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Christopher J. Salemmme

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Unpatriotic Profit: How For-Profit Colleges Target Veterans and What the Government Must Do to Stop Them

Christopher J. Salemme

I. INTRODUCTION

Veterans in the United States today are easy prey for corporations looking to make a profit from federal government funds intended to help these veterans become educated and gainfully employed in the private sector. For-profit educational institutions promise career advancement, practical technical skills, and easy online access to their programs. Yet a veteran like Mark Glogouski, who enrolled in the for-profit Colorado Technical University¹ in 2011, remains in his original job as an aircraft painter, but with “two associates’ degrees that aren’t in the field [he] wanted, an unfinished bachelor’s degree, no more veteran benefits and \$65,000 in federal student loan debt.”² When Corinthian Colleges went out of business following a U.S. Department of Education investigation into its deceptive advertising practices,³ Marine Corps veteran and Corinthian

1. Colorado Technical University markets itself as a “military-friendly university” and provides “Military Education Benefits Specialists . . . to help [service members] navigate [their] education benefits and financial aid.” *Military-Friendly Online College*, COLO. TECH. UNIV., <http://www.coloradotech.edu/military> (last visited June 20, 2017).

2. David Olinger, *Veterans Feel Ripped Off by Colorado For-Profit College*, COLO. INDEP. (Jan. 26, 2017), <http://www.coloradoindependent.com/163650/veterans-colorado-tech-for-profit-college-debt>.

3. “Following enforcement actions by the federal government and other authorities, Corinthian Colleges, Inc., sold most of its schools and later closed the remaining ones.” *Information About Debt Relief for Corinthian Colleges Students*, FED. STUDENT AID, <https://studentaid.ed.gov/sa/about/announcements/Corinthian> (last visited June 20, 2017).

student Paul Fajardo's GI Bill housing benefits were revoked, forcing him to live out of his car.⁴ Navy veteran Robert Velasquez was enrolled at the Retail Ready Career Center in Garland, Texas, until it abruptly shut down in September 2017.⁵ Velasquez now "question[s] why [he] believed the school's aggressive sales pitch to him that sounded 'too good to be true.'"⁶

Considered the finest fighting force in world history, the Armed Forces of the United States of America credits its success "not [to] tanks, planes or ships, [but to its] People. . . . They are your sons and daughters, brothers and sisters, husbands and wives. People of whom we are very proud. These are the best of America."⁷ The value of the American men and women who selflessly serve their nation is unparalleled; however, the protections afforded to veterans by the federal government are not always sufficient to meet the injustices they face in the civilian world. The wars in Afghanistan and Iraq that began early in the twenty-first century are far less active than they were a few years ago.⁸ Today, there are approximately 11,000 American service members in Afghanistan, down from 100,000 in 2010, and 5,765 service members in Iraq, down from 170,000 in 2007.⁹ Thus, veterans seeking post-military

4. Chris Kirkham & Alan Zarembo, *For-Profit Colleges Are Using the GI Bill to Make Money Off Veterans*, L.A. TIMES (Aug. 18, 2015), <http://www.latimes.com/business/la-fi-for-profit-colleges-gi-bill-20150809-story.html>.

5. Eva-Marie Ayala, *Hundreds of Veterans Scramble After Garland For-Profit College Closes*, DALLAS NEWS (Sept. 28, 2017), <https://www.dallasnews.com/news/education/2017/09/28/hundreds-veterans-scramble-garland-profit-college-closes>.

6. *Id.*

7. *Our Most Important Resource*, U.S. DEPARTMENT OF DEFENSE, <http://www.defense.gov/About-DoD/DoD-101#Our%20Most%20Important%20Resource> (last visited Dec. 13, 2016).

8. Helene Cooper, *U.S. to Send 600 More Troops to Iraq to Help Retake Mosul from ISIS*, N.Y. TIMES (Sept. 28, 2016), <http://www.nytimes.com/2016/09/29/world/middleeast/obama-troops-iraq.html>; Greg Jaffe & Missy Ryan, *Obama Outlines Plan to Keep 5,500 Troops in Afghanistan*, WASHINGTON POST (Oct. 15, 2015), https://www.washingtonpost.com/world/national-security/obama-expected-to-announce-new-plan-to-keep-5500-troops-in-afghanistan/2015/10/14/d98f06fa-71d3-11e5-8d93-0af317ed58c9_story.html?utm_term=.99879b327685.

9. Ryan Browne, *Pentagon Revises Number of Troops in Afghanistan, Disclosing*

employment are also seeking educational opportunities to better qualify them for civilian jobs.¹⁰

The private sector has taken note. For-profit educational institutions saw a significant increase in veteran enrollment between 2009 and 2013, while their civilian enrollment declined.¹¹ In 2014, one notable for-profit college company, University of Phoenix, received \$345 million in federal educational funds for veterans as it enrolled approximately 50,000 veterans from the wars in Afghanistan and Iraq.¹² Veterans are heavily—and often unscrupulously—recruited by for-profit institutions (“FPIs”) because education benefits provided to veterans under existing law do not qualify as standard, Department of Education-administered, federal educational assistance programs, and therefore the revenue that can be generated from veterans is unlimited.¹³ This article explores the for-profit education industry, its history of deceitful recruitment of veterans, the federal government’s attempts at reform, and what steps need to be taken by the Trump administration and Congress to protect veterans and taxpayer dollars from private industry exploitation.

2,600 More, CNN (Aug. 30, 2017, 4:31 PM), <http://www.cnn.com/2017/08/30/politics/us-revises-number-troops-afghanistan/index.html>; Mark Thompson, *Number of U.S. Troops in Iraq Keeps Creeping Upward*, TIME (Apr. 18, 2016), <http://time.com/4298318/iraq-us-troops-barack-obama-mosul-isis/>.

10. See Eric Westervelt, *For-Profit Colleges Seeking Veterans’ GI Bill Dollars Aren’t Always the Best Fit*, NPR: NPR ED (Jan. 29, 2016, 7:06 AM), <http://www.npr.org/sections/ed/2016/01/29/464579497/veterans-to-higher-ed-big-room-for-improvement>.

11. Elizabeth Jones, *New Report Shows Nearly \$2 Billion in GI Bill Funds Go to For-Profit Colleges*, PBS NEWSHOUR (July 30, 2014, 5:11 PM), <https://www.pbs.org/newshour/education/new-report-shows-nearly-2-billion-of-gi-bill-funds-go-to-for-profit-colleges>.

