

The Veterans Education Project

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Public Comment on Identifying Congressional and Administration
Priorities for the Next Congress:
How We Can Support Our Veterans Through and After COVID-19

House Subcommittee on Economic Opportunity
B-234 Longworth Office Building
Washington, DC 20515

The Veterans Education Project

The Veterans Education Project (VEP) is a Veteran Service Organization in Washington, D.C. that regularly engages with Congress, the White House, the Departments of Veterans Affairs, Defense, and Education, as well as with institutions of higher education in order to advocate for student veterans, servicemembers, and their families. As veterans serving veterans, VEP is committed to nonpartisan research, engagement, and policy implementation in our efforts to support institutions that meet the needs of student veterans, and guarantee the benefits and support systems necessary for veteran and military students to succeed.



Executive Director Daniel Elkins

Mr. Elkins is the Executive Director of the Veterans Education Project (VEP). His duties include the engagement of Congress, the White House, and other key stakeholders in the administration on behalf of Student Veterans.

Prior to serving with VEP, Mr. Elkins served as the Legislative Director for the Enlisted Association of the National Guard of the United States (EANGUS) where he directed nationwide Congressional outreach to ensure the protection of military benefits. He was also responsible for monitoring all legislative activities on Capitol Hill, with a focus on oversight and implementation. His day-to-day responsibilities included developing new relationships with key stakeholders on Capitol Hill, maintaining relationships with the Administration, partnering with institutions of higher education, and serving as an expert witness to both Congressional and federal offices. Prior to working for EANGUS, Mr. Elkins was a legislative associate for the Veterans of Foreign Wars of the United States (VFW). At the VFW, Mr. Elkins's

portfolio included legislative issues related to the National Guard, healthcare, and higher education.

Currently, Mr. Elkins maintains strong relationships with the White House, other Veteran Service Organizations, Congress, and the Departments of Defense, Education, Labor, and Veterans Affairs, which often places him at the forefront of policy decisions that impact veterans. Mr. Elkins is also a Green Beret and proud combat veteran. Prior to working as an advocate for veterans and serving in the military, Mr. Elkins spent five years working overseas to solve complex issues related to human trafficking. During his time away, he worked across South America, Sub-Saharan Africa, Europe, and the Middle East. Mr. Elkins is originally from Western Maryland, and currently resides in Washington, D.C. with his wife Lauren.

Dear Chairman Levin,

Thank you for this opportunity to make comment on the most pressing issues causing adversity for student veterans, and the opportunity to recommend legislative remedies that will secure their benefits and ensure their success. The Veterans Education Project has identified the following pressing issues affecting military and veteran students now and after COVID-19.

Military and Veteran Student Protections

Members of the Armed Forces enrolled in postsecondary programs of higher education lack adequate protections when activated for military service.

Issue 1: USERRA, cited by commanders in response to their student-servicemembers' concerns with conflicting scheduling and duty requirements, does not protect them "because the educational institution is not the student's employer."

Issue 2: Readmission requirements, codified in 20 U.S.C. 1091c, do not apply to servicemember's absence from class to attend training within 30 days, e.g. Commanders' Training, Equal Opportunity Training, Predator Training, Air Assault, Airborne, and Fiscal Law. The readmission requirements apply to servicemembers who have completely withdrawn from an institution for a period of service of more than 30 consecutive days.

Issue 3: Institutions, regardless of sector, are increasing and boldening their recruiting efforts towards members of the military community—specifically, reserve members of the military community using either Tuition Assistance or G.I. Bill benefits. Many of these student servicemembers have active military obligations that are less than 30 days in length at any one time, i.e., Army Air Assault School.

Military commanders frequently cite the Uniformed Services Employment and Reemployment Rights Act (USERRA) in response to military students' concerns with missing classes, presentations, or exams due to military obligations. However, USERRA does not protect students; it protects employees. While reenrollment protections are provided to military students activated for military service under 20 U.S.C. 1091c and 34 C.F.R. 668.18, student veterans and servicemembers lack federal causes of action, like those provided under USERRA, to protect them while activated for active duty or active status. Further, the 30-day threshold of continuous service required of National Guard and Reserve component servicemembers disbars many student servicemembers from the reenrollment protections provided under 20 U.S.C. 1091c and 34 C.F.R. 668.18.

