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December 7, 2018

Mr. Phil McAllister, Esq.
Regulatory Actions Coordinator
California Department of Veteran Affairs
1227 O Street, Suite 300
Sacramento, CA 95814

Re: Comment of Groups Representing Veterans, Consumers, and Children in Support of Proposed Rulemaking to Title 12 of California Code of Regulations Regarding CSAAVE Title 38 Approval of Postsecondary Institutions

Dear Mr. McAllister:

Pursuant to the notice dated October 26, 2018, the undersigned groups representing veterans, consumers, students, and children offer public comment in support of, and asking for modest corrections and additions to, proposed sections 443, 444, 445, 446, and 447 of Title 12, Division 2, Chapter 3, subchapter 3.6, California Code of Regulations.

In the main, the proposed regulations simply memorialize existing applicable law and, thus, offer consistency and transparency¹ to how CSAAVE implements its already-existing duty of approving Title 38 funding to educational institutions. Regulations such as the ones proposed not only promote government efficiency in decision-making but when, as here, significant discretion is given to approving agency, regulations such as the ones proposed are practically required to avoid underground rulemaking banned by Government Code section 11340.5(a).

I. The Regulations Are Urgently Needed As Numerous and Uncontested Authorities Document That Veterans Are Targets And Victims of Disreputable Postsecondary Education Businesses.

Title 38 funding is intended to provide education opportunity for American veterans who have often suffered unimaginable sacrifices for our common good, as have their families. Veterans and taxpayers have a right to expect and require a minimum level of beneficial results from Title 38 expenditures. This is especially true as there is no Title 38 “do over” — these are one-time benefits for our heroes.

¹ “A major aim of the APA was to provide a procedure whereby people to be affected may be heard on the merits of proposed rules.” *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204.

Studies and litigation have now exhaustively documented that a significant number of institutions receiving Title 38 taxpayer funds simply do not provide baseline quality education worthy either of taxpayer subsidies or veteran sacrifice. Three flagship examples of such institutional failure are the widespread failures of their students to graduate, pass licensing exams, or obtain employment. Such institutions often entice students to enroll over less expensive community college options, and then leave them jobless, older, in debt where the debts are by law not dischargeable in bankruptcy, and with their credit irrevocably ruined. In particular, government reports examining students at for-profit colleges have found lower success rates than similar students at public and nonprofit colleges, as evidenced by lower graduation rates, lower employment offerings, and higher loan default rates.²

As one news report aptly summarized:

A large number of veterans enrolled in IIT Tech and [Corinthian College](#), which both heavily recruited students from the military. The two colleges shut down dozens of campuses, suddenly closing their doors to thousands of students, amid a [crackdown on the industry](#) from the Obama administration.

For-profit colleges in general have been accused of preying on veterans and low-income students, and making false promises about good jobs upon graduation. But many students at for-profit colleges don't ever finish their degree. They make up about [35% of all federal student loan defaults](#).

After the schools shut down, many students found their credits wouldn't transfer to other colleges. While students who borrowed federal student loans to attend IIT Tech or Corinthian can apply to [have their debt erased](#), veterans were unable to reuse their GI Bill benefits.³

The list of recently shuttered for-profit education businesses (many of which operated in California) is depressingly long, exemplifying the urgency and common sense of efforts such as these regulations to guarantee minimum educational benefits to veterans. The most recent to be added to this list, Brightwood College, just closed on December 5, 2018 — one day into the semester.⁴

- [Allied American University](#) – Laguna Hills, California, closed 2016
- Allied College – [Maryland Heights, Missouri](#) and [Fenton, Missouri](#), closed
- [Anthem College](#) – multiple locations, closed in 2014
- [Anthem Institute](#) – formerly the Chubb Institute; multiple locations, closed 2014
- [Ashmead College](#) – multiple locations, closed
- [ATI Enterprises](#) – campuses in Arizona, Florida, and Texas, closed
- [Banner College](#) – [Arlington, Virginia](#), closed
- [Banner Institute](#) – Chicago, closed
- [Briarcliffe College](#) – Long Island, New York; a subsidiary of [Career Education Corporation](#); closed 2016

² Senator Tom Harkin, The Senate Health, Educ., Labor & Pensions Comm., *Department of Defense Data Reveals For-Profit Colleges are Taking in the Bulk of Military Education Benefits*, <http://www.help.senate.gov/ranking/newsroom/press/harkin-report-reveals-troubling-realities-of-for-profit-schools>.

³ <https://money.cnn.com/2017/08/03/pf/college/gi-bill-benefits-for-profit/index.html>.

⁴ As one veteran studying to be a patient care technician who was one month away from graduating remarked: “You had a hint something might happen but not a definite answer, and then all of a sudden, BAM, here we are ... I don’t blame the teachers and staff here. I don’t blame them at all because it’s not really up to them but the corporation is what we’re upset with.” Andrew Johnson, *Brightwood College Permanently Closes Three Local Campuses One Day Into Semester*, NBC 7 (December 5, 2018). Available online at: <https://www.nbcsandiego.com/news/local/brightwood-college-kearny-mesa-chula-vista-closure-education-corporation-of-america-students-502031331.html?akmobile=o>.