12. Aaron Glantz, *University of Phoenix Sidesteps Obama Order on Recruiting Veterans*, REVEAL (June 30, 2015), <https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/>.

13. See *infra* notes 58–65 and accompanying text.

II. FOR-PROFIT EDUCATION

A. Higher Education Systems in the United States

Higher education institutions in the United States can be broken down into three economic categories: public, non-profit, and for-profit. Public universities, as their name indicates, are generally owned and operated by state governments who charge their state residents lower tuition than out-of-state residents. Some of these universities date back to the eighteenth century, with Georgia being the first state to charter a university in 1785,¹⁴ followed by the chartering of the University of North Carolina in 1789.¹⁵ Non-profit universities in the United States predate public universities, and even the independence and establishment of the nation.¹⁶ Section 501(c)(3) of the Internal Revenue Code defines the non-profit status, and therefore tax exempt status, of these privately owned institutions as corporations that are “organized and operated exclusively for . . . educational purposes.”¹⁷ The Internal Revenue Service (“IRS”) further requires of these entities that:

[N]o part of the net earnings . . . inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in . . . any political

14. *History of UGA*, UNIVERSITY OF GEORGIA. (July 11, 2011), <http://www.uga.edu/profile/history/>.

15. *First Public University in the United States*, THE CAROLINA STORY: A VIRTUAL MUSEUM U. HIST., <https://museum.unc.edu/exhibits/show/davie/silhouette1820> (last visited Oct. 20, 2016).

16. *See About Harvard*, HARVARD UNIVERSITY, <http://www.harvard.edu/about-harvard> (last visited Oct. 20, 2016) (“Established in 1636, Harvard is the oldest institution of higher education in the United States.”).

17. I.R.C. § 501(c)(3) (2012).

campaign on behalf of (or in opposition to) any candidate for public office.¹⁸

Although many non-profit private universities generate millions of dollars in revenue annually¹⁹ and some have multi-billion-dollar endowments,²⁰ they are in accordance with section 501(c)(3) so long as they operate with an educational, rather than profit-driven, purpose.

However, the third category of higher education institutions do have a profit-based purpose and do not qualify for tax-exempt status with the IRS. These institutions may operate entirely online, as traditional campus-based universities, or a hybrid of the two.²¹ They distinguish themselves from non-profit universities by treating their students as customers and operating on a business model with financial growth as their primary goal.²² Frequently criticized by academics²³ and government agencies,²⁴ FPIs are still able to

18. *Id.*

19. *See, e.g.*, NW. UNIV., 2013 FINANCIAL REPORT 1 (2014), <http://www.northwestern.edu/financial-operations/annual-financial-reports/2013-Financial-Report.pdf> (In FY 2013, Northwestern University's "[t]otal assets grew to \$10.9 billion, an increase of more than \$1 billion from the previous year."); VANDERBILT UNIVERSITY, 2015 FINANCIAL REPORT 5 (2015), <https://finance.vanderbilt.edu/report/FY2015-FinancialReport.pdf> (noting that in FY 2015, "the university's total net assets increased \$132 million to [\$5.975 billion]").

20. Katherine N. Lapp & Paul J. Finnegan, *Financial Overview from the Executive Vice President and the Treasurer*, in HARVARD UNIVERSITY, FINANCIAL REPORT, FISCAL YEAR 2014, at 3, 3 (Nov. 7, 2014), http://finance.harvard.edu/files/fad/files/har_fy14_financialreport.pdf (Harvard's endowment after FY 2014 amounted to \$36.4 billion).

21. *See* RICHARD L. ALFRED, *MANAGING THE BIG PICTURE IN COLLEGES AND UNIVERSITIES: FROM TACTICS TO STRATEGY* 189 (2006).

22. *Id.* at 189–90; JAMES COLEMAN & RICHARD VEDDER, *CTR. FOR COLLEGE AFFORDABILITY & PRODUCTIVITY, FOR-PROFIT EDUCATION IN THE UNITED STATES: A PRIMER* 11 (May 2008).

23. *See generally* Amanda Harmon Cooley, *The Need for Legal Reform of the For-Profit Educational Industry*, 79 TENN. L. REV. 515 (2012); Menesha Mannapperuma, *Protecting Students, Protecting Consumers: A New Federal Regulation of the For-Profit Distance Learning Industry*, 23 J.L. & POL'Y 541 (2015).

24. *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-948T, *FOR-PROFIT COLLEGES: UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES 2* (2010) [hereinafter GAO REPORT].

maintain profitability by selling themselves as career-oriented and a cost-effective means for students to learn practical job skills.²⁵ While the continued growth of the Internet and online education has resulted in the increased prevalence of for-profit education, the concept dates back centuries.²⁶ In the United States, FPIs saw significant growth during the nineteenth century, especially in the business education sector.²⁷

B. For-Profit Education Today

By 2005, over one million students in the United States were enrolled in FPIs, with an average annual growth rate of eleven percent since 1976.²⁸ Larger umbrella corporations, such as Education Management Corporation, often own and operate these schools as subsidiaries like a company would in any other market.²⁹ The internet has allowed for the rapid growth of FPIs as students can enroll and take classes from anywhere in the world and there are no physical enrollment limits that a traditional classroom would have. Two of the largest FPIs, DeVry University³⁰ and University of Phoenix,³¹ offer classes in dozens of degree programs online and on campuses across the United States.³²

With a profit-driven objective, FPIs are forced to competitively price their programs. They earn far less revenue per student than traditional, non-profit public and private

25. ALFRED, *supra* note 21.

26. COLEMAN & VEDDER, *supra* note 22, at 5.

27. *Id.*

28. *Id.* at 6 Figures 1, 9.

29. *See About Us*, EDUC. MGMT. CORP., <http://www.edmc.edu/About/> (last visited Oct. 26, 2016).

30. *See Our Heritage*, DEVRY UNIVERSITY, <http://www.devry.edu/community-network/our-heritage.html> (last visited Nov. 4, 2016).