At a minimum, the absence of federal law potentially affects over 200,000 military students. In 2017, DoD reported 255,727 of its members used tuition assistance (TA) benefits at post-secondary educational institutions—563 non-profit, 186 for-profit, and 1,215 public. Tuition assistance is a reliable indicator of the number of servicemembers simultaneously maintaining military and educational obligations. However, the number of military students is likely much higher because some veterans using G.I. Bill benefits actively serve and may have conflicting military obligations during their semesters. In the same year, 727,018 Veterans used G.I. Bill benefits at post-secondary educational institutions; VA does not report the number of veterans still serving and using educational benefits. In total, between

veterans and military, the absence of federal law potentially affects over 900,000 postsecondary students.

There have been further attempts to provide protections to veteran and military students via Executive Order 13607, “Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members,” and Department of Defense Instruction 1322.25, which establishes Memorandums of Understanding between institutions of higher education and DoD. However, both of these efforts fail to provide military and veteran students with a private right of action to bring against their respective institution of higher education.

Lacking a private right of action, the Department of Justice (DOJ) is unable to advocate on behalf of military and veteran students. Rather, DOJ “protects a servicemember's civilian employment rights by enforcing the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), Pub. L. No. 103-353, 108 Stat. 3149; voting rights by enforcing the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 52 U.S.C. §§ 20301-20311; and, financial security through the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§ 3901-4043—all federal law codified in the U.S. Code.

To provide military and veteran students the protections they need, the Veterans Education Project recommends the pursuit of the following legislative endeavors:

- Remove “30 consecutive days” from 20 U.S.C. 1091c. This will protect servicemembers’ required to attend short-term military training.
- If an institution is currently accepting TA and GI Bill benefits of any chapter, mandate disclosures by educational institutions regardless of sector. These disclosures should include but are not limited to: a written commitment to readmission of student servicemembers regardless of length of service; the entirety of 20 U.S.C. 1091c; the link and instructions to submit to the VA Feedback Tool; the link and instructions to submit to the DoD Student Intake Complaint System and relevant agencies charged with the duty of protecting servicemembers and consumers.

Modernize Monthly Housing Allowance for Veteran Students

The Monthly Allowance for Housing (MHA) for Veteran Students whose programs switched to distance learning due to COVID-19 will revert to half of the national Basic Housing Allowance average, even though it is likely that distance learning will be extended and expanded into 2021 and beyond.

The Post-9/11 GI Bill was passed in 2008 to provide education benefits to those who have served on active duty for at least 90 days since Sept. 10, 2001. These benefits include payment of tuition and fees, a stipend for textbooks and supplies, and a monthly housing allowance for up to 36 months.

The veteran student’s MHA depends on the percentage level of benefits they are eligible for, how many courses they’re enrolled in, and the zip code of the institution where the student physically attends the majority of classes. Normally, those pursuing a degree entirely online only receive about half as much of the MHA as student veterans who take traditional in-person courses.

Since 2008, increasing amounts of institutions have made available distance learning modalities for larger amounts of programs, credentials and certificates, and the percentage of military and veteran

students enrolled in distance learning programs has steadily increased. These students have relied on effectively half of their eligible housing benefit to enroll in these distance learning programs. The coronavirus pandemic of 2020, however, sparked a predicament when institutions at all levels were forced to alter their educational programs to acclimate to the need for isolation and social distancing. Mass gatherings, including in-person college lectures have been cancelled and many converted to distance learning.

Changing to an online-only class structure would have left veteran students who were originally enrolled in in-person classes unable to qualify under VA regulation to receive their full housing benefits. Online-only student veterans, however, have not been afforded equivalent MHA entitlements as those of their peers.

The conditions set by COVID-19 have highlighted this inequity among student veterans in online programs, and it has made evident that online-only student veterans need and ought to be entitled to the full Monthly Housing Allowance afforded to all other student veterans throughout and following the COVID-19 crisis. To this end, the Veterans Education Project recommends that online-only veteran students receive an MHA entitlement equivalent to the zip-code of their residence.