- Brightwood College – California, closed December 5, 2018
- [Brooks College](#) – California, closed in 2008
- [Brooks Institute of Photography](#) – multiple locations, closed in 2016
- Brown College – Mendota Heights, Minnesota; not to be confused with Brown University in Providence, Rhode Island
- [Brown Mackie College](#) – multiple locations, a subsidiary of [Education Management Corporation](#), closed in 2017
- [Bryman College](#) – multiple locations; not to be confused with The Bryman School in Arizona, closed in 2014
- [Career Colleges of America](#) – California, closed in 2014
- [Collins College](#) – Phoenix, Arizona area
- [Charlotte School of Law](#) – subsidiary of [InfiLaw System](#)
- [Corinthian Colleges](#)
- Court Reporting Institute – St. Louis, MO and Dallas, TX
- [Le Cordon Bleu](#) – multiple locations, subsidiary of [Career Education Corporation](#); closing 2017
- [Crown College](#) – Tacoma, Washington; lost accreditation in 2007 and closed
- [Daniel Webster College](#) – [Nashua, New Hampshire](#), subsidiary of [ITT Educational Services](#), closed 2017
- [Decker College](#) - 2002
- [Drake College of Business](#) – New Jersey; closed 2015
- [Eagle Gate College](#) – Utah; closed 2015
- [Everest College](#) – multiple locations, a subsidiary of [Corinthian Colleges](#), closed 2015
- [Everest Institute](#) – multiple locations, a subsidiary of [Corinthian Colleges](#), closed 2015
- [Erie Business Center](#) – [Erie, Pennsylvania](#), closed 2014
- [FastTrain College](#) – Florida, closed in 2014 after FBI raid^[3]
- [Gibbs College](#) – multiple locations; closed 2009
- Globe University/Minnesota School of Business – multiple locations in Minnesota not to be confused with Carlson School of Management the business school of the University of Minnesota
- [Harrington College of Design](#) – a subsidiary of [Career Education Corporation](#); closed 2016
- [Heald College](#) – multiple locations, a subsidiary of [Corinthian Colleges](#); closed 2015
- [High-Tech Institute](#) – multiple locations, closed
- [Illinois School of Health Centers](#) – Chicago, Illinois, closed 2015
- [International Academy of Design and Technology](#) – multiple locations - consolidated with Sanford-Brown, then closed
- [ITT Technical Institute](#) – all locations (closed September 6, 2016)
- [Kee Business College](#) – multiple locations in Virginia, subsidiary of [Corinthian Colleges, Inc.](#)
- [King's College](#) - Charlotte, North Carolina (closed December 2018)
- [Lighthouse College](#) – closed 2015
- [Metro Business College](#) – closed 2015
- [Miami-Jacobs Career College](#) – closed 2016^[4]
- [Missouri College](#) – a subsidiary of [Career Education Corporation](#), closed 2016
- [Mount Washington College](#) – multiple locations in New Hampshire, closed 2016
- [McNally Smith College of Music](#) – Saint Paul, Minnesota
- Oregon Polytechnic Institute - closed 6/28/1996
- [Sanford-Brown College](#) – multiple locations; subsidiary of [Career Education Corporation](#); not to be confused with either [Stanford University](#) or [Samford University](#); closed 2016
- Southwest Florida College Tampa, Fort Myers, Port Charlotte, Bonita Springs, closed

- [Springfield College](#) – [Springfield, Missouri](#); not to be confused with [Springfield College](#) in [Springfield, Massachusetts](#), changed name to Everest College, closed in 2015
- [Star Career Academy](#) – Berlin, New Jersey, closed in 2016
- TCI College of Technology – New York City; in 2007 TCI also assumed responsibility for the closed Interboro Institute, owned by EVCI Career Colleges Holding Corporation[
- [Trump University](#) – New York City, New York; closed 2010
- [University of Southernmost Florida](#) – closed 2015
- [Victory University](#) – Memphis, Tennessee; closed in 2014
- [Video Technical Institute](#) - Bell Gardens, CA
- [Westwood College](#) – multiple locations; closed 2016
- [Wright Career College](#) – multiple locations; closed 2016⁵

Almost as long (but with some overlap) is the large number of education businesses sanctioned or investigated by regulators.⁶

It is overwhelmingly within the for-profit education business sector where problems afflicting veterans and all students have arisen. There are two reasons for this:

First, markets work best when consumers understand what they are buying, especially when it comes to the quality of the product.⁷ However, without sufficient disclosures and information, prospective students are not able to differentiate between the quality of the product they are pursuing; namely, education.

Second, for-profit business leaders have a legally-imposed, fiduciary duty to their shareholders to maximize their profits. They thus have a financial incentive to charge as much as they can in tuition without scaring away a potential student, and to spend as little as possible on the education delivered.⁸ This of course does not preclude useful and effective education, but does introduce an element at times in proven conflict with a student’s educational purpose. As our Attorney General explains and cautions:

Be careful and do your homework before enrolling in a “for-profit” college or career training college. The for-profit college and career training industry is not part of the public school system; they operate schools to maximize profits for their investors. For-profit schools have been accused of fraud, abuse, and predatory practices targeting the poor, veterans and minorities by offering expensive degrees that often fail to deliver promised skills and jobs. Students have complained about aggressive recruiting practices, misleading graduation and employment rates, and illegal debt collection practices—their complaints suggest that many graduates can’t get jobs or afford to repay their loans. If you are not careful, enrolling in a for-profit school may leave you under a mountain of debt, but not help you get a job.

⁵ https://en.wikipedia.org/wiki/List_of_for-profit_universities_and_colleges.

⁶ <https://www.collegeaffordabilityguide.org/online-colleges-sanctioned-by-government-organizations/>; <https://www.pbs.org/newshour/education/dept-ed-names-schools-facing-financial-investigation-severe-audit-findings>; <https://www.chronicle.com/article/State-Attorneys-General-Open/144255>; thirty two state ags: https://www.huffingpost.com/davidhalperin/state-attorneys-general-o_b_4677145.html.

⁷ John O. Ledyard (2008), Market Failure,” *The New Palgrave Dictionary of Economics*, 2nd Ed.

⁸ James Surowiecki, *The Rise and Fall of For-Profit Schools*, The New Yorker (Nov. 2, 2015), available at <http://www.newyorker.com/magazine/2015/11/02/the-rise-and-fall-of-for-profit-schools>.