31. *See UNIVERSITY OF PHOENIX, CONSUMER INFO. GUIDE 2017–2018*, at 1–3 (2017), http://www.phoenix.edu/content/dam/altcloud/doc/about_uopx/Consumer-Information-Guide.pdf

32. UNIVERSITY OF PHOENIX, *supra* note 31; *Our Heritage*, *supra* note 30.

universities, and receive on average only five dollars per student in government support, whereas nonprofits receive on average over seven thousand dollars per student.³³ Therefore, FPIs must also balance their fiscally competitive edge with the necessity of earning a profit. Ninety percent of their revenue is generated by student fees, meaning that without donors or substantial government assistance, they must reduce expenses to maintain profitability.³⁴

Recruiting students and maintaining low costs has led FPIs to aggressively market their product as an affordable, career-driven, and legitimate alternative to traditional institutions. In 2010, and in light of billions of dollars in federal loans being spent at FPIs annually, the Government Accountability Office (“GAO”) conducted an investigation into the marketing practices of fifteen FPIs.³⁵ Investigators presented themselves as prospective students seeking to enroll in one of several different types of degree programs offered by the schools.³⁶ Of the fifteen FPIs, four encouraged the undercover investigators to falsify federal student aid documentation in order to receive federal benefits.³⁷ For example, in direct violation of reporting requirements for federal aid, “[a] financial aid officer at a privately owned college in Texas told [a GAO] undercover applicant not to report \$250,000 in savings, stating that it was not the government’s business how much money the undercover applicant had in a bank account.”³⁸

Additionally, FPIs have been defendants in at least twenty lawsuits under the False Claims Act (“FCA”).³⁹ The FCA creates civil liability for any person who knowingly makes

33. COLEMAN & VEDDER, *supra* note 22, at 11.

34. *Id.*

35. GAO REPORT, *supra* note 24.

36. *Id.*

37. *Id.* at 7.

38. *Id.*

39. Cooley, *supra* note 23, at 534.

“a false or fraudulent claim for payment or approval” or “a false record or statement material to a false or fraudulent claim”⁴⁰ in an effort to defraud the federal government.⁴¹ Barring mitigating circumstances for reduced liability,⁴² defendants are subject to a civil penalty of up to three times the damages sustained by the government plus five to ten thousand dollars.⁴³ Actions under the FCA may only be brought by the United States Department of Justice, or by a private person, state, or local government (possibly as a co-plaintiff with the Department of Justice) in a Qui Tam action.⁴⁴

In one example of an FCA action being brought against an FPI, the University of Phoenix was alleged to have violated the federal ban⁴⁵ on incentive compensation for recruiters by making “false promises to comply with the incentive compensation ban in order to become eligible to receive Title IV funds.”⁴⁶ The United States District Court for the Eastern District of California originally granted the defendant’s motion to dismiss for failure to state a claim.⁴⁷ However, the Court of Appeals for the Ninth Circuit reversed, finding that the plaintiffs properly alleged the elements of liability under the False Claims Act: “(1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out money or forfeit moneys due. The question remaining is whether relators in this case have alleged facts satisfying all four of these elements.”⁴⁸

40. 31 U.S.C. § 3729 (a) (2012).

41. *See id.* § 3729(b).

42. *See id.* § 3729(a)(2).

43. *Id.* § 3729(a)(1)(g).

44. *Id.* § 3730.

45. *See* 20 U.S.C. § 1094(a) (20) (“The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance. . .”).

46. *United States v. Univ. of Phoenix*, 461 F.3d 1166, 1168–69 (9th Cir. 2006).

47. *See id.* at 1168.

48. *Id.* at 1174, 1177–78.

The for-profit education industry has further been accused of exploiting veterans in especially egregious ways:

[S]ome institutions have recruited veterans with serious brain injuries and emotional vulnerabilities without providing academic support and counseling; encouraged service members and veterans to take out costly institutional loans rather than encouraging them to apply for Federal student loans first; engaged in misleading recruiting practices on military installations; and failed to disclose meaningful information that allows potential students to determine whether the institution has a good record of graduating service members, veterans, and their families and positioning them for success in the workforce.⁴⁹

In a prime example of how dedicated FPIs are to luring veterans to their programs, the University of Phoenix was recently found to be distributing commemorative coins with the University logo on one side and the insignias of each branch of the armed forces on the other on military installations.⁵⁰ Challenge coins, as these coins are often called in military culture, are “a form of recognition of the hard work and excellence an individual has displayed” and are usually distributed by unit commanders or senior non-commissioned officers.⁵¹ In using official military insignias with the institution’s logo as a marketing tool, University of Phoenix not only showed disrespect for the military tradition of challenge

49. Exec. Order No. 13607, 77 Fed. Reg. 25,861 (Apr. 27, 2012).

50. Dan Sagalyn, *Pentagon Puts For-Profit University of Phoenix on Probation*, PBS NEWSHOUR (Oct. 9, 2015, 7:06 PM), <http://www.pbs.org/newshour/rundown/pentagon-puts-profit-university-phoenix-probation/>.

51. Cf. Deana Heitzman, 31st Fighter Wing Pub. Affairs, *Challenge Coins: A Tradition of Excellence*, U.S.A.F. (Apr. 10, 2015), <http://www.af.mil/News/ArticleDisplay/tabid/223/Article/584692/challenge-coins-a-tradition-of-excellence.aspx>.

coins, but was also found to be in violation of Department of Defense policy and was subsequently put on “probation.”⁵² However, the Department of Defense does allow the University of Phoenix to advertise its programs on military installations with permission and at a cost.⁵³ At Fort Campbell, Kentucky, the corporation paid \$250,000 over three years to sponsor eighty-nine events.⁵⁴

III. VETERANS’ EDUCATION BENEFITS

Educational financial assistance for veterans and their families is primarily administered by the United States Department of Veterans Affairs through several programs, for which eligibility is generally dependent on when the veteran served and for how long. Of these programs, the largest in effect today are the Veterans’ Educational Assistance Program,⁵⁵ (“VEAP”), the All-Volunteer Force Educational Assistance Program,⁵⁶ (“Montgomery GI Bill”), and the Post-9/11 Educational Assistance Program,⁵⁷ (“Post-9/11 GI Bill”).⁵⁸ Enacted in 1976, VEAP provides educational assistance to service members who enlisted between December 31, 1976, and July 1, 1985.⁵⁹ The program aimed “to assist young men and women in obtaining an education they might not otherwise be able to afford” while also encouraging future enlistment.⁶⁰ At the conclusion of VEAP’s eligibility window, Congress enacted

52. Sagalyn, *supra* note 50.

53. Aaron Glantz, *University of Phoenix Gained Special Access to Military Base—For a Price*, REVEAL (Sept. 8, 2017), <https://www.revealnews.org/blog/university-of-phoenix-gained-special-access-to-military-base-for-a-price/>.

