensing requirements to be eligible to participate in Title IV programs. Institutions must certify that their programs are all included in the institution’s accreditation; are programmatically accredited if required by a state or

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<sup>46</sup> Please read the testimony and watch the hearing video at:  
<http://www.appropriations.senate.gov/hearings-and-testimony/hearing-voluntary-military-education-programs>

<sup>47</sup> Available at <http://www.gao.gov/new.items/d12150.pdf>.

<sup>48</sup> Available at <http://www.gao.gov/assets/130/125197.pdf>.

<sup>49</sup> *United States ex rel. Washington et al. v. Education Management Corp. et al.*, Civil No. 07-461 (W.D. Pa.).

<sup>50</sup> Available at <http://www.consumerfinance.gov/complaintdatabase/>.

<sup>51</sup> Available at <http://www.consumerfinance.gov/speeches/testimony-of-holly-petreaus-improving-educational-outcomes-for-our-military-and-veterans/>.

<sup>52</sup> See <http://www.republicreport.org/2014/law-enforcement-for-profit-colleges/>.

Federal entity; and meet any state certification, or licensure “that is needed ... to practice or find employment in an occupation that the program prepares students to enter.”<sup>53</sup>

The proposed certification requirements are a crucial, independent component of the proposed rule. Students too often discover the for-profit school lied to them about their eligibility to sit for any licensing exam required to get a job (especially jobs in the health and medical fields, but also law degrees).<sup>54</sup>

However, we believe it is important that the proposed rule be strengthened: First, programs should be required to meet generally accepted industry standards nationwide, not just the state government requirements of the state in which the college is incorporated. Second, the rule should cover programs that don’t require a license but where the graduate is nevertheless ineligible because of generally accepted requirements as dictated by the job market. Third, the Department should make public and transparent any claims by schools that they do provide the correct training, as this would enable non-governmental non-profit public advocates to serve as watchdogs to alleviate the burden on the Department of determining if schools are lying.

These three suggestions are important because students are unwittingly attending unaccredited programs and are finding out too late that they are ineligible for employment in the field the school prepared them for (and promised them they would be eligible for). Recall the experience of Marine Specialist Bryan Babcock:

“I specifically asked ITT Tech before signing up whether their degree was the same as any other public 4-year university and was told YES. I found out while applying at NYPD, LAPD, Seattle PD and 23 other police departments that NONE of them accepted ITT Tech credits. Once I found out that my time and money spent at ITT Tech was worthless, I tried to transfer my credits to a community college. I was told I have to start completely over as a freshman.”

ITT may have satisfied the state requirements of the single state in which ITT is incorporated and criminal justice work doesn’t need a license, but that doesn’t mean that ITT’s criminal justice program is worth a dime on the job market. Bryan Babcock is stuck today with \$70,000 in debt for a criminal justice degree that no police department in the country respects. He is working instead as an assistant in a real estate office, and his debt has crippled his future. The Gainful Employment rule needs to protect students like Bryan.

The problem of for-profit colleges’ lying to students about the programs’ accreditation is rampant. For example, the New Mexico Attorney General announced recently its allegation that ITT Technical Institute lied to students about the accreditation of its nursing program, and graduates discovered they could not work as licensed

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<sup>53</sup> 79 Fed. Reg. 16426, 16486 (Mar. 25, 2014).

<sup>54</sup> HELP Report at 102-111.

nurses.<sup>55</sup> In addition, the Colorado Attorney General settled with Argosy in December 2013 for its allegations that Argosy lied to students about the accreditation of its doctorate program, and graduates discovered they could not work as psychologists although they had been promised they could.<sup>56</sup> And the New York Attorney General’s successful suit against Career Education Corporation, with a \$10.5 million settlement, alleged the company had lied to students about the accreditation of its programs.<sup>57</sup>

In addition, Charlotte, North Carolina’s local broadcast TV news discovered that Kaplan was enrolling North Carolina students in a “dental assistance” program even though it knew full well that its graduates could not work as dental assistants because Kaplan wasn’t eligible to teach them, and Kaplan was lying to the students about the accreditation.<sup>58</sup>