National Guard Independent Student Status

Members of the National Guard are not considered as independent students when applying for financial aid, often disqualifying them from grants and financial aid.

Many states, such as New Jersey, have state-level grant programs for members of the National Guard that subsidize their postsecondary education at public institutions of higher education. These programs cover the cost of postsecondary education for National Guard servicemembers through a combination of state-level programs and federal aid.

In order to be eligible for state and federal student aid programs, it is required for servicemembers to fill out a FAFSA form. For active duty military under the age of 25, guardian signatures can be waved, as these servicemembers are considered independent students under 20 USC § 1087vv (d)(D):

The term "independent", when used with respect to a student, means any individual who...(D) is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1)) or is currently serving on active duty in the Armed Forces for other than training purposes;

However, members of the National Guard and Reserve component are not considered active duty while on Title 32 orders, and thus, if they are under the age of 25, are not recognized as independent students for the purpose of need analysis for financial aid. This statute disbars members of the National Guard that are estranged from their parents or legal guardians from applying for state and federal financial aid programs for which they are otherwise eligible.

The Veterans Education Project recommends the Committee to amend 20 USC § 1087vv (d)(D) as follows:

(D) is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1)) or is currently serving on active duty or active status, or inactive status currently under a Reserve Component military contract in the Armed Forces,

This addition of “active status or inactive status currently under a Reserve Component military contract in the Armed Forces” will bring parity to members of the National Guard with respect to active duty servicemembers that are considered “independent students” when applying for state and federal financial aid, and ensure that all members of the National Guard have access to the benefits they deserve.

Calculating the Return on Investment of the Post 9/11 GI Bill By Creating a GI Bill Calculator

Calculating the Return on Investment (ROI) of the Post 9/11 GI Bill will provide greater oversight of GI Bill eligible institutions, while providing transparency to Veterans deciding where to invest their GI Bill education benefits. We recommend that the Committee direct the Department of Veterans Affairs to form a partnership with the Department of Education in order to share its data with the Institute of Education Sciences (IES). We suggest VA share the following data sets:

1. The name of the institution receiving benefits
2. The program attended
3. How much benefit used
4. Age and rank, if a Veteran
5. Whether it is a Veteran or their family using Post-9/11 GI Bill Dollars

Individual student-level data systems exist in many federal agencies, but federal data remains siloed, inhibiting the study of student outcomes. Even when agencies recognize the value of linking their data, there is no current infrastructure to facilitate such data sharing. This problem manifests itself in the inability of the VA to accurately report basic outcomes and return on investment of the billions of dollars spent on the Post-9/11 GI Bill.

While VA has made significant progress in the administration and oversight of Veteran education benefits, as the Department of Education moves towards programmatic level data, updating the GI Bill Comparison Tool is essential to ensure that Veteran students are given Veteran-specific outcomes to be at parity with the information given to nonveteran students. Without this necessary improvement to create a GI Bill Calculator, Veterans and their family members who take advantage of GI Bill benefits might enroll in programs that have low Veteran student success rates and low ROI for a specific degree pathway, despite having high institutional outcomes in general. In turn, many Veterans will continue to invest precious time and scarce taxpayer dollars on pursuing a degree or credential that will not produce desired results.

Better data could be used immediately to improve the GI Bill Comparison Tool and calculate the ROI of the Post-9/11 GI Bill, without VA having to obtain all the necessary data-sharing agreements

themselves.⁴ At present, the Department of Education's College Scorecard displays a range of student outcomes, like the average salary of an institution's graduates, since it is linked with IRS data, or debt data derived from the office of Federal Student Aid. The Scorecard will soon be presenting student outcome data at the even more meaningful programmatic level.

If the Department of Veterans Affairs agrees to share its data with The Department of Education, all necessary data will be linked in order to disaggregate Veteran students down to the programmatic level, calculate the ROI of the Post-9/11 GI Bill, and create an improved GI Bill Calculator for all Veteran students. This will provide the transparency Student Veterans deserve when deciding where and how to invest their GI Bill benefits, further enhancing the ROI of the Post-9/11 GI Bill, and provide additional oversight over GI Bill eligible institutions of higher education.