54. *Id.*

55. 38 U.S.C. §§ 3201–3243 (2012).

56. *Id.* §§ 3001–3036.

57. 38 C.F.R. pt. 21, subpt. P (2009).

58. See VETERANS BENEFITS MANUAL 857 (Barton F. Stichman, Ronald B. Abrams & Louis J. George eds., 2014 ed. 2014).

59. 38 U.S.C. § 3201 (2012).

60. *Id.*

the Montgomery GI Bill to continue providing service members with educational assistance to ease their transition to civilian life and allow them to take advantage of higher-education opportunities they otherwise might not be able to afford.⁶¹ Those eligible under the GI Bill must have begun their service after June 30, 1995, and must have served at least two years on active duty status.⁶² The most-recently enacted program is the Post-9/11 GI Bill—a program for veterans who served at least thirty-six months on active duty and began their service on or after September 11, 2001.⁶³

Educational assistance programs for veterans, while complex in nature, are vast and apply to many different educational opportunities veterans may seek. The Post-9/11 GI Bill, for example, offers tuition assistance that starts at covering forty percent of expenses for veterans who, after September 11, 2001, served between ninety days and six months on active duty, and up to one hundred percent of expenses for veterans who served at least thirty-six months on active duty or were discharged for a service-related disability after serving at least thirty continuous days.⁶⁴

IV. THE 90/10 RULE

A. The Rule

Through empty promises of strong career prospects after completion of their programs, FPIs recruit veterans in astonishing numbers.⁶⁵ DeVry University, for example, “advertise[d] that 90 percent of its graduates seeking

61. 38 U.S.C. § 3001 (2012).

62. *Montgomery GI Bill Active Duty (MGIB-AD)*, U.S. DEPARTMENT OF VETERANS AFFAIRS, https://www.benefits.va.gov/gibill/mgib_ad.asp (last visited Nov. 10, 2016).

63. 38 U.S.C. § 3311(b) (2012).

64. DEP’T OF VET. AFFAIRS, POST-9/11 GI BILL: IT’S YOUR FUTURE (May 2012), http://www.benefits.va.gov/gibill/docs/pamphlets/ch33_pamphlet.pdf.

65. See Westervelt, *supra* note 10.

employment found jobs in their field within six months of graduation.”⁶⁶ The Federal Trade Commission (“FTC”) filed suit against DeVry for this allegedly deceptive advertisement, and also for its claim “that its graduates had 15 percent higher incomes one year after graduation on average than the graduates of all other colleges or universities.”⁶⁷ A settlement agreement between the FTC and DeVry was reached in December 2016 in which DeVry agreed to “pay \$49.4 million in cash to be distributed to qualifying students who were harmed by the deceptive ads, as well as \$50.6 million in debt relief.”⁶⁸

Of course, with the veterans recruited by FPIs comes revenue from federal educational assistance programs like the GI Bill, and in fiscal year 2012–2013, twenty-five percent of GI Bill funds were paid to just eight FPIs⁶⁹ and totaled \$1.7 billion just from Post-9/11 GI Bill benefits.⁷⁰ FPIs recruit veterans so heavily, in part, because of what has become known as the “90/10 Rule.”⁷¹ This rule, established in an amendment to the Higher Education Act in 2008, requires that FPIs “derive not less than ten percent of such institution’s revenues from sources

66. Merrit Kennedy, *For-Profit DeVry University Is Sued Over Employment Figure Claims*, NPR (Jan. 27, 2016, 4:57 PM), <http://www.npr.org/sections/thetwo-way/2016/01/27/464599226/for-profit-devry-university-is-sued-over-employment-figure-claims>.

67. Press Release, Fed. Trade Comm’n, *FTC Brings Enforcement Action Against DeVry University* (Jan. 27, 2016), <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-brings-enforcement-action-against-devry-university>; *see also* Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. DeVry Educ. Grp. Inc.*, No. 2:16-cv-00579-MWF-SS (C.D. Cal. Jan. 27, 2016).

68. Press Release, Fed. Trade Comm’n, *DeVry University Agrees to \$100 Million Settlement with FTC* (Dec. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>; *see also* Stipulated Order for Permanent Injunction and Monetary Judgment, *FTC v. DeVry Educ. Grp. Inc.*, No. 2:16-cv-00579-MWF-SS (C.D. Cal. Jan. 27, 2016) (imposing additional advertising, training, and reporting requirements on DeVry).

69. *Id.*

70. Jones, *supra* note 11.

71. *See* Jaelyn Patton, Comment, *Encouraging Exploitation of the Military by For-Profit Colleges: The New GI Bill and the 90/10 Rule*, 54 S. Tex. L. Rev. 425, 426 (2012).

other than funds provided under [Title 20].”⁷² Therefore, no more than ninety percent of an FPI’s revenue may come from traditional federal education assistance programs.⁷³

Veterans educational assistance programs do not fall under Title 20 of the United States Code, however.⁷⁴ After an FPI’s revenue reaches that ninety percent threshold, it can still take advantage of federal money through the recruitment of veterans to fill that remaining ten percent.⁷⁵

B. Initiatives

The deceptive and ill-willed tactics of the for-profit education industry have not gone unnoticed. In 2012, President Barack Obama issued Executive Order 13607 “in order to ensure that Federal military and veterans educational benefits programs are providing service members, veterans, spouses, and other family members with the information, support, and protections they deserve.”⁷⁶ The Order required the formation of “Principles of Excellence”— a series of standards for educational institutions receiving funds through veteran assistance programs that would provide additional oversight of FPIs’ recruitment and enrollment of veterans.⁷⁷ Specifically, the Principles of Excellence were intended to ensure veterans are provided with the necessary information related to the educational programs, end the inappropriate recruitment efforts by FPIs on military installations, and end deceptive online marketing targeted at veterans and service members.⁷⁸

72. 20 U.S.C. § 1094(a) (24) (2012).

73. *See id.*; Patton, *supra* note 71.

74. *See generally* 20 U.S.C. § 1094; 38 U.S.C. §§ 3001–3036, 3201–3243, 3311.

75. *See Westervelt, supra* note 10.

76. Exec. Order No. 13607, 77 Fed. Reg. 25,861 (Apr. 27, 2012).

77. *Id.* at 25, 861–25, 862.