The Attorney General's Office led the charge against California-based Corinthian Colleges for targeting low-income, vulnerable individuals through false advertisements that misrepresented job placement rates and the value of the school's programs, obtaining a \$1.1 billion judgment against Corinthian.⁹

Many of the measures intended to ensure institution quality have been compromised and cannot alone be relied upon. The GI Bill has long had a built-in defense related to this problem, requiring that for every 17 veterans who are enrolled using a GI Bill, a school must show that at least three students were supported privately, such as through an employer, a private scholarship program, family, or self-financed (the rule is referred to as "85-15," because no more than 85% of the students in a program can be funded by the GI Bill). In other words, the rule uses paying customers as an accountability tool to determine the value of the program. The U.S. Supreme Court ruled in 1978 that the policy made sense as a "free market mechanism" designed to "minimize the risk that veterans' benefits would be wasted on educational programs of little value" by "weed[ing] out those institutions [that] could survive only by the heavy influx of Federal payments."¹⁰

Over time, this market test of a program's value has been undermined by the fact that many of the non-veteran students that are supposed to be paying with private funds are in fact legally permitted to be supported by federal grants and loans from the U.S. Department of Education. The similar so-called "90-10" rule which does apply to Education Department funds is likewise undermined by the lack of inclusion of GI Bill funds as public funds subject to limitation.¹¹ As a result, veterans have become the for-profit colleges' favored method of satisfying the 10 percent requirement for Department of Education funds, contributing to even more aggressive pursuit of veterans than would exist in the absence of the Education Department's rule.¹² Those private for-profit schools receiving Title 38 funding charge and receive tuition levels well above public school levels. And, importantly, the Title 38 GI Bill program includes room and board cash while the veteran attends school, giving further incentive for students to attend in order to receive this ancillary funding, and for schools to solicit Title 38 eligible students.

These dynamics have led to widely documented and publicized marketing abuses in the enrollment of veterans,¹³ including the expenditure of large sums of Title 38 revenue for CEO salaries, profit,

⁹ <https://oag.ca.gov/consumers/general/for-profit-schools>.

¹⁰ *Max Cleland, Administrator of the Veterans Administration, et al. v. National College of Business* 435 U.S. 213 (1978).

¹¹ The "90/10 rule" is based on revenue but includes Department of Education funds, while excluding the robust funding from Title 38 for veterans. The latter are subject only to a different restriction called the "85-15 rule" that limits not revenue, but the number of students in any given program to 85% who are veterans receiving GI bill (Title 38) assistance. See *e.g.*, 20 U.S.C. § 1094(a)(24)(2014); 38 U.S.C. § 3680A(d)(1) (2014).

¹² Daniel J. Reigel, *Closing the 90/10 Loophole in the Higher Education Act: How to Stop Exploitation of Veterans, Protect American Taxpayers, and Restore Market Incentives to the For-Profit College Industry*, 81 GEO. WASH. L. REV. 259 (2013).

¹³ <https://www.businessinsider.com/for-profit-colleges-have-been-ripping-off-veterans-since-world-war-ii-2016-6>;
<https://www.coloradoindependent.com/2017/01/26/veterans-colorado-tech-for-profit-college-debt/>;
<https://www.npr.org/2012/04/09/150148966/for-profit-schools-under-fire-for-targeting-veterans>;
<https://www.cnn.com/2013/11/11/are-for-profit-colleges-unfairly-targeting-vets.html>;
<https://slate.com/human-interest/2016/07/why-are-people-so-easily-exploited-by-for-profit-colleges-stealing-americas-future-explains-a-veterans-story-of-student-loan-debt.html>;
<https://www.nytimes.com/2017/11/24/opinion/exploiting-veterans-profit.html>;
<https://www.marketwatch.com/story/new-film-exposes-how-for-profit-colleges-exploit-veterans-and-single-moms-2017-11-14>;
<https://www.cbsnews.com/news/study-most-student-loan-fraud-claims-involve-for-profits/>;
<https://www.motherjones.com/politics/2011/09/gi-bill-for-profit-colleges/>.

lobbying, and marketing.¹⁴ The last has included incidence of illegal “bounty” payments to those securing additional enrollment.¹⁵ Representations and promises have grown increasingly deceptive and problematic.¹⁶ It is crucial to ensure that veterans receive a high-quality education and that the taxpayer-funded GI Bill education benefits are used effectively.¹⁷

Some of the for-profit colleges with the lowest graduation rates, questionable retention rates, and higher loan default rates are those that cost taxpayers the most money.¹⁸ Veterans are most aggressively recruited by for-profit colleges with lower graduation rates, lower retention rates, and higher cohort default rates, than other institutions (schools) the veterans could attend if they had the information and counseling to do so.¹⁹ For example, the Defense Department has alleged that the University of Phoenix has sponsored recruiting events in violation of an executive order preventing for-profit colleges from gaining preferential access to the military,²⁰ and California regulators have barred them from enrolling veterans in seven programs.²¹ Therefore, there is a need to raise the standards for the quality of education that these schools provide and to strengthen protections for veterans so they are not taken advantage of.²² To help veterans graduate, obtain gainful employment post-graduation, repay their loans, and to ensure that taxpayer dollars are used in a more effective way, it is necessary to hold for-profit colleges to a minimum floor or standard.²³

Although the most serious abuses have centered in the for-profit education sector, they are not confined to that sector and, consequently, the proposed regulations appropriately apply identically to all Title 38 possible institutions.

¹⁴ Chris Kirkham and Alan Zarembo, *For-Profit Colleges are Using the GI Bill to Make Money Off Veterans* (Aug. 18, 2015). Available at <http://www.latimes.com/business/la-fi-for-profit-colleges-gi-bill-20150809-story.html>.