Several students also testified before the Senate that their programs had left them ineligible for the profession for which they studied. One witness said that Kaplan had promised him a bright future as a lawyer and only when he was hundreds of thousands of dollars into their “law school” did he learn that Kaplan’s “law graduates” are not eligible to sit for the bar exam in any state except California because it allows anyone to take the bar exam (but he does not live in California).<sup>59</sup> Yasmine Issa, a single mom of two kids testified before the Senate that she was duped into attending a program at Sanford Brown Institute to get a degree as a sonographer. Only after she finished the program did she learn that her for-profit college did not leave her eligible to get the license to become a sonographer because it lacked “programmatic accreditation” for the sonography program.<sup>60</sup>

**C. Provide financial relief for students in programs that lose eligibility.**

Schools with ineffective programs that lose eligibility for federal aid should be required to make whole the students who enrolled in the program. Providing full relief to all such students is not only fair, it also creates a greater incentive for schools to quickly improve their programs.

**D. Limit enrollment in poorly performing programs until they improve.**

Under the draft regulation, poorly performing programs can increase the number of students they enroll, without limit, right up until the day the programs lose eligibility. The rule should, instead, impose enrollment caps until a program improves.

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<sup>55</sup> See [http://www.insidehighered.com/sites/default/server\\_files/files/New%20Mexico%20ITT%20complaint.pdf](http://www.insidehighered.com/sites/default/server_files/files/New%20Mexico%20ITT%20complaint.pdf).

<sup>56</sup> See [http://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney\\_general\\_suthers\\_announces\\_cons\\_umer\\_protection\\_settlement\\_argosy\\_unive](http://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney_general_suthers_announces_cons_umer_protection_settlement_argosy_unive).

<sup>57</sup> See <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>.

<sup>58</sup> See <http://www.wsocvtv.com/news/news/whistleblower-9-students-say-they-were-misled-by-l/nGSy3/>.

<sup>59</sup> See <http://www.help.senate.gov/hearings/hearing/?id=2c199df0-5056-9502-5df0-feb236792b52>.

<sup>60</sup> See <http://www.help.senate.gov/hearings/hearing/?id=464686ba-5056-9502-5d95-e21a6409cc53>.

**E. Close loopholes and raise standards.**

The proposed regulation is too easy to game, and its standards are too low. For example, programs can pass the standards even when 99% of their students drop out with heavy debts that they cannot pay down. Unscrupulous schools can easily manipulate job placement rates or evade accountability by limiting program size. They can exclude the debt of graduates who enroll in a program for just one day and can enroll students in online programs that lack the accreditation needed to be hired in the states where the students live. These types of loopholes need to be closed and the standards raised. We also urge you to heed the suggestions on closing loopholes from the U.S. Consumer Financial Protection Bureau and *the New York Times* editorial.

**F. Protect low-cost programs where most graduates don't borrow.**

Low-cost programs where most graduates do not borrow at all should automatically meet the standards because, by definition, these programs do not consistently leave students with unaffordable debts. Burdening these programs with a complicated appeals process could prompt more schools to leave the federal student loan program and lead to the closure of effective, low-cost programs. The veterans who seek help from non-profit aid organizations like Veterans Education Success, the Veterans Student Loan Relief Fund, and the Initiative to Protect Student Veterans at the University of San Diego Veterans Legal Clinic are veterans who find themselves burdened by tens of thousands of dollars in debt for worthless degrees from for-profit colleges, such as Marine Bryan Babcock, who holds \$70,000 in debt for a completely worthless degree from ITT Technical Institute. It is the enormous debt that cripples them.

**IV. Conclusion**

These four changes are essential to adequately protect both students and taxpayers. We strongly urge you to include them in the final rule. The rule must be finalized by November 1, 2014, and go into effect no later than July 1, 2015. Students and taxpayers have waited too long already.

The Departments of Defense and Veterans Affairs repeatedly told veterans service organizations that only the Education Department is equipped to make judgment calls about educational quality and to know how to draw the line on subpar programs. Therefore, veterans are counting on you to step up and draw that line.

We cannot plead strongly enough with you to please issue a strong gainful employment rule as well as other rules to provide some protection to veterans who have given so much of themselves to America but who now are being duped into extremely expensive, subpar educations – wasting their one shot at the GI Bill and the American Dream.

Sincerely,

Carrie Wofford  
President  
Veterans Education Success