78. *Id.*; Press Release, The White House, We Can’t Wait: President Obama Takes

These new standards require FPIs to do the following: (1) use a “standardized form . . . to help those prospective students understand the total cost of the educational program” and how much would be covered by military and veteran programs; (2) “end fraudulent and unduly aggressive recruiting techniques on and off military installations, as well as misrepresentation, payment of incentive compensation, and failure to meet State authorization requirements;” (3) readmit active and reserve service members who are forced to take a leave of absence from their education to perform service obligations; (4) refund tuition to students who withdraw before the completion of their course of study; (5) ensure that service members and veterans using federal funds for the educational program understand the program’s completion requirements; and (6) “designate a point of contact for academic and financial advising (including access to disability counseling) to assist service member and veteran students and their families with the successful completion of their studies and with their job searches.”⁷⁹

The Principles, delegated to the Secretaries of Education, Veterans Affairs, and Defense for implementation, also delegated enforcement authority to those secretaries and their respective departments.⁸⁰ A centralized system was thus formed where veterans can file complaints about educational institutions which may have violated federal laws or regulations.⁸¹ Complaints thought to have a well-founded basis are then referred to the Department of Justice for civil or criminal enforcement against the suspect institutions.⁸² To

Action to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans, Service Members and Their Families (Apr. 26, 2012), <https://www.whitehouse.gov/the-press-office/2012/04/26/we-can-t-wait-president-obama-takes-action-stop-deceptive-and-misleading>.

79. Exec. Order No. 13607, 77 Fed. Reg. 25, 862 (Apr. 27, 2012).

80. *Id.* at 25,863.

81. *Id.*

82. *Id.*

combat the incidences of FPIs illegally recruiting service members on military installations, the Order requires the Department of Defense to issue new rules pertaining to access of military installations, and to require that only those institutions that enter into a memorandum of agreement with the Department of Defense will be permitted such access.⁸³

Also in furtherance of President Obama's Principles of Excellence, the Departments of Veterans Affairs, Education, and Defense collaboratively launched the GI Bill Feedback System.⁸⁴ Complaints received under the GI Bill Feedback System are categorized as either serious or flagrant, or as not being related to the Principles of Excellence.⁸⁵ The latter category is for complaints that "focus[] on VA's handling of education benefits, [do] not involve the institution or employer, [are] incoherent or spam," or if the "[c]omplaint is a duplicate of another."⁸⁶ Serious or flagrant complaints include accusations of "serious or significant fraud or abuse," are "[s]ubmitted by a whistleblower," or are otherwise determined to be serious by department staff.⁸⁷ In less than one year after the program began, the Department of Veterans Affairs received 2,254 complaints, of which 1,434 were based on the Principles of Excellence.⁸⁸ These complaints led to forty-two "targeted risk-based program reviews," and as a result, two federally-approved education programs were disqualified.⁸⁹

C. Pushback from FPIs

83. *Id.* at 25, 864; *see supra* footnotes 43–46 and accompanying text.

84. VETERANS BENEFITS ADMIN., GI BILL FEEDBACK SYSTEM 1 (January 2015), https://www.benefits.va.gov/GIBILL/docs/Overview_GI%20Bill_Feedback%20System_CY14.pdf.

85. *Id.* at 3.

86. *Id.*

87. *Id.*

88. *Id.* at 1.

89. *Id.*

With the new regulations in place, the federal government has met opposition from the for-profit education industry, especially in its lobbying arm Career Education Colleges and Universities (“CECU”), formerly known as the Association of Private Sector Colleges and Universities (“APSCU”).⁹⁰ CECU represents five hundred member schools that claim to pride themselves in providing “skills-based education opportunities to nontraditional students, particularly veterans, working mothers, and parents.”⁹¹ In 2014, APSCU filed a three-count, seventy-seven-page complaint against Secretary of Education Arne Duncan, the Department of Education, and the federal government as a whole.⁹² The lawsuit was in response to the Department of Education’s promulgation of the Gainful Employment Rule.⁹³ The rule “establish[ed] measures for determining whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation, and the conditions under which these educational programs remain eligible under the Federal Student Aid programs authorized under Title IV of the HEA (Title IV, HEA programs).”⁹⁴ During the public comment period for the rule, “[o]ne commenter expressed support on the basis that, by preventing students from enrolling in low-performing programs, the regulations would curb predatory recruiting practices that target veterans in particular,”⁹⁵ and others expressed support

90. See CAREER EDUC. COLLS. & UNIVS., <http://www.career.org/> (last visited Nov. 28, 2016); *infra* notes 85–102 and accompanying text; see also Complaint & Prayer for Declaratory & Injunctive Relief, Cal. Ass’n of Private Postsecondary Sch. v. DeVos, No. 1:17-cv-00999 (D.D.C. filed May 24, 2017).

91. *About Us*, CAREER EDUC. COLLS. & UNIVS., <http://www.career.org/about.html> (last visited Nov. 27, 2017).

92. See Complaint, Ass’n of Private Sector Colls. & Univs. v. Duncan, 110 F. Supp. 3d 176 (D.D.C. 2015) (No. 1:14-cv-01870-JDB).

93. *Id.* at 2; see Program Integrity: Gainful Employment, 79 Fed. Reg. 64,890 (Oct. 31, 2014) (to be codified at 34 C.F.R. pts. 600, 668).

94. Gainful Employment, *supra* note 93, at 64, 890.

95. *Id.* at 64, 896.

based on the for-profit education industry's high reliance on veterans' educational assistance programs compared to their non-profit counterparts.⁹⁶

APSCU, on behalf of its 1,400 member institutions, argued that the rule was a violation of the First Amendment,⁹⁷ Title IV of the Higher Education Act of 1965,⁹⁸ and the Administrative Procedure Act ("APA")⁹⁹ because it was "unlawful, arbitrary, and irrational, and [would] needlessly harm millions of students who attend private sector colleges and universities."¹⁰⁰ According to the plaintiff, the Department of Education unscrupulously "rel[ied] primarily on error-ridden, partisan, and discredited sources" and "pursued the proposed regulations with the singular premise of 'cut[ting] [for-profits] out . . . of federal aid.'"¹⁰¹ They further contended that the enabling legislation for the rule "requires only that programs prepare student for employment that is gainful . . . not that the students actually secure employment at certain income levels relative to various measures of student debt."¹⁰² Because it believed the rule not only exceeded the Department's rulemaking authority, but was also arbitrary and capricious and violated its "members' right to free speech by compelling them to speak in an unduly burdensome manner," APSCU sought the District Court for the District of Columbia to declare the rule unlawful, postpone its effective date, and award plaintiffs' costs and attorneys' fees.¹⁰³

In its motion for summary judgment, the government argued that the Department "promulgated thoughtful

96. *Id.* at 64,903.