¹⁵ Robert Shireman, *To Get Value from For-Profit Colleges, Create the Right Incentives* (May 31, 2013). Available at http://www.huffingtonpost.com/robert-shireman/forprofit-colleges-gettin_b_3367622.html.

¹⁶ David Zuchino & Carla Rivera, *Anger Grows Over GI Bill Profiteers*, L.A. TIMES (Jul. 16, 2012), <http://articles.latimes.com/2012/jul/16/nation/la-na-vets-colleges-20120716>; STAFF OF S. HEALTH, EDUC., LABOR, AND PENSIONS COMM., 113th CONG., *Is the New GI Bill Working?: For-Profit Colleges Increasing Veteran Enrollment and Federal Funds*, at 3 (2014).

¹⁷ Tim Hsia & Anna Ivey, Op-Ed., *Fix the New G.I. Bill*, N.Y. TIMES (Nov. 10, 2014), available at http://www.nytimes.com/2014/11/11/opinion/fix-the-new-gi-bill.html?_r=0 (asserting that veterans and taxpayers are harmed by predatory for-profit schools because these schools exploit veterans’ “G.I. Bill funding and offer them – and taxpayers – very little in return”).

¹⁸ STAFF OF S. HEALTH, EDUC., LABOR, AND PENSIONS COMM., 113th CONG., *Is the New GI Bill Working?: For-Profit Colleges Increasing Veteran Enrollment and Federal Funds*, at 7 (2014).

¹⁹ *Id.* According to the U.S. Department of Education, “an institution’s cohort default rate is calculated as the percentage of borrowers in the cohort who default before the end of the second fiscal year following the fiscal year in which the borrowers entered repayment.” *Three-year Official Cohort Default Rates for Schools*, Federal Student Aid, <http://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html> (last updated Sept. 24, 2014).

²⁰ Danielle Douglas-Gabriel, *Why the Defense Department is Kicking the University of Phoenix Off Military Bases* (October 9, 2015). Available at <https://www.washingtonpost.com/news/grade-point/wp/2015/10/09/why-the-defense-department-is-kicking-the-university-of-phoenix-off-military-bases/>.

²¹ Aaron Glantz, *University of Phoenix barred from enrolling Veterans in 7 Programs* (July 30, 2014). Available at <https://www.revealnews.org/article-legacy/university-of-phoenix-barred-from-enrolling-veterans-in-7-programs/>.

²² See Senator Tom Harkin, *The Senate Health, Educ., Labor & Pensions Comm., Department of Defense Data Reveals For-Profit Colleges are Taking in the Bulk of Military Education Benefits*, <http://www.help.senate.gov/ranking/newsroom/press/harkin-report-reveals-troubling-realities-of-for-profit-schools>, *supra* note 2.

²³ See S. COMM. ON HEALTH, EDUC., LABOR, AND PENSION, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, S. REP. NO. 112-37, at 19 (2d Sess. 2012).

II. Real-world Examples of Why The Proposed Regulations That Seek To Prevent Harm Are Needed: Stories Of Veterans Defrauded With Little Or No Remedies.

Accompanying this letter is a submission by Robert F. Muth, Managing Attorney of the Veterans Legal Clinic, describing examples of just some of the veterans harmed by for-profit education companies that the Clinic has represented. The Clinic has assisted hundreds of individual veterans who have lost their precious Title 38 benefits to predatory for-profit education businesses. Here, briefly summarized, are two of their stories:

T.O. is a veteran who was medically retired from the United States Marine Corps after suffering catastrophic injuries incurred in a rocket attack while serving in Iraq. This Marine veteran was subsequently rated 100% disabled by the Department of Veterans Affairs (“VA”) due to the extent of his injuries which include a serious Traumatic Brain Injury (“TBI”). Despite his injuries, T.O. was intent on pursuing higher education and sought a meaningful career notwithstanding his combat related disabilities. The veteran was recruited to enroll in a for-profit school with a wide range of false promises. He was given false job placement rates, inaccurate data of starting salaries for graduates, falsely told that the school was accredited when it was not and misled as to the teaching qualifications and quality of instruction provided by the school. When the veteran left the school midway through the course of study, unbeknownst to him, the school continued to debit the VA for his Post 9/11 GI Bill benefits despite the fact he was no longer enrolled. Adding insult to injury, the veteran was later informed that the school was not providing an educational program that met the minimum standards required to be eligible to receive GI Bill funds. The VA then decided to retroactively disapprove the school’s program and told the veteran that, despite the fact that the school was approved at the time he attended, he would now have to pay the VA back for all of the GI Bill funds that had been expended on his behalf at the school. Since the veteran did not have the funds to pay back the VA, the VA began garnishing his disability compensation benefits that he uses to provide for his basic needs and living expenses.

E.S. is a U.S. Navy veteran who has significant service-connected disabilities. She attended a for-profit school after being fraudulently induced to enroll with false promises as to, *inter alia*, the quality of instruction, time needed to complete the program and guarantees that the school could effectively accommodate her military related disabilities. The for-profit school consistently failed to provide any reasonable accommodations for her disabilities and, further, refused to accommodate necessary VA required medical appointments. Additionally, the school significantly changed the length of time needed to complete its program after the veteran had already enrolled which would have required her to not only expend all of her GI Bill benefits but also incur significant student loans to complete the program. The veteran was then faced with choosing whether to switch to a new school that would not accept the credits she had earned at the for-profit school, or stick with the for-profit program so that her hard earned education benefits already spent would not go completely to waste.

III. Institutions Should Welcome The Certainty Of Knowing What Is Required For Title 38 CSAAVE Approval.

Currently, institutions are not comprehensively apprised before applying to CSAAVE for Title 38 eligibility of the criteria by which their applications will be judged. The proposed regulations admirably forecast for applicants how their applications will be considered and thus allow them the maximum opportunity to shape their applications to obtain certain approval.

