



January 10, 2019

Charmain Bogue, Interim Executive Director  
Department of Veterans Affairs  
Veterans Benefits Administration  
Education Service  
810 Vermont Avenue, NW  
Washington, DC 20420

Re: 38 U.S.C. § 3696 and Career Education Corporation's Recent Settlement

Dear Charmain:

I hope you know how much the VSO and MSO community appreciates your leadership and excellent work. You have a lot of fans among veterans' advocates. Thank you very much for your diligence and serious dedication to serving veterans.

I wanted to alert you to important news. Last week, a **bipartisan** group of **49 state** attorneys general – representing **nearly every state in the nation** – reached a \$500 million settlement with Career Education Corporation (CEC) resulting in more than \$493 million in debt relief nationwide to more than 179,000 students. CEC runs a number of for-profit college chains, including American InterContinental University and Colorado Technical University, that have large veteran populations.

According to a [report](#) released in March 2018 by VES using the VA Transparency tool, "*Schools Receiving the Most Post-9/11 GI Bill Tuition and Fee Payments Since 2009*," CEC was the fifth highest recipient of Post-9/11 GI Bill Tuition and Fee Payments from 2009-2017 at \$630,384,872.<sup>1</sup>

Under 38 U.S.C. § 3696, the VA is obligated to disapprove tuition funds for institutions using deceptive recruiting or marketing towards veterans. Specifically, 38 U.S.C. § 3696(a) states: "*The Secretary shall not approve the enrollment of an eligible veteran or eligible person in any*

---

<sup>1</sup> VES Issue Brief #2: Schools Receiving the Most Post-9/11 GI Bill Tuition and Fee Payments, March 2018, available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5ab2a76b6d2a73a4746063ef/1521657708194/GI+Bill+Cumulative+Revenue+Brief+%232+March2018.FINAL.pdf>.

*course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.”*

The language of the statute dictates that the Secretary **must** deny the enrollment of veterans in education programs engaging in deceptive practices. Congress specifically used the word “shall” rather than the word “may.”

You may recall that, in 2016, Yale Law School published a report, “[VA's Failure to Protect Veterans from Deceptive College Recruiting Practices](#).”<sup>2</sup> Following that report, on May 16, 2016, twenty three leading VSOs and MSOs [wrote a letter](#) to the VA Secretary requesting his attention to the Yale Law School report and requesting the appointment of a 30-day task force to develop a roadmap for VA to come into compliance with the law.<sup>3</sup> The letter also raised a number of concerns about VA’s failure to complete compliance with Executive Order 13607 (“Principles of Excellence”). The letter stated, “Failure to enforce your statutory obligations (as well as your approval criteria) harms veterans, their families, survivors, and taxpayers; leaves the G.I. Bill open to fraud; and sends the wrong message to other potential violators of federal law.”

As you may recall, Mr. Curtis Coy then embarked on a lengthy planning phase to determine criteria that might trigger VA’s application of 38 U.S.C. § 3696. We appreciate that he consulted VSOs and MSOs as well as other federal agency experts, including Holly Petraeus, and, yet, the planning seemed to be interminable.

At this point, VA has yet to adhere to 38 U.S.C. § 3696. VES recently received a FOIA [response](#) from the US Federal Trade Commission (FTC), which states that FTC has never received any referrals from VA under 38 U.S.C. § 3696 and is unaware of any VA determinations under 38 U.S.C. § 3696.<sup>4</sup>

You can understand, then, why VSOs and MSOs might be frustrated by VA’s lack of adherence to the law.

---

<sup>2</sup> Veterans Legal Services Clinic, Yale Law School, “VA’s Failure to Protect Veterans From Deceptive Recruiting Practices,” February 26, 2016, available at [https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59fa600671c10b386ab1d1f9/1509580807045/Yale\\_Law\\_School\\_Analysis\\_of\\_VA\\_Authority.pdf](https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59fa600671c10b386ab1d1f9/1509580807045/Yale_Law_School_Analysis_of_VA_Authority.pdf)

<sup>3</sup> Letter to the Honorable Robert McDonald, May 16, 2016, available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5744bdfc2eeb81f2ceb68358/1464122877006/VSO+MSO+Letter+to+VA+Secretary+re+GI+Bill+oversight.Signed+%281%29.pdf>.

<sup>4</sup> Department of Veterans Affairs FOIA response to National Student Legal Defense Network request, November 13, 2018, available at <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5bff0710352f5374405eb80f/1543440145927/VBA+NSLDN+FOIA+Final+Response+%281%29.pdf>.