97. U.S. CONST. amend. I.

98. 20 U.S.C. §§ 1070–1099d (2012).

99. 5 U.S.C. §§ 551–706 (2012).

100. Complaint, *supra* note 92, at 2, 75–76.

101. *Id.* at 4 (quoting Roberto J. Rodriguez, Conference of Student Loans: Opening Plenary Session (Oct. 24, 2013)).

102. *Id.* at 5.

103. *Id.* at 75–76.

regulations, aimed at a vexing problem in its area of expertise, that demonstrate reasoned decision-making.”¹⁰⁴ The United States Supreme Court discussed the standard of review for an agency’s rulemaking in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*:

When a court reviews an agency’s construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute . . .

“The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.” If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency

104. Def.’s Mem. of Law in Supp. of Their Cross-Motion for Summ. J. & Opp’n to Pl.’s Mot. for Summ. J. at 2, *Ass’n of Private Sector Colls. & Univs. v. Duncan*, 110 F. Supp. 3d 176 (D.D.C. 2015) (No. 1:14-cv-01870-JDB) [hereinafter Defendants’ Memorandum in Support of Summary Judgment].

to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.

We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer¹⁰⁵

Arguing that the rule was in the taxpayers' best interests because they bear the burden of defaults on student loans for ineffective educational programs, the defendants asserted that when the administrative agency's enabling legislation is "silent or ambiguous on the precise question at issue," as was the case here, the court "must uphold the agency's construction of the statute it administers so long as it is reasonable."¹⁰⁶ Additionally, the defendant argued the rule was not arbitrary or capricious under the APA because the Department "discussed at length the connection between debt and earnings, and students' ability to repay their loans" and because "there is an inherently rational connection between the quality of education and training a program provides and the type of jobs its students are able to obtain."¹⁰⁷ Therefore, defendants noted, the

105. *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 842-44 (1984) (footnotes omitted) (citations omitted) (quoting *Morton v. Ruiz*, 415 U.S. 199, 231 (1974)).

106. Def.s' Cross-Motion for Summ. J. at 8, *Ass'n of Private Sector Colls. & Univs. v. Duncan*, 110 F. Supp. 3d 176 (D.D.C. 2015) (No.14-1870).

107. *Id.*

reasonable nature of the rule entitles the Department to deference under *Chevron*.¹⁰⁸

The district court first analyzed the parties' respective arguments by addressing whether the Higher Education Act's phrase "prepare students for gainful employment in a recognized occupation" [has] a plain meaning that the Department (and the Court) must simply implement? Or is this language ambiguous such that the Court should accept the Department's interpretation—assuming, of course, that its interpretation is a reasonable one?"¹⁰⁹ In its discussion of the rule and previous case law, the court found that Congress's language was ambiguous and the Department could reasonably interpret the provision in its promulgation of rules, which it did.¹¹⁰ The court next rejected APSCU's arguments that the rule was arbitrary and capricious¹¹¹:

[T]ry as it might, the Association has not shown that the Department unreasonably interpreted an ambiguous statutory command, nor has it proven (despite at least a baker's-dozen arguments) that the debt-to-earnings portion of the Department's final "gainful employment" rule is arbitrary or capricious or otherwise in violation of the APA.¹¹²

In the apt words of Judge John Bates: "And that, as they say, is that. The Department's 'gainful employment' regulations—including the current debt-to-earnings test and disclosure, reporting, and certification requirements—survive

108. Def.s' Mem. in Supp. of Summ. J., *supra* note 103, at 19. See generally *Chevron*, 467 U.S. at 842-44.

109. Ass'n of Private Sector Colls. & Univs. v. Duncan, 110 F. Supp. 3d 176, 184 (D.D.C. 2015).

110. See *id.* at 184-92.

111. *Id.* at 191.

112. *Id.* at 198.

this court challenge in their entirety”¹¹³ The government’s motion for summary judgment was thus granted.¹¹⁴

V. NEED FOR FURTHER REFORM

A. Federal Executive Reform

Towards the end of his administration, President Obama took significant action to curtail the abuse of American veterans and the federal purse by the for-profit education industry, but on January 20, 2017, Donald J. Trump became the President of the United States.¹¹⁵ President Trump has criticized President Obama’s use of executive orders to overcome gridlock in Congress,¹¹⁶ but has also indicated that he plans to use executive orders to do the same.¹¹⁷ Because he claims to be a strong supporter of veterans,¹¹⁸ he may, under that rationale, leave the Obama administration’s executive orders regarding veterans issues alone. However, Secretary of Education Betsy DeVos indicated in her confirmation hearing that she may not continue the enforcement of federal regulations enacted by the Obama administration for FPIs.¹¹⁹ In July 2017, the Department of Education announced that it

113. *Id.* at 204.

114. Order at 1, *Ass’n of Private Sector Colls. & Univs. v. Duncan*, 110 F. Supp. 3d 176 (2015) (No. 14-1870). (D.D.C. June 23, 2015).

115. *Presidential Inauguration 2017*, USA.GOV, <https://www.usa.gov/inauguration-2017> (last visited Nov. 30, 2016).

116. Timothy Noah & Cogan Schaefer, *Trump Poised to Erase Obama Policies*, POLITICO (Nov. 10, 2016, 5:14 AM), <http://www.politico.com/story/2016/11/trump-erase-obama-policies-231156>. See generally Thomas O. McGarity, *Avoiding Gridlock Through Unilateral Executive Action: The Obama Administration’s Clean Power Plan*, 7 WAKE FOREST J.L. & POL’Y 141 (2017).

117. Bradford Richardson, *Trump: Obama ‘Led the Way’ on Executive Orders*, THE HILL (Jan. 10, 2016, 12:14 PM), <http://thehill.com/blogs/blog-briefing-room/265371-trump-obama-led-the-way-on-executive-orders>.

118. See *Veterans Affairs Reform*, TRUMP PENCE MAKE AMERICA GREAT AGAIN! 2016, <https://www.donaldjtrump.com/policies/veterans-affairs-reform> (last visited Nov. 30, 2016).

