



Proposed Education Department Regulatory Changes Should Be Reevaluated Based on GI Bill Oversight Lessons

Highlights

States, federal agencies, and accreditors are responsible for ensuring quality in institutions of higher education and protecting students from predatory schools. Together, they are known as the Triad. The U.S. Department of Education (ED) has proposed [sweeping changes](#) that affect the functions of each component of the Triad, including state authorization requirements, federal agency standards, and accreditors' authority. The evidence suggests that the regulatory tools for holding predatory schools accountable should be strengthened, not weakened.

ED's rulemaking should be reevaluated based on the lessons learned from GI Bill oversight and the impact on veterans. In each of the areas ED is proposing changes, veterans have been disproportionately harmed in a veritable [cycle of scandals](#) involving poor quality, predatory schools chasing GI Bill dollars. In several instances, the proposed changes would actually undermine protections for GI Bill beneficiaries by making it harder for State Approving Agencies (SAA) to hold schools accountable. [SAAs](#), an important component of the Triad, are a hybrid oversight entity consisting of state employees who, under contract with the Department of Veterans Affairs (VA), enforce federal statutory requirements governing the GI Bill. Many of those requirements rely on other federal standards and on the work of accreditors.

Background

On [January 15, 2019](#), ED commenced [negotiated rulemaking](#) on a suite of controversial proposals that will rewrite Departmental standards, including requirements affecting accreditation, distance education, the measurement of academic progress, the use of unaccredited educational providers contracted by schools, and access to federal student aid for closing schools. ED's justification for the proposals is to spur innovation in higher education by removing regulatory roadblocks.

Typical descriptions of the [three](#) components of the Triad portray the division of responsibilities as follows: states are viewed as primarily responsible for consumer protection, accreditors focus on quality, and the federal government through ED monitors financial stability and compliance with the rules governing Title IV federal student aid. Although not often recognized as such, SAAs are an important component of the Triad, acting as the gatekeeper for GI Bill funds by vetting degree and non-degree programs permitted to enroll GI Bill beneficiaries. An important distinction between SAAs and accreditors is that the former review the quality of specific *degree programs* offered by schools, while the latter examine the *policies and processes* in place that enable schools to provide a high-quality education. As such, their roles are complementary, not duplicative.

Title 38 of the U.S. Code, which spells out the rules and regulations governing the GI Bill, recognizes and builds on oversight by other elements of the Triad. For example, degree programs at accredited [public and nonprofit schools](#) are "deemed approved" and undergo an abbreviated SAA approval process. On the other hand, [unaccredited programs and those offered by proprietary schools](#) undergo a more thorough review, including an examination of the institutions' "financial soundness." Recognizing the roles of state licensure entities, accreditors, and other federal agencies, the statute directs VA to ensure that SAAs coordinate their activities and cooperate with other oversight entities. In fact, SAAs and accreditors routinely share information with each other on issues that they identify at schools.

This issue brief focuses on the implications of several key components of the ED proposal on the enforcement of protections for GI Bill beneficiaries by SAAs.

Weakening Accreditation

ED Proposal. ED's proposal would weaken accreditation by: (1) lowering the experience bar for recognition of new accreditors; (2) allowing accreditors to increase the scope of their accreditation or modify degree programs without adequate review; (3) eliminating the standard time limit for a school to return to compliance when an accreditor finds problems that would prevent the public and other regulators from learning about the school's failure to meet standards; (4) reducing transparency for EDs actions to hold accreditors accountable; and (5) allowing for-profit schools to participate in Title IV even though they don't meet full accreditation standards, which is prohibited under current rules.

Discussion. It's important to point out that federally recognized accrediting agencies were a result of the proliferation of predatory schools after the enactment of the original GI Bill in 1944.¹ The [Veterans' Readjustment Assistance Act of 1952](#) required schools receiving GI Bill funds to be accredited. A precursor of the Department of Education was tasked with publishing the list of recognized accrediting agencies.

Accreditation remains a key quality assurance mechanism for the GI Bill. When alerted to predatory behavior by a school that participates in the GI Bill, VA officials often explain that they rely on a school's approval by an ED-recognized accreditor as an indicator of quality. VA should be able to rely on the Department's accreditors to weed out bad actors, and SAAs should be able to proactively rescind GI Bill eligibility when an accreditor uncovers serious problems.

The closure of two large, publicly traded for-profit chains—Corinthian (2015) and ITT (2016)—underscores the need to strengthen, not weaken accreditation. Both schools were accredited by the Accrediting Council for Independent Colleges

and Schools (ACICS), whose ability to serve as an ED-recognized accreditor was [revoked in 2016](#) for literally “being asleep at the wheel” with respect to these and other predatory schools.² According to ACICS, Corinthian remained in compliance with its accreditation standards up until the day it closed.

