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**OFFICE OF INSPECTOR GENERAL**

*Office of Audits and Evaluations*

VETERANS BENEFITS ADMINISTRATION

VA's Oversight of State  
Approving Agency Program  
Monitoring for  
Post-9/11 GI Bill Students

AUDIT

REPORT #16-00862-179

DECEMBER 3, 2018



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## Executive Summary

### Why the OIG Did This Audit

Prior VA Office of Inspector General (OIG) reports have identified significant financial risks in how the education benefits under the Post-9/11 GI Bill are administered.<sup>1</sup> The OIG conducted this audit to determine if VA and State Approving Agencies (SAAs) effectively reviewed and monitored education programs in accordance with the provisions of Title 38 of the United States Code (U.S.C.)<sup>2</sup> and ensured only eligible programs had enrolled Post-9/11 GI Bill students.<sup>3</sup>

In FY 2018, VA expected to provide an estimated \$16.6 billion in overall educational assistance to servicemembers, veterans, and their family members. According to VA, an estimated \$5.5 billion of this amount (33 percent) was to be used in FY 2018 to cover tuition and fees for almost 800,000 Post-9/11 GI Bill students. Inadequate governance by VA and SAA of the educational institutions providing services covered under the Post-9/11 GI Bill, as mandated by Congress, would put billions of dollars at risk for fraud and waste and hinder efforts to provide quality education to eligible students.

### What the Audit Found

At the time of the OIG audit, the 51 SAAs nationwide had approved nearly 82,200 programs that enrolled Post-9/11 GI Bill students. The audit team randomly selected seven of the 51 SAAs for examination and reviewed a statistical sample of 175 of the programs approved by the seven selected SAAs. The OIG determined that 35 programs approved by six of the seven SAAs examined had unsupported or improper program approvals;<sup>4</sup> missing or delayed program modification reporting and reviews;<sup>5</sup> or potentially erroneous, deceptive, or misleading

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<sup>1</sup> The Post-9/11 GI Bill refers to the *Post-9/11 Veterans Educational Assistance Act of 2008*. See page 49 for related OIG publications.

<sup>2</sup> A program of education is defined in 38 CFR §21.5230. For the purposes of this audit, a program was any curriculum or combination of subjects or unit courses offered by a school that is necessary to meet the requirement for a predetermined, identified educational, professional, or vocational objective.

<sup>3</sup> States may have SAAs to determine which education and training programs are appropriate for students to enroll in using their VA education benefits (see e.g., 38 U.S.C. 3671(a) and <http://www.nasaa-vetseducation.com/About.aspx>).

<sup>4</sup> SAAs are required under SAA Contract, Article V, Paragraph 2 to maintain complete approval records for programs to support the approvals provided and 38 CFR § 21.4150 requires SAAs to approve the programs in accordance with 38 U.S.C. Chapter 36.

<sup>5</sup> To comply with 38 U.S.C § 3679 and SAA Contract, Article II, Paragraph 4, SAAs are required to promptly report each program modification to VA and ensure programs continue to meet requirements for participation in the education benefits program.

advertisements.<sup>6</sup> The six SAAs did not always conduct adequate reviews to ensure programs met Title 38 requirements. Moreover, Veterans Benefits Administration (VBA) administrative quality reviews did not always identify problems in the SAAs' approvals of these programs. VBA also did not ensure the six SAAs had effective monitoring procedures in place to ensure programs continued to meet the conditions of their approvals, even though VBA's contracts with the SAAs require the SAAs to maintain an inspection system for services provided to VA.<sup>7</sup>

The audit team found that six of the seven SAAs reviewed had approved 35 ineligible or potentially ineligible programs at schools that enrolled Post-9/11 GI Bill students. The 35 ineligible or potentially ineligible programs received more than \$1.54 million in payments from VBA during the audit review period from February 2015 through January 2016. In addition, the audit team noted that 29 of the 35 ineligible or potentially ineligible programs (83 percent) were at for-profit schools that received about \$1.5 million of these payments (97 percent). Based on its review of the seven SAAs, the audit team estimated that 44 of 51 SAAs (86 percent) did not adequately oversee the education and training programs to ensure only eligible programs participated in the Post-9/11 GI Bill program. Because VBA and the SAAs lacked effective controls to ensure the proper review, approval, and monitoring of programs, VBA could not provide reasonable assurance that Post-9/11 GI Bill benefits were paid to eligible schools and programs and that students received quality education and training.

Specifically, SAAs lacked effective, sufficient controls to ensure the proper review and evaluation of programs, program modifications, and advertisements after programs were approved. VBA's administrative quality reviews of SAA program and modification approvals also did not sufficiently evaluate the SAAs' decisions related to the programs' eligibility and compliance with federal laws. These VBA reviews did not address lapses in the reporting and review of program modifications. Finally, VBA's compliance survey process, which should have focused on ensuring schools and programs continued to meet all the conditions of their program approval, did not adequately address ongoing program eligibility.