119. David Halperin, *DeVos Declines to Support For-Profit College Accountability Rules*, HUFFINGTON POST (Jan. 17, 2017 8:24 PM), http://www.huffingtonpost.com/davidhalperin/devos-declines-to-support_b_14235348.html.

would suspend the federal student loan debt forgiveness program for students cheated by FPIs and the Obama administration's gainful employment mandate.¹²⁰ Secretary DeVos has also been criticized for her close connections to the for-profit education industry, which some believe will lead to further deregulation of FPIs over the next three years.¹²¹

In addition to the Department of Education's support of FPIs, in September 2017, the Department of Veterans Affairs proposed a suspension of a fifty-year-old conflict-of-interest law that prohibits its employees from having a financial interest in FPIs.¹²² The law requires the dismissal of any Department of Veterans Affairs employee who during their employment "owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any educational institution operated for profit in which an eligible person or veteran was pursuing a program of education or course."¹²³ However, the agency contends "that statute has illogical and unintended consequences, in that it requires the removal of any V.A. employee who has any connection to" an FPI.¹²⁴ Opponents of the regulation, including veterans' groups and ethics experts, disagree with the agency's position, asserting that "no good . . .

120. Stacy Cowley & Patricia Cohen, *Trump Administration Delays Rules on Abuses by For-Profit Colleges*, N.Y. TIMES, June 15, 2017, at B8; see also Danielle Douglas-Gabriel, *DeVos Rejects Invitation to Meet with Former For-Profit College Students*, WASH. POST (Sept. 28, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/09/28/devos-rejects-invitation-to-meet-with-former-for-profit-college-students/?utm_term=.d86235c21efa.

121. See *id.*; John Bowden, *Warren Accuses DeVos of Helping For-Profit Colleges 'Swindle' Students*, THE HILL (June 15, 2017, 6:48 PM), <http://thehill.com/homenews/administration/338056-warren-accuses-devos-of-helping-for-profit-colleges-swindle-students>; Richard North Patterson, *Too Many For-Profit Colleges Defraud Students and Taxpayers Alike*, BOS. GLOBE (June 5, 2017), <https://www.bostonglobe.com/opinion/2017/06/05/too-many-for-profit-colleges-defraud-students-and-taxpayers-alike/6jKnrUaLp9Ue1SPcgU4nUL/story.html>.

122. *Employees Whose Association with For-Profit Educational Institutions Poses No Detriment to Veterans*, 82 Fed. Reg. 43, 288 (Sept. 14, 2017).

123. 38 U.S.C. § 3683 (2012).

124. *Employees Whose Association with For-Profit Educational Institutions Poses No Detriment to Veterans*, 82 Fed. Reg. at 43, 288.

can come from allowing colleges to have unseemly financial entanglements with V.A. employees.”¹²⁵

Still, President Trump also has a controversial history of involvement in the for-profit education industry. Trump University, a company founded by Trump, was an FPI that offered “courses in real estate, asset management, entrepreneurship and wealth creation.”¹²⁶ According to a class action complaint filed against Trump University in the United States District Court for the Southern District of California in 2010 by former students, “Trump University lure[d] consumers in with a free introductory Seminar, which turn[ed] out to be nothing more than an infomercial used to ‘up-sell’ and persuade students to purchase its \$1,495 ‘one year apprenticeship’ course.”¹²⁷ The action was brought by plaintiffs under the California Unfair Competition Law,¹²⁸ Consumer Legal Remedies Act,¹²⁹ and False Advertising Law.¹³⁰ They claimed breach of contract, breach of the covenant of good faith and fair dealing, money had and received, negligent misrepresentation, fraud, and false promises.¹³¹ The plaintiffs sought relief in the form of “refunding Plaintiff and class members the full amount paid for Trump University Seminars; an order enjoining Trump from falsely marketing and advertising its Seminars;” and costs and attorneys’ fees.¹³² The lawsuit was eventually settled for \$25 million in November 2016, less than two weeks after the general election.¹³³

125. Patricia Cohen, *Veterans Agency Seeks to Scrap Ethics Law on For-Profit Colleges*, N.Y. TIMES (Sept. 29, 2017), <https://www.nytimes.com/2017/09/29/business/veterans-affairs-ethics.html>.

126. Class Action Compl. at 4; *Makaeff v. Trump Univ., LLC*, No. 3:10-cv-00940-GPC-WVG (S.D. Cal. Apr. 30, 2010).

127. *Id.* at 4.

128. CAL. BUS. & PROF. CODE § 17200 (Deering 2016).

129. CAL. CIV. CODE § 1750 (Deering 2016).

130. CAL. BUS. & PROF. CODE § 17500 (Deering 2016).

131. Class Action Compl., *supra* note 126, at 2.

132. *Id.*

133. Steve Eder, *Trump Settles University Suit for \$25 Million*, N.Y. TIMES, Nov. 19, 2016, at A1.

The President's history in the industry is not to say, however, that he will hinder the work done by the Obama administration to curb the predatory practices of FPIs as they involve veterans. Rather, it emphasizes the pervasiveness of the industry. In addition to maintaining and enforcing the Principles of Excellence,¹³⁴ the executive branch can further promulgate rules regarding access by FPIs to military installations and federal veterans' centers, educate veterans and service members on the risks these institutions pose, and bolster the enforcement of Department of Education regulations. However, any substantial change will require congressional intervention.¹³⁵

B. Legislative Reform

One approach to fixing the problems associated with the 90/10 Rule is for federal veteran education funding to be included in the ninety percent allocation with other federal funds. In June of 2015, Senator Thomas Carper of Delaware introduced the Military and Veterans Education Protection Act—a bill that precisely addresses the issue.¹³⁶ The bill was referred to the Senate Committee on Health, Education, Labor, and Pensions that month, where it remains today.¹³⁷ An identical bill was introduced in the House of Representatives by Representative Jackie Speier of California in November 2015 and now awaits passage in three committees, most recently being referred to the Subcommittee on Higher Education and

134. See *supra* Part IV, Section B.

135. See generally Patton, *supra* note 71, at 446–49.

136. Military and Veterans Education Protection Act, S. 1664, 114th Cong. (1st Sess. 2015) (“A Bill [t]o count revenues from military and veteran education programs toward the limit on Federal revenues that certain proprietary institutions of higher education are allowed to receive for purposes of section 487 of the Higher Education Act of 1965, and for other purposes.”).

137. *S.1664 – Military and Veterans Education Protection Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/1664> (last visited Dec. 12, 2016).