Both Corinthian and ITT engaged in [predatory practices](#), including misrepresenting job placement rates and pressuring students to take out expensive private loans. ACICS ignored abundant warning signs, including dozens of state and federal investigations as well as signs of financial instability. The 2014 revocation of Corinthian’s eligibility to enroll veterans and eligible family members by the California and Virginia SAAs reduced the number of beneficiaries ultimately affected by the closure, protecting both taxpayers and beneficiaries from additional losses. Overall, though, more than 7,000 veterans and eligible family members were still enrolled when Corinthian and ITT shut down. In explaining its decisions, the California SAA referenced ED’s decision to force Corinthian to sell or close all of its campuses because of the school’s failure to cooperate with ED’s ongoing investigation of misleading job placement rates. Moreover, when ED placed Corinthian on [Heightened Cash Monitoring](#), the school warned it was at risk of bankruptcy—a clear indication of financial stress.

Removing the time limit for schools to return to compliance when an accreditor identifies shortcomings will delay the public’s and SAA’s access to important information about the financial stability or quality of schools. The public deserves to know if there are risks to enrolling at a school, ideally before signing an enrollment agreement and taking out student loans. In fact, accreditation issues are among the multiple risk factors that VA uses to post caution flags on its [GI Bill Comparison Tool](#), a website intended to help beneficiaries make an informed choice about where to use their hard-earned educational benefits. ED’s proposal would make it harder for the VA to gather and share relevant information collected by accreditors.

Finally, ED would water down the requirements for accreditors to review substantive changes schools make to the programs they offer. Such review requirements were put in place in a 1994 crack-down on the proliferation of poor-quality programs. A 2015 action by the Virginia SAA illustrates why the approval of program modifications is an important student protection. SAAs are required to ensure that approved programs continue to meet the conditions of their approval, particularly when a school modifies program requirements after enrolling GI Bill beneficiaries.³ Based on beneficiary complaints, the Virginia SAA suspended new enrollment in ECPI’s Medical Career Institute. ECPI had implemented a new policy requiring nursing students to pass an additional exam in order to graduate and be eligible to sit for the nursing licensing exam. ECPI’s goal was to restrict the exam to students it believed would have a good chance of passing the exam, suggesting that it either admitted and charged tuition to unqualified students who had little chance of succeeding and being licensed, or that its program was of poor quality. A nursing program with low exam pass rates can have its state approval revoked. It’s unlikely that non-veteran nursing

students would retain similar protections if the ED proposal is actually implemented.

Ignoring Lawsuits

ED Proposal. In evaluating an accreditor, the Department of Education would not be able to consider lawsuits against schools that the agency accredits unless the schools admit guilt.

Discussion. The Department’s proposal to weaken rather than strengthen accreditation and to diminish its own ability to hold accreditors accountable is inconsistent with its mission to protect students and taxpayers, including student veterans. The proposal, however, is totally in step with its November 2018 decision to reinstate ACICS, an accreditor whose reputation was thoroughly tarnished by its failure to hold Corinthian and ITT accountable.

Between 2012 and 2017, 10 [for-profit chains](#) settled state or federal lawsuits alleging that they had used misleading advertising and recruiting to enroll students, including veterans. These chains agreed to pay fines totaling over \$400 million.⁴ More recently, Career Education Corporation settled similar allegations with 49 state Attorneys General, agreeing to provide over \$500 million in loan forgiveness, reimburse states \$5 million for the costs of the lawsuit, and pay \$2 million for a monitor to oversee the terms of the settlement.⁵ None of the chains involved in these settlements admitted any wrongdoing.

Information about federal or state Attorneys General settlements is directly relevant to evaluating accreditors. A law enforcement investigation that leads to a settlement means there was sufficient evidence that law enforcement felt compelled to investigate and that a school believed the evidence of wrongdoing was strong enough to settle the case rather than fight it.⁶ An accreditor should be held accountable for missing or ignoring such important warning signs. As noted above, such settlements are one of a number of risk factors that result in caution flags on the GI Bill Comparison Tool. Given the importance VA attaches to providing this information to GI Bill beneficiaries, that information should also be indispensable for a federal agency responsible for protecting billions of taxpayer dollars each year.