When the FTC brought a full lawsuit against DeVry, which included pasted images of DeVry's deceptive ads, how did that not arise to the level of at least a "preliminary finding" by FTC of deceptive advertising and sales?<sup>5</sup> When the California Attorney General brought a lawsuit against Ashford, which included ample evidence of deceptive advertising, sales, and enrollment practices, how is that VA still has not adhered to the law, despite two reminders from CSAAVE about VA's obligations under 38 U.S.C. § 3696?<sup>6</sup>

Please remember that VA's adherence to 38 U.S.C. § 3696 isn't just a policy question. It's hundreds of thousands of veterans wasting their GI Bill because they were deceived and misled by schools about so many key aspects – the quality of education, the actual courses offered, the true tuition, the real accreditation and transferability of the credits, and their job placement and salary prospects. It also impacts taxpayers as hundreds of millions of GI Bill dollars go wasted.

The recent lawsuit brought by the 49 state attorneys general alleged CEC employed myriad deceptive and predatory enrollment tactics.<sup>7</sup> The state attorneys general alleged that CEC put significant pressure on recruiters to enroll students and engaged in making misleading statements to prospective students, while failing to disclose material facts and otherwise engaging in recruitment methods that violated state consumer protection laws.

Specifically, the state attorneys general alleged: CEC misled students about the total cost of enrollment and transferability of credits;<sup>8</sup> CEC misrepresented their program offerings and the potential to obtain employment in the desired field by prospective students;<sup>9</sup> CEC failed to disclose certain programs lacked the necessary accreditation;<sup>10</sup> and CEC engaged in unfair and deceptive practices when calculating job placement rates that gave prospective student an inaccurate of impression of CEC graduates' employment outcomes.<sup>11</sup> These misrepresentations related to job placement rates included misrepresenting graduates who worked only temporarily as having "placed," and mispresenting when a graduate was "placed" in a field they trained for, when in fact the graduates employment was neither in the field they were trained nor in a field related to their field of study.

---

<sup>5</sup> See Federal Trade Commission, "DeVry University Agrees to \$100 Million Settlement with FTC," December 15, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>.

<sup>6</sup> See California Attorney General's Office, "Attorney General Xavier Becerra Sues For-Profit Ashford University for Defrauding and Deceiving Students," November 29, 2017, available at <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-sues-profit-ashford-university-defrauding-and>.

<sup>7</sup> *In the Matter of: Career Education Corporation, American InterContinental University, Inc., and Colorado Technical University, Inc.*, Assurance of Voluntary Compliance/Assurance of Discontinuance, available at [https://www.iowaattorneygeneral.gov/media/cms/CEC\\_AVC\\_FINAL\\_w\\_Sigs\\_and\\_Exhibits\\_4993AFC201EFD.pdf](https://www.iowaattorneygeneral.gov/media/cms/CEC_AVC_FINAL_w_Sigs_and_Exhibits_4993AFC201EFD.pdf).

<sup>8</sup> *Id.* at pg. 2.

<sup>9</sup> *Id.* at pg. 3.

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

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

**The fact that 49 states – a bipartisan group representing nearly every state in the nation – all concur that CEC engaged in deceptive and misleading advertising, sales, and enrollment practices** should meet the definition in 38 U.S.C. § 3696 that CEC utilized erroneous, deceptive, or misleading advertising, sales or enrollment practices either by actual statement, omission, or intimation.

VA has additional evidence of CEC's deceptive and misleading practices. Specifically, CEC currently has the third highest number of school complaints brought to VA.

Furthermore, in June of 2018, VES brought to VA a whistleblower who was employed by CEC and Colorado Technical University. The whistleblower met with Bridget Griffin, Programs Management Analyst Education Service.; Khalidah Jones, Programs Management Analyst Education Service; and Chris Sutherland, Chief, GI Bill Integrity and Protection. In this meeting, the whistleblower described a litany of issues and actions by CEC that, without question, would be considered deceptive recruiting and constitute violations of 38 U.S.C. § 3696.

We believe that the recent action by 49 states, coupled with the CEC whistleblower's information provided to the VA in June, and third highest volume of student complaints to VA, necessitates that VA immediately apply 38 U.S.C. § 3696 to disapprove CEC from VA education programs. In the alternative, at a minimum, we ask that the matter be referred to the Federal Trade Commission, which VA has the authority to do under 3696(c), for its preliminary finding about whether CEC utilized erroneous, deceptive, or misleading advertising, sales or enrollment practices either by actual statement, omission, or intimation.

I write to you with gratitude for your leadership and hope that you will give this careful consideration. Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Wofford". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Carrie Wofford  
President