Amend the 85/15 Rule

The 85/15 Rule indirectly forces student veterans out of GI Bill eligible programs, taking away their right to use their benefits and halting their postsecondary persistence.

38 CFR § 21.4201 and 38 USC § 3680A state that Department of Veterans Affairs (VA) shall not approve the use of education benefits in any course for an eligible veteran if the percent of supported students in that course exceeds 85 percent. This is commonly referred to as the 85/15 Rule, and it has hurt many Veterans who are pursuing postsecondary degrees with their rightfully earned VA education benefits.

The 85/15 Rule prohibits paying VA education benefits to students enrolling in a program when more than 85 percent of the students enrolled in that program are having any portion of their tuition, fees, or other charges paid for them by the school or VA. This means that VA will deny veterans their education benefits to attend a program with a high 85/15 supported student ratio. Further, even if a veteran enrolled in an approved program, if they deploy for active duty or active status and take a leave of absence from their program, at times they are denied their education benefits when attempting to reenroll due to changes in the program's 85/15 ratio. The student veteran is told they are no longer eligible to use their GI Bill benefits because of the imbalanced ratio, and must take out loans to stay in school. Consider this testimony from a deployed Special Forces operator in Afghanistan,

"I was a recent casualty of [the 85/15 Rule]...About halfway through my graduate program I was told that I could no longer use my VA benefits for tuition due to the 85/15 Rule. I was told by several ranking school officials that they had reached their limit on VA students within my degree program and they could not let me continue receiving my VA benefits under that specific program. They said I could switch degree programs, which I thought was absolutely ridiculous. I wasn't able to complete my degree and just stopped attending because I couldn't afford the tuition without VA tuition assistance.

⁴ This data sharing is already established in 20 U.S. Code § 1015, which directs the Commissioner of Education Statistics to: develop a uniform methodology of reporting postsecondary spending, design systems capable of receiving and analyzing data from other federal agencies, disseminate data to stakeholders, and work with the Secretary of the Department of Veterans Affairs to collect, study, and disseminate information on financial aid and education benefits.

Why should I have to go to another school or switch degree programs and start all over again after competing several graduate level courses at? Now, I am currently deployed to Afghanistan for my third combat tour with no degree and no hope of completing it while this rule is in effect.”

The federal regulations for 85/15 were established in the 1950’s during the Korean War Era GI Bill when many fly-by-night programs targeted veterans, took their benefits, and closed their doors. Seven decades have since passed and there have been no substantial updates to the regulations, and the criteria of appeal for a waiver are now outdated and rarely obtainable. When institutions cannot appeal for a waiver, veterans are the ones who pay the price.

Current interpretation of 38 CFR § 21.4201(h) establishes criteria and guidelines for institutional waivers and requires that institutions meet every single criterion in order to be eligible for a waiver, such waiver being provided by the Secretary of VA under 38 USC § 3680A(d)(1),

“The Secretary may waive the requirements of this subsection, in whole or in part, if the Secretary determines, pursuant to regulations which the Secretary shall prescribe, it to be in the interest of the eligible veteran and the Federal Government.”

It is clear that the Secretary of VA has the authority to waive 85/15 requirements when presented with a compelling argument “in the interest of the eligible veteran” according to criteria established in federal regulation. In order to better represent the interests of student veterans, the Veterans Education Project recommends the Committee to codify a reinterpretation of 38 CFR 21.4201(h) thusly:

- Establish Arabic numeral (3) as a prerequisite for waiver eligibility: “Previous compliance history of the school, including such factors as false or deceptive advertising, complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to VA.”
- Reinterpret Arabic numeral (4) and establish it as a prerequisite for waiver eligibility, “General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc.”
 - Currently, “veteran-students” completion is only captured if the Student Veteran is using education benefits. Many Student Veterans do not complete their postsecondary programs on education benefits alone, disqualifying them from contributing to institutions’ Student Veteran completion rates.
 - Allow institutions to report all Student Veteran completions regardless of whether they are using benefits when appealing for an institutional waiver.
- Allow institutions to apply for a waiver under either Arabic number (1) or (2).

Risk of Opioids, Benzodiazepines and Suicide

Previous studies highlight a connection between opioids, benzodiazepines and death by suicide among Veterans and Servicemembers. We must protect the warfighters from unnecessary therapeutics that may intensify the risk of death by suicide.