Watering Down Distance Education Protections

ED Proposal. Online schools would no longer be required to (1) seek authorization from the states where they are enrolling students, (2) disclose information about the eligibility of graduates to meet licensure requirements in the state where they live, or (3) provide information to students about how to file complaints against the school.⁷

Discussion. Watering down online education protections would undermine the safeguards put in place by 2016 legislation prohibiting the GI Bill participation of degree programs that do not prepare beneficiaries for state licensure or certification.⁸ This provision was a response to our [research](#) that 20% of the 300 degree programs sampled did not lead to a job because the programs failed to meet state licensure or certification requirements. ED’s proposal sends the wrong signal to schools, reversing progress made on addressing this problem. After

enactment of the 2016 legislation, [some school websites](#) were revamped, making it easier for SAAs and beneficiaries to determine if an institution's programs actually qualify graduates to sit for a licensing or certification exam.

The Department's proposal to allow schools to withhold information on how to file complaints is puzzling because it also runs counter to progress making it easier to file a grievance. Both [ED](#) and [VA](#) have created accessible, online systems for students and veterans to file complaints; and all states are required to have complaint systems in place in order to meet state authorization requirements for ED. Because beneficiary complaints can be an early warning sign of a systemic problem at a school, VA and SAAs use them to initiate investigations. According to a recent [GAO report](#), "As of July 2018, VA and state agencies have conducted about 160 targeted reviews of schools in response to complaints since 2014, resulting in the withdrawal of program approval for 21 schools...."

Evaluating College's Credit Hours

ED Proposal. ED would eliminate the definition of the amount of time (or commensurate amount of learning time) that an institution should expect from each credit hour earned for the purpose of awarding federal student aid, a protection added in [2010](#) to combat schools' inflation of the credits they awarded for very short programs.⁹

Discussion. ED's proposal would remove a protection that prevents schools from maximizing Title IV and revenue by charging students more, causing them to spend down their GI Bill benefits faster, without providing more education in return. As a [Chronicle of Higher Education](#) article pointed out, by increasing the number of credits per course, "the colleges make it easier for their students to maximize their use of loans and grants—the lifeblood of most for-profits." This practice also increases the chances that a GI Bill beneficiary will be considered a "full-time student," undermining enforcement of the statutory requirement that veterans attending less than full-time receive a smaller living and book stipend.¹⁰

The 2010 rule was implemented after the ED Office of Inspector General had criticized a regional accreditor for allowing American InterContinental University, owned by the Career Education Corporation, to offer a 9 credit, 5-week business course, which the school's accreditor criticized but nonetheless approved with modest changes. Kaplan, another for-profit chain at the time, had also increased the number of credits awarded for some of its 10-week courses.

VA's administration of GI Bill benefits is built on the concept of credit hours. For example, educational benefits are available for 36 months, which assumes that beneficiaries receive sufficient credits (120) over four, nine-month semesters to earn a bachelor's degree. In addition, a beneficiary's enrollment status influences the level of benefits received. Thus, the living and book stipends are prorated for beneficiaries enrolled in fewer than 12 credits per semester; those who take fewer than 6 credits receive no living stipend. Moreover, SAAs are responsible for policing school's changes to credit hours, which affect enrollment status and benefit payments. A for-profit

school in one was challenged by the SAA to show the substantive changes to the curriculum it had made to justify increasing the number of credits earned from 3 to 6. The school backed down.

Granting Access to Unvetted Educational Providers

ED Proposal. ED would allow schools to outsource 100% (up from a 50% limit) of a degree program to an unaccredited contractor.

Discussion. ED should take note of VA's experience with rotary-wing flight schools, which demonstrate the pitfalls of allowing schools to [outsource](#) a portion of their degree programs to unaccredited contractors. A 2015 [Los Angeles Times](#) article reported that helicopter flight schools were exploiting a statutory loophole to charge tuition and fees that far exceeded the caps on such payments—often by hundreds of thousands of dollars. One such school [confirmed](#) that helicopter training for 12 veterans cost VA \$500,000 each—\$6 million—far exceeding the tuition and fee caps at GI Bill participating institutions.

Helicopter flight schools, which are not independently [accredited](#), were able to avoid SAA oversight by contracting with public institutions, which have no hard dollar cap on tuition and fee payments.¹¹ Unlike private schools, which are capped at \$23,692 for the 2018-19 academic year, public 2- and 4-year institutions are paid based on in-state tuition, which has no specific dollar limitation. In addition, along with nonprofit institutions, public schools are deemed approved and therefore undergo an abbreviated GI Bill approval process, which further limited SAA oversight. Since the flight school scam emerged in 2015, VA has taken several steps to address the scandal. It reversed its interpretation that a flight school contracting with an institution of higher learning could also be treated as such, giving SAAs the authority to examine contracted entities.