More broadly, neither the public, the federal government, the California Legislature, sister agencies within California government, nor veterans are currently made aware of the criteria by which CSAAVE will approve or disapprove institutions for Title 38 participation. These stakeholders, too, should be aware of the benchmarks used by CSAAVE in approving the Title 38 eligibility of institutions.

Finally, with but one welcome exception, these proposed regulations simply make explicitly applicable to CSAAVE Title 38 approvals certain laws or regulations that already govern the operations of postsecondary institutions. These regulations therefore laudably promote consistency in oversight and enforcement and avoid left vs. right hand problems where one state or federal agency oversees the same institution differently than another, leading to needless expense and confusion among all stakeholders, institutions especially.

IV. The Regulations' Requirement Of An Employment Assessment Is Particularly Warranted.

The proposed regulations put in place a very wise, common sense requirement that each institution desiring to enroll veterans in a non-standard college degree program involving a substantially different syllabus or class agenda, or involving a new or different occupation, object, or purpose than was previously approved, provide, in addition to an application, an employment market assessment. An employment market assessment is an analysis of the labor market and needs assessment to demonstrate the employment demand for the programming the geographic area in which the program is advertised and is offered to students. Simply put, the labor market assessment shows that there is actually a need for the program and students have a reasonable likelihood of finding sufficient employment upon completing the program.

This approach is good because it will help to ensure students are spending their time and resources on a program that will improve their employment prospects in the area in which they live. It is an approach that is precedented. Several states as well as the federal government conduct similar assessments as a condition of approval for new programs. For example:

- Oregon requires the initial application for a private career school license to include labor market information showing current employment, replacement, and expansion data for regional, state, and national labor markets for the occupational area being served.²⁴
- Wisconsin's criteria for schools and programs of instruction includes a requirement programs, which are innovative and not comparable to currently approved private or public programs, are based on demonstrable quality and documented labor market needs.²⁵ Wisconsin's School and Approval Guide (the Guide) reinforces this requirement, noting that schools "must be able to clearly state its mission. The education and training provided should be consistent with the school's mission and are documented by either a needs assessment or market experience."²⁶ The Guide further states schools will be asked what market research is available that shows there is a need for the type of programs that will be offered and shows graduates will have

²⁴ Or. Admin. R. 715-045-0006(11)(l).

²⁵ Wis. Adm. Code SPS 404.04(1)(d).

²⁶ *SCHOOL & PROGRAM APPROVAL GUIDE Understanding EAP Oversight: Protecting Wisconsin Consumers and Promoting Institutional Effectiveness* Version 2.4, at 4. (January 2018) <https://dsps.wi.gov/Documents/EASchoolAndProgramApprovalGuide.pdf>.

labor market success and/or career advancement.²⁷ Finally, the Guide requires a market assessment; it states that a school must be able to demonstrate that there is a need for the program(s) that it will offer. The Wisconsin Educational Approval Program will want to know that students in the target market will enroll in the program(s) to be offered and that employers have a need for the school's graduates.²⁸

- Federally, the Workforce Innovation and Opportunity Act of 2014 requires, as a condition to receiving funding for programs, states must submit a unified State plan which meets specified requirements. The state plan must include strategic planning elements, the first of which is an analysis including in-demand industry sectors and occupations, and employment needs of employers including a description of the knowledge, skills, and abilities needed in those industries and occupations.²⁹ The determination as to whether an occupation is in-demand is made by the State or local board and is based State and local business and labor market projections, including the use of labor market information.³⁰ This parallels the requirements articulated in the proposed regulations.

V. Modest Corrections And Additions To The Proposed Regulations' Treatment Of CalGrant Eligibility Are Needed For Them Adequately To Protect Veterans Consistent With The Regulations' Intent.

Ensuring that Title 38 eligible institutions meet the State's CalGrant performance eligibility criteria is self-evidently an important aim of the regulations. The cover letter to the regulations from Secretary Imbasciani states:

Applying the standards currently in place for the CalGrant subsidy ensure a consistent application of state requirements for higher education institutions for higher education institutions, while protecting veterans and ensuring they will receive educational benefits they expect and should acquire when enrolled in a state-approved Title 38 program.

The Notice likewise provides:

The specific problem being addressed in this regulatory action is to, without being unduly burdensome, build upon the recent performance standards for the broader state higher education CalGrant subsidy, and establish baseline accreditation, graduation, and academic spending requirements appropriate for this distinct population.

Similarly, the ISOR supporting proposed section 443(a)(3) in part (with emphasis supplied) explains:

This is necessary to ensure that institutions and programs comply with state and federal requirements and standards applying to Title 38 eligibility. The metrics for this portion of the section are modeled on the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant program, which provides standardized criteria and expectations for a successful educational institution capable of servicing Cal grant recipients. EC section 69432.7 provides the metrics used in this

²⁷ *Id.*

²⁸ *Id.* at 6.

²⁹ 29 U.S.C.S. § 3112(b)(1).

³⁰ 29 U.S.C.S. § 3102(23).

section. *The Cal Grant metrics allow CSAAVE to accomplish the goals of 38 USC 3676 using standards commonly applied to post-secondary schools within California.*

However, the regulations themselves are not as clear as they could and should be *in requiring compliance with CalGrant eligibility standards as at least a presumptive condition* of CSAAVE approval.