The oversight weaknesses identified during the audit were largely attributable to VBA's position that it had a limited role in the SAA oversight process and that the statute prohibited VBA from supervising the SAAs.<sup>8</sup> Congress clearly intended VBA to work cooperatively with the SAAs to ensure the quality and effective administration of programs and to protect student and taxpayer

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<sup>6</sup> 38 CFR § 21.4252 prohibits students from enrolling in programs at schools that engage in erroneous, deceptive, or misleading practices. Using Federal Trade Commission (FTC) advertising guidelines, the audit team determined advertisements were potentially erroneous, misleading, or deceptive in instances where the school did not have evidence to support its claims, or where claims were not supported by available facts.

<sup>7</sup> Under Article XIII § 5(b) of the SAA contracts, "The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract."

<sup>8</sup> 38 U.S.C. § 3682.

interests.<sup>9</sup> However, the former Executive Director of VBA Education Service stated to OIG auditors that the SAAs were primarily responsible for the review, approval, and continuous monitoring of programs,<sup>10</sup> and that VBA was prohibited under Title 38 from exercising control over the SAAs.<sup>11</sup>

While the OIG acknowledges VBA is prohibited from directly supervising or controlling SAAs' operations, VBA is authorized to establish and negotiate contracts with SAAs and to set forth requirements for SAA completion of program reviews, approvals, and monitoring in the terms and conditions of these contracts.<sup>12</sup> Furthermore, VBA has the authority to determine whether an SAA, under the terms and conditions of its contract, is complying with the standards and provisions of the law.<sup>13</sup> Notably, Title 38 addresses the need for the Secretary and SAAs to establish an exchange of information pertaining to activities of educational institutions, paying particular attention to the enforcement of approval standards.<sup>14</sup> In addition, VBA conducts annual evaluations of each SAA and considers these evaluations as it negotiates the terms and conditions of future contracts.<sup>15</sup> VBA has the discretion not to renew a contract with a state should it fail to achieve a satisfactory appraisal, which it did in the cases of Hawaii and Vermont in FY 2015, and it has the authority to assume an SAA's program review, approval, and monitoring responsibilities.<sup>16</sup>

The former Executive Director of VBA Education Service also maintained that VBA and SAA oversight and monitoring controls only had to meet the specific requirements set forth in the statute and regulations governing the SAA process. However, this interpretation would limit both VBA's and the SAAs' ability to meet broader requirements established in Title 38. VBA and SAAs have the authority to add "such other fair and reasonable provisions" that they consider necessary to administer the Title 38 program review and approval process.<sup>17</sup> For example, the approval letters sent to the schools by VBA and the SAAs state that the schools are required to self-report program modifications as part of the programs' conditions of approval, even though this is not a specific requirement in the statute. Despite VBA and the SAAs imposing a sensible duty on the schools, VBA and the SAAs generally argued that they were only responsible for the review and approval of program modifications the schools reported. They further argued that VBA and the SAAs were not responsible for identifying and reviewing any program

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<sup>9</sup> 38 U.S.C. § 3672, Approval activities: cooperation and coordination of activities.

<sup>10</sup> The Executive Director of VBA Education Service in place during the audit became the Executive Director of the Houston Regional Office in Houston, Texas, on November 9, 2018.

<sup>11</sup> 38 U.S.C. § 3682, Control by agencies of the United States.

<sup>12</sup> 38 U.S.C. § 3674, Reimbursement of expenses.

<sup>13</sup> 38 CFR § 21.4152, Control by Agencies of the United States.

<sup>14</sup> 38 U.S.C. § 3673.

<sup>15</sup> 38 U.S.C. § 3674A.

<sup>16</sup> 38 U.S.C. § 3671(b)(1), *Designation*.

<sup>17</sup> 38 U.S.C. § 3678(7).

modifications the schools failed to report because this was not specifically required under Title 38.

By failing to recognize and assert its authority to add “fair and reasonable provisions” to the review and approval process, including the effective identification and review of all program modifications, VBA did not ensure the SAAs complied with 38 U.S.C. § 3679 and Article II § 4 of the SAA contracts. Title 38’s fair and reasonable provisions and the contract provisions support requiring SAAs to provide VA with written notice of each amendment, modification, suspension, or withdrawal of any course or program approval. SAAs must also provide the reasons for the action to ensure programs continue to meet requirements for participation in the education benefits program after their initial approval.

Furthermore, under Office of Management and Budget (OMB) guidance, VBA managers and staff are responsible for safeguarding federal assets and ensuring the efficient delivery of services to the public.<sup>18</sup> Although VBA relies on the quality of SAA reviews, approvals, and monitoring for the proper disbursement of education benefits to eligible programs that meet Title 38 requirements, VBA has an administrative and financial responsibility to protect students’ and taxpayers’ interests and to monitor the SAAs’ performance effectively.

Additional OMB guidance establishes that

[a]n improper payment “is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. An improper payment also includes any payment that was made to an ineligible recipient. In addition, when an agency’s review is unable to discern whether a payment was proper as a result of insufficient or a lack of documentation, this payment