The average rate of Veteran deaths by suicide is 20 per day. Of these, 14 do not have access or decline treatment by the Department of Veterans Affairs. There have been attempts to research the possible contributing factors driving deaths among Veterans, and efforts have been made to reach these 14 unserved Veterans. But what is evident is that the findings from this research have not provided viable therapeutics, methodologies, or questioned current practices thoroughly enough to identify solutions for Veterans.

Previous studies¹ by the Department of Veterans Affairs cannot conclude the etiology of antidepressants and antipsychotics in relation to Veteran deaths by suicide. Other studies have been directed to the National Academy of Sciences (NAS) via the National Defense Authorization Act (NDAA) to investigate the strength of the correlation between medications used by VA to treat Veterans experiencing depression or suicidal ideations and deaths by suicide of these Veterans. But this study did not include antidepressants within its scope and was inconclusive in its results.

S. 785, the *Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019*, includes Section 204, which reads,

“The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine under which the Secretary shall collaborate and coordinate with the National Academies on a revised study design to fulfill the goals of the 2019 study design of the National Academies described in the explanatory statement accompanying the Further Consolidated Appropriations Act, 2020 (Public Law 116-94), as part of current and additional research priorities of the Department of Veterans Affairs, to evaluate the effects of opioids and benzodiazepine on all-cause mortality of veterans, including suicide, regardless of whether information relating to such deaths has been reported by the Centers for Disease Control and Prevention.”

It is imperative that the paradigms for this study, and the oversight and transparency of its researchers, ensure real solutions are provided by its findings.

Given that veteran deaths by suicide have progressively increased at an alarming rate over the past ten years regardless of the previous efforts to investigate the causes and provide treatments, the Veterans Education Project recommends the Committee engage with the Department of Veterans Affairs to

¹ Valenstein, Marcia, Hyungjin Myra Kim, Dara Ganoczy, John F McCarthy, Kara Zivin, Karen L Austin, Katherine Hoggatt, et al. “Higher-Risk Periods for Suicide among VA Patients Receiving Depression Treatment: Prioritizing Suicide Prevention Efforts,” January 2009. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2909461/>

require stringent vetting processes of all researchers to limit biases for or against opioids and benzodiazepine; and, the addition of an oversight panel consisting of medical doctors and PhDs from relevant specialties who pass the same vetting processes, with the aim towards diversity of experience, perspective, and objectivity.

Strengthening Informed Consent for Prescription Medications

Currently, only-oral informed consent is outlined on page ten of the 2020 VHA Handbook, viz.,

- (1) Documentation of Treatments and Procedures That Require Only Oral Informed Consent (a) Treatments and procedures that are low risk and within broadly-accepted standards of medical practice (e.g., administration of most drugs...)

This regulation is contradictory. Veterans are being prescribed large amounts of antidepressants, antipsychotics, benzodiazepines, opioids and stimulants, which all contain an FDA Black Box Warning. The Black Box Warning is the highest risk warning according to FDA regulations. Suicidal ideation is one of the chief side effects of these Black Box Warning medications, and yet Veterans receive only-oral informed consent by VHA regulation. This means that the Department of Veterans Affairs is prescribing Veterans at risk of death by suicide medications whose greatest side-effects are suicidal ideation and increased risk of death by suicide—and *not* providing these Veterans with comprehensive explanations of these risks, information of alternative therapeutic courses of action made available by VA, or requiring signatory consent by veteran patients.

The prevention of veteran deaths by suicide has rightfully become the top priority for Congress and the Administration; yet even with the continued spending and research, the most recent VA report on veteran deaths by suicide demonstrates more fatalities and at faster rates. This has been the trend for the past ten years.

The VHA Handbook was most recently revised in July of 2020. There was no modification of this regulation.

The Veterans Education Project, therefore, respectfully urges the Committee to codify Signatory Informed Consent for all medications prescribed by the Department of Veterans Affairs to veterans that contain FDA Black Box Warning, as VA partially practices with the prescription of long-term opioids, Clozapine, Thalidomide, and Buprenorphine.