The ambiguity arises this way:

First, while proposed Section 445(3)(A) and (B) states that an applying institution shall “[s]ubmit and certify its cohort default rate and graduation requirements (the CalGrant benchmarks)” to CSAAVE, the regulation does not, as foreshadowed by the expressed intent of the regulations (see above), specifically and actually say that CSAAVE will only approve an institution if it meets the requirements for CalGrant eligibility: a three-year cohort default rate below 15.5 percent and a graduation rate above 30 percent.³¹ Simply requiring an institution to submit and certify information to CSAAVE does not mean that CSAAVE uses the CalGrant-based baseline as a required and certain basis approving or disapproving an application based on what default and graduation information is submitted and certified.

Said more plainly, a requirement that someone send information to CSAAVE does not establish a rule for what CSAAVE does with the information.

Second, while it is true that proposed section 445(a)(2) provides that an applying institution shall “[c]omply with all requirements set forth in ... Education Code section 67100,” Education Code section 67100(c) only requires institutions “to comply with all federal and state laws and regulations[.]” An institution is not, however, required to seek and maintain eligibility for CalGrants. Thus, strictly speaking, an institution can under this drafting of the regulations be “complying” with “all state laws” and have a right to CSAAVE approval under the regulations (all other factors being equal) if an institution simply does not seek to participate in the CalGrant program.

Thus, the graduation rate and cohort default rates in-place for CalGrant eligibility could be viewed as optional incentives or conditions and not “regulations” for which “compliance” is required.

Respectfully, ambiguity on this score is inconsistent with the expressed intent of the proposed regulations and its effort to ensure only worthy institutions obtain Title 38 approval. And, it is inconsistent with the expressed intent of the proposed regulations to offer institutions that flunk the CalGrant standards to serve and educate veterans. This intent should not be left to inferential guesswork. To align the regulations with the intent expressed for them, we suggest the following:

Section 445. Programs of Education: Requirements for CSAAVE Approval.

(a) To be approved by CSAAVE, programs of education shall:

(1) Be offered by an institution approved by CSAAVE;

³¹ These standards were enacted through Chapter 7, Statutes of 2011 (SB 70, Committee on Budget and Fiscal Review), and Chapter 38, Statutes of 2012 (SB 1016, Committee on Budget and Fiscal Review), limiting institutional participation in Cal Grant programs, found at Section 69432.7 of the Education Code, also known as Ortiz-Pacheco-Poochigian-Vasconcellos Act.

- (2) Comply with all requirements set forth in 38 Code of Federal Regulations parts 21.4253 and 21.4254, and Education Code section 67100, and Education Code section 69432.7 governing eligibility for the CalGrant program.

The simple cross-reference to Education Code section 69432.7 clarifies that CSAAVE will not be approving institutions for veterans that fall below what is required for the institution to participate in the CalGrant program. This is the expressed intent of the regulations and it is a wise and modest way for CSAAVE to ensure that a veteran's precious, one-time, sacrifice-earned benefits are used at institutions of some bare minimum quality; institutions that sufficiently prepare their students so they are graduating and employed sufficiently post-graduation to avoid default.

Notably, the cross reference also builds into the regulations current law's flexibility allowing ineligible institutions that may at one point in time be ineligible for CalGrants to regain their eligibility at another point in time, making the CalGrant requirement operationally a presumption that is rebuttable. Here is the applicable part of section 69432.7, with flexibility-permitting provisions highlighted:

(ii) If the United States Department of Education corrects or revises an institution's three-year cohort default rate or graduation rate that originally failed to satisfy the requirements established in subparagraph (B), (C), or (F), as applicable, and the correction or revision results in the institution's three-year cohort default rate or graduation rate satisfying those requirements, that institution shall immediately regain its eligibility for the academic year to which the corrected or revised three-year cohort default rate or graduation rate would have been applied.

(E) An otherwise qualifying institution for which no three-year cohort default rate or graduation rate has been reported by the United States Department of Education shall be provisionally eligible to participate in the Cal Grant Program until a three-year cohort default rate or graduation rate has been reported for the institution by the United States Department of Education.

If CSAAVE wishes additional flexibility, it could amend proposed section 445(d) as follows:

CSAAVE may consider an institution's or program's compliance with any standards, rules, or requirements prescribed by any state or federal licensing or approving agency or entity, as well as those promulgated by any accrediting body, agency, or association, in determining whether to grant CSAAVE approval. An institution that has its application disapproved for failure to comply with section 445(a)(2) may submit additional information to CSAAVE explaining reasons why its application should be approved notwithstanding the disapproval and CSAAVE may issue a one time temporary approval with reasonable conditions where the temporary approval expires after one year from the date the temporary approval is granted.

V. A Modest Correction Is Needed To Proposed Section 447(a) To Ensure What May Be The Worst Institutions Do Not Escape CSAAVE Scrutiny.

Proposed section 447(a) wisely requires an institution to self-report changes in accreditation, licensure, or approval status. However, institutional misdeeds are often first uncovered and revealed by state attorneys general or private plaintiffs through civil lawsuits. For this reason, it is imperative to require the self-reporting of civil judgments against approved institutions in lawsuits where plaintiffs, a city

attorney, or an attorney general alleged misleading advertising, knowing false representations, fraud, or deceit; information about such judgments is at least as valuable, if not more, to CSAAVE as changes in accreditation status. Just as a change in accreditation status will alert CSAAVE to a possible violation of proposed section 444(a) (requiring proof of accreditation), so, too, might a civil judgment for fraud indicate a possible violation of proposed section 445(a)(5).

Such self-reporting is common sensical and precedented. All three cannabis licensing agencies proposed permanent regulations adopt such a strategy to possibly identify those whose approval may need to be re-visited:

Bureau of Cannabis Control proposed permanent regulation section 5035 reads in part as follows:

(b) A licensee shall ensure that the Bureau is notified in writing of a civil penalty or judgment rendered against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the verdict or entry of judgment, whichever is sooner. The written notification shall include the date of verdict or entry of judgment, the court docket number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgment rendered against the licensee.