Workforce Training of the House Committee on Education and the Workforce on March 23, 2016.¹³⁸ This is not the first time Senator Carper and Representative Speier have attempted to pass this legislation,¹³⁹ and yet infamous congressional gridlock prevails.¹⁴⁰ Further, other members of Congress have introduced similar legislation with predictably similar results.¹⁴¹

In September 2016, another attempt was made to improve the federal government's education assistance programs for veterans.¹⁴² Representative Mark Tanko of California introduced the Supporting, Employing, and Recognizing Veterans in Communities Everywhere Act ("SERVICE Act"), an expansive piece of legislation that, among other components, includes provisions to increase oversight of disingenuous educational institutions and improve accountability of federal dollars spent on education benefits for veterans.¹⁴³ For example, if enacted, the bill directs the Inspector General of the Department of Veterans Affairs to "apply heightened scrutiny" to any institution that has been found to have used deceptive practices by any state or federal agency and to provide notice to any students enrolled at that institution who receive federal assistance of such scrutiny.¹⁴⁴ If, after the heightened scrutiny is applied, the Secretary of the Department finds that the institution has engaged in deceptive practices, the institution will be formally disapproved by the Department.¹⁴⁵ These provisions, in addition to striking the

138. *H.R. 3988 – Military and Veterans Education Protection Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/3988/all-actions> (last visited Dec. 12, 2016); *see also* *Military and Veterans Education Protection Act*, H.R. 3988, 114th Cong. (1st Sess. 2015).

139. *See* Patton, *supra* note 71, at 448.

140. *See generally* McGarity, *supra* note 116.

141. *Ensuring Quality Education for Veterans Act*, H.R. 4054, 114th Cong. (1st Sess. 2015).

142. *See* *Supporting, Employing, and Recognizing Veterans in Communities Everywhere Act*, H.R. 6062, 114th Cong. (2d Sess. 2016).

143. *Id.*

144. *Id.* § 301.

145. *Id.* § 302.

veteran-loophole of the 90/10 Rule,¹⁴⁶ are precisely the actions that need to be taken to protect veterans and taxpayer money.

The Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016,¹⁴⁷ was unanimously passed by the House of Representatives on December 6, 2016,¹⁴⁸ and the Senate on December 10, 2016.¹⁴⁹ The omnibus bill contains numerous veterans-related provisions and addresses some issues surrounding educational assistance programs.¹⁵⁰ One such provision requires educational institutions to provide annual progress reports of students from whom they receive funds under the Post-9/11 GI Bill to the Department of Veterans Affairs.¹⁵¹ Concerning FPIs, the bill transfers the approving authority of education programs not subject to approval by the federal government to state agencies.¹⁵² Non-accredited programs must meet certain state-mandated criteria in order to be approved by the federal government unless the Secretary of the Department of Veterans Affairs deems it necessary to expand such criteria in particular situations.¹⁵³

Overall, the bill's posture towards FPIs is almost friendly. In fact, the bill adds language to Title 38 requiring the Secretary, in administering heightened requirements for non-accredited programs, to "treat public, private, *and proprietary for-profit educational institutions* equitably."¹⁵⁴ Also, notably absent from this legislation is any mention of the 90/10 Rule,

146. *See id.* § 305.

147. Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, Pub. L. No. 114-315, 130 Stat. 1536.

148. *H.R.6416 - Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/6416/all-actions?overview=closed#tabs> (last visited Dec. 13, 2016).

149. *Id.*

150. *See* Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, Pub. L. No. 114-315, 130 Stat. 1536.

151. *Id.* § 404.

152. *Id.* § 408.

153. *Id.* § 410.

154. *Id.* (emphasis added).

institutional abuses targeted at veterans, or any of the issues raised by President Obama in the Principles of Excellence program.¹⁵⁵ The bill was signed into law by President Obama at the end of his term. Senator Johnny Isakson, Chairman of the Senate Veterans Affairs Committee, called the legislation “a down payment on . . . the debt that we owe to [our] veterans.”¹⁵⁶

Most recently, President Trump signed into law the Harry W. Colmery Veterans Educational Assistance Act of 2017, which expands educational benefits for veterans and assist those veterans who fell victim to the predatory practices of ITT Technical Institute and Corinthian Colleges.¹⁵⁷ While the legislation, enacted on August 16, 2017, undoes some of the deregulation of the industry by the Trump administration’s Department of Education, it fails to protect future predation.¹⁵⁸ With the for-profit education industry generating millions of dollars in revenue from veterans assistance programs, and in turn spending that money on lobbyists and campaign contributions to influence congressional leaders like the Chairman of the House Committee on Education and the Workforce,¹⁵⁹ the 90/10 Rule may continue to leave veterans vulnerable to the industry’s corporate greed.

155. See Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, Pub. L. No. 114-315, 130 Stat. 1536

156. Leo Shane III, *Congress Passes Slimmed-Down Veterans Reform Bill*, MIL. TIMES (Dec. 13, 2016), <http://www.militarytimes.com/articles/va-omnibus-passes-without-major-provisions>.

157. Harry W. Colmery Veterans Educational Assistance Act of 2017, H.R. 3218 (1st Sess. 2017); Alexa Liautaud & Christina Sterbenz, *Trump’s “Forever GI Bill” Won’t Stop For-Profit Schools from Preying on Vets*, VICE NEWS (Aug. 17, 2017), <https://news.vice.com/story/trumps-forever-gi-bill-wont-stop-for-profit-schools-from-preying-on-vets>; Katie Lobosco, *Congress Expands GI Bill, Helping Veterans Burned by For-Profit Schools*, CNN (Aug. 3, 2017, 3:28 PM), <http://money.cnn.com/2017/08/03/pf/college/gi-bill-benefits-for-profit/index.html>.

158. Liautaud & Sterbenz, *supra* note 155.

159. In 2014, Representative John Kline, Chairman of the House Committee on Education and the Workforce, received \$194,099 from the for-profit education industry, over \$100,000 to the next highest recipient. *ForProfit Education*, OPENSECRETS.ORG, <http://www.opensecrets.org/i>

Christopher J. Salemmé[†]

ndustries/summary.php?ind=H5300&recipdetail=H&sortorder =A&mem=Y&cycle=2014 (last visited Dec. 13, 2016). In 2016, he received \$52,800 from the industry. *Id.*

[†] Fellow, Wake Forest Veterans Legal Clinic. Juris Doctor, 2017, Wake Forest University School of Law; Bachelor of Arts in Political Science, 2014, Furman University.