Closed Schools and Veterans

ED Proposal. ED would give closing institutions authority to stay open and retain eligibility to receive federal student aid for 4 months after announcing closure, which would allow schools to offer teach-outs.

Discussion. Thousands of veterans and eligible family members were enrolled at for-profit schools that [closed](#) abruptly since 2013. Many of these schools offered a poor-quality education at a price much higher than a comparable program at a public institution. Many of these schools lied to GI Bill beneficiaries in order to recruit them.¹² Moreover, employers often didn't respect credentials from these schools, making it difficult for graduates to find a job.

The options for GI Bill beneficiaries when a school closes are not straightforward. Although they can apply to ED for a closed-school discharge and have any federal student loans forgiven, their VA-provided educational benefits generally can't be restored once they are used.¹³ Alternatively, they can decide to forgo loan forgiveness and complete their programs at other institutions willing to accept their credits. Unfortunately, the schools most likely to accept transfer credits are another for-profit school.

According to The Institute for College Access and Success, thousands of students enrolled at Corinthian when it closed in April 2015 had [transferred](#) from schools that had closed. These students had most likely transferred from other for-profit schools. Moreover, many of the [transfer options](#) open to former Corinthian students were also for-profit schools that were themselves under law enforcement scrutiny. For example, ED published a list of viable transfer options near shuttered Corinthian campuses, which included ITT Tech, DeVry, University of Phoenix, Education Management Corporation, Career Education Corporation, and Westwood. All of these chains were under investigation, were facing state or federal lawsuits, or had settled such lawsuits.

Conclusions

SAA Directors are aware of the strengths and weaknesses of accreditation. Nonetheless, they view accreditation as an important, if imperfect, quality assurance protection for GI Bill beneficiaries. They work with and share information with accreditors, particularly if they believe an approved school may

be out of compliance with Title 38 requirements. Weakening accreditation standards would undermine the credibility of accreditation and the controls that VA relies on to ensure GI Bill beneficiaries receive a high-quality education. At the same time, it would increase the workload of SAAs, which are already overworked and underfunded.

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¹The existence of [private accrediting organizations](#) pre-dates the requirement for federal recognized entities.

²ED [restored](#) ACICS standing as a recognized accreditor last year.

³The December 3, 2108 [VA Office of Inspector General Report](#) on SAA oversight discusses the importance of reviewing schools' program modifications on page 9.

⁴See App. I in hyperlinked document.

⁵Diane Auer Jones, Principal Deputy Under Secretary at ED, who was a senior vice president responsible for external relations at the Career Education Corporation from 2010 to 2015, spearheaded the development of ED's proposed regulatory changes.

⁶Moreover, a lawsuit itself provides a comprehensive summary of the investigation's findings.

⁷To strengthen the enforcement of state consumer protection laws, the Obama administration had finalized a rule requiring schools to be approved in every state where they enrolled students in online programs. ED delayed the rule's implementation and this proposed rule would eliminate any such requirement. With the growing popularity of online programs, the role of states as part of the Triad will be increasingly marginalized.

⁸[Sec. 409](#) of P.L. 114-315, the Jeff Miller and Richard Blumenthal Veterans Healthcare and Benefits Improvement Act of 2016.

⁹ED guidance issued after publication of the final regulations stated that "A credit hour is a unit of measure that gives value to the level of instruction, academic rigor, and time requirements for a course taken at an educational institution. At its most basic, a credit hour is a proxy measure of a quantity of student learning."

¹⁰To receive full living and book stipends, beneficiaries must take courses totaling 12 credits per term. For example, beneficiaries who enroll for six credits have their stipends reduced by half.

¹¹Independent flight schools are capped at about \$12,000, which is adjusted annually for inflation.

¹²By statute, for-profit schools can receive up to 90% of their revenue from Title IV, providing an incentive to recruit military-connected students whose educational benefits are excluded from the cap—the 90/10 loophole. For every \$1 in revenue from military educational benefits, a school can earn an additional \$9 by enrolling students who depend on Title IV to pay for school.

¹³Section 109 of [P.L. 115-48](#) enacted in August 2017 provides for the restoration of all GI Bill benefits used at a school that closed from January 1, 2015, through August 16, 2017. Beneficiaries attending a school that closed prior to January 1, 2015, or 90 days after August 16, 2017, are eligible for only a partial restoration of benefits—those benefits used in the term during which the school closed. For example, beneficiaries enrolled at two chains which recently announced their closure, Education Corporation of America and Vatterott College, will only receive a limited restoration of benefits.