Department of Public Health proposed permanent regulation section 40184 reads as follows:

(b) A licensee shall notify the Department in writing of a civil penalty or judgment rendered against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the verdict or entry of judgment, whichever is sooner. The written notification to the Department shall include the date of verdict or entry of judgment, the court case number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgement rendered against the licensee or owner.

And, proposed CDFA regulation section 8204 reads as follows:

(c) Licensees shall notify the department in writing of the following within forty-eight (48) hours of: (1) Receiving a criminal conviction or civil judgment rendered against the licensee or any owner ...

Relying on accreditors to catch and remedy unlawful business practices is unwise in the extreme. At the time they were sued, almost all of the major defrauders in the for-profit sector (e.g., Corinthian, ITT, DeVry) were accredited and operating under no threat of losing their accreditation. This is because the core competency of accreditors is academics — not business practices. As the Legislative Analyst's Office rightly observed in 2013, the focus of accreditors is on pedagogical matters while the focus of state overseers is on business practices:

Assessing Existing Oversight Structure

Our comparison of the oversight provided by accrediting agencies and the Bureau shows that these entities have different strengths and weaknesses. Accrediting agencies provide better educational oversight than the Bureau. In addition, these agencies require institutions to meet general operating requirements that typically are at least as rigorous as the Bureau's requirements. *In the areas of business practices and student complaints, however, accreditor oversight (both regional and national) falls short of Bureau oversight.*³²

³² <https://lao.ca.gov/reports/2013/edu/oversight/oversight-121713.aspx>.

For these reasons, the undersigned respectfully request that the proposed regulation be modified as follows:

Section 447. Notice of Change in Status, Enforcement, and Student Protection.

- (a) An approved institution or an institution seeking approval shall immediately notify CSAAVE in writing of any change in institutional or programmatic accreditation, licensing, approval status, or or of a civil penalty or judgment rendered against the institution and provide all documentation associated with the change, judgment, or penalty to CSAAVE within 30 days of its receipt.

V. Conclusion.

The proposed regulations modestly gather in one place and clarify the application of existing federal and state requirements. They offer predictability for institutions and students alike and, with the modest and precedented additions offered above, will constitute an enduring veteran-protecting legacy for CSAAVE.

Sincerely,



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on behalf of

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Joanna Adler
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David Brennan
Professor in Residence, University of San Diego School of Law

Enclosures (please note that the enclosed documents are also available electronically at www.cachildlaw.org/CSAAVE_Comments.html).

List of Enclosures to Attached Comment on CSAAVE Rulemaking Proposal

[please note that these documents are also available electronically at

www.caichildlaw.org/CSAAVE_Comments.html]

| Document | Citation / Web Address |
|---|---|
| Harkin Report | Senator Tom Harkin, The Senate Health, Educ., Labor & Pensions Comm., <i>Department of Defense Data Reveals For-Profit Colleges are Taking in the Bulk of Military Education Benefits</i> , http://www.help.senate.gov/ranking/newsroom/press/harkin-report-reveals-troubling-realities-of-for-profit-schools |
| Case: <i>Armistead v. Personnel Board</i> | <i>Armistead v. State Personnel Board</i> (1978) 22 Cal.3d 198, 204. |
| News Article: Congress expands GI Bill, helping veterans burned by for-profit schools | https://money.cnn.com/2017/08/03/pf/college/gi-bill-benefits-for-profit/index.html |
| List of for-profit universities and colleges | https://en.wikipedia.org/wiki/List_of_for-profit_universities_and_colleges |
| Colleges Sanctioned by the Government | https://www.collegeaffordabilityguide.org/online-colleges-sanctioned-by-government-organizations/ |
| PBS: Dept. of Ed names 20 schools facing financial investigation after 'severe' audit findings | https://www.pbs.org/newshour/education/dept-ed-names-schools-facing-financial-investigation-severe-audit-findings; |
| Chronicle of Higher Education: State Attorneys General Open New Investigations Into For-Profit Colleges | https://www.chronicle.com/article/State-Attorneys-General-Open/144255 |
| Huffington Post: State Attorneys General Open Major Investigations of Big For-Profit Colleges | https://www.huffingtonpost.com/davidhalperin/state-attorneys-general-o_b_4677145.html |
| Market Failure | John O. Ledyard (2008). "market failure," <i>The New Palgrave Dictionary of Economics</i> , 2nd Ed. |
| New Yorker: The Rise and Fall of For-Profit Schools | James Surowiecki, <i>The Rise and Fall of For-Profit Schools</i> , The New Yorker (Nov. 2, 2015), available at http://www.newyorker.com/magazine/2015/11/02/the-rise-and-fall-of-for-profit-schools |
| Xavier Beccera: California AG: For-Profit Colleges | https://oag.ca.gov/consumers/general/for-profit-schools |
| Case: <i>Max Cleland, Administrator of the Veterans Administration, et al. v. National College of Business</i> | <i>Max Cleland, Administrator of the Veterans Administration, et al. v. National College of Business</i> 435 U.S. 213 (1978). |
| 20 U.S.C. § 1094(a)(24) | 20 U.S.C. § 1094(a)(24)(2014) |
| 38 U.S.C. § 3680A(d)(1) | 38 U.S.C. § 3680A(d)(1) (2014) |
| Law Review Article: <i>Closing the 90/10 Loophole in the Higher Education Act: How to Stop Exploitation of Veterans, Protect American Taxpayers, and Restore Market Incentives to the For-Profit College Industry</i> | Daniel J. Reigel, <i>Closing the 90/10 Loophole in the Higher Education Act: How to Stop Exploitation of Veterans, Protect American Taxpayers, and Restore Market Incentives to the For-Profit College Industry</i> , 81 GEO. WASH. L. REV. 259 (2013). |
| Article: For-profit colleges have been ripping off veterans since World War II | https://www.businessinsider.com/for-profit-colleges-have-been-ripping-off-veterans-since-world-war-ii-2016-6 |
| Article: Veterans feel ripped off by Colorado for-profit college | https://www.coloradoindependent.com/2017/01/26/veterans-colorado-tech-for-profit-college-debt/ |

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| CNBC article: Are for-profit colleges unfairly 'targeting' vets? | https://www.cnb.com/2013/11/11/are-for-profit-colleges-unfairly-targeting-vets.html |
| Slate article: This Army Veteran Wanted to Become a Video Game Animator. Instead, he got played by two for-profit colleges. | https://slate.com/human-interest/2016/07/why-are-people-so-easily-exploited-by-for-profit-colleges-stealing-americas-future-explains-a-veterans-story-of-student-loan-debt.html |
| New York Times article: Exploiting Veterans for Profit | https://www.nytimes.com/2017/11/24/opinion/exploiting-veterans-profit.html |
| MarketWatch article: Dan Rather on for-profit colleges: 'It's hard to find anything more outrageous than this' | https://www.marketwatch.com/story/new-film-exposes-how-for-profit-colleges-exploit-veterans-and-single-moms-2017-11-14 |
| CBS News: For-profit colleges linked to almost all loan fraud claims | https://www.cbsnews.com/news/study-most-student-loan-fraud-claims-involve-for-profits/ |
| Mother Jones article: How Pricey For-Profit Colleges Target Vets' GI Bill Money | https://www.motherjones.com/politics/2011/09/gi-bill-for-profit-colleges/ |
| LA Times article: For Profit Colleges are Using the GI Bill to Make Money off Veterans | Chris Kirkham and Alan Zarembo, <i>For-Profit Colleges are Using the GI Bill to Make Money Off Veterans</i> (Aug. 18, 2015). Available at http://www.latimes.com/business/la-fi-for-profit-colleges-gi-bill-20150809-story.html |
| Huffington Post article 'To Get Value from For-Profit Colleges, Create the Right Incentives | Robert Shireman, <i>To Get Value from For-Profit Colleges, Create the Right Incentives</i> (May 31, 2013). Available at http://www.huffingtonpost.com/robert-shireman/forprofit-colleges-gettin_b_3367622.html . |
| L.A. Times article: Anger Grows Over GI Bill Profiteers | David Zucchini & Carla Rivera, <i>Anger Grows Over GI Bill Profiteers</i> , L.A. Times (Jul. 16, 2012), http://articles.latimes.com/2012/jul/16/nation/la-na-vets-colleges-20120716 |
| Is the New GI Bill Working?: For-Profit Colleges Increasing Veteran Enrollment and Federal Funds | STAFF OF S. HEALTH, EDUC., LABOR, AND PENSIONS COMM., 113th CONG., <i>Is the New GI Bill Working?: For-Profit Colleges Increasing Veteran Enrollment and Federal Funds</i> (2014) |
| New York Times article: Fix the New G.I. Bill | Tim Hsia & Anna Ivey, Op-Ed., <i>Fix the New G.I. Bill</i> , N.Y. Times (Nov. 10, 2014), available at http://www.nytimes.com/2014/11/11/opinion/fix-the-new-gi-bill.html?_r=0 |
| Federal Student Aid: Official Cohort Default Rates for Schools | <i>Three-year Official Cohort Default Rates for Schools</i> , Federal Student Aid, http://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html (last updated Sept. 24, 2014) |
| Washington Post Article: Why the Defense Department is Kicking the University of Phoenix Off Military Bases | Danielle Douglas-Gabriel, <i>Why the Defense Department is Kicking the University of Phoenix Off Military Bases</i> (October 9, 2015). Available at https://www.washingtonpost.com/news/grade-point/wp/2015/10/09/why-the-defense-department-is-kicking-the-university-of-phoenix-off-military-bases/ |
| Reveal News article: University of Phoenix barred from enrolling Veterans in 7 Programs | Aaron Glantz, <i>University of Phoenix barred from enrolling Veterans in 7 Programs</i> (July 30, 2014). Available at https://www.revealnews.org/article-legacy/university-of-phoenix-barred-from-enrolling-veterans-in-7-programs/ |
| HELP Report | COMM. ON HEALTH, EDUC., LABOR, AND PENSION, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, S. REP. NO. 112-37, at 19 (2d Sess. 2012). |
| LAO Report: Oversight of Private Colleges in California | https://lao.ca.gov/reports/2013/edu/oversight/oversight-121713.aspx |
| Oregon regulation related to labor market information requirement | OAR 715-045-006 |

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| Wisconsin regulation related to required documentation of labor market needs | Wis. Adm. Code SPS 404.04 |
| Wisconsin guidance related to required documentation of labor market needs | https://dps.wi.gov/Documents/EASchoolAndProgramApprovalGuide.pdf |
| Federal Workforce Innovation and Opportunity Act | 29 U.S.C.S. § 3112 |
| Federal Workforce Innovation and Opportunity Act | 29 U.S.C.S. § 3102 |
| News article from Dec. 5 on San Diego school closure - quote from veteran | https://www.nbcsandiego.com/news/local/brightwood-college-kearny-mesa-chula-vista-closure-education-corporation-of-america-students-502031331.html?akmobile=o |
| Submission from Robert F. Muth, Managing Attorney of the Veterans Legal Clinic of the University of San Diego School of Law | Correspondence from Robert F. Muth, Managing Attorney of the Veterans Legal Clinic of the University of San Diego School of Law to Phil McAllister, Esq., Regulatory Actions Coordinator, California Department of Veterans Affairs (Dec. 7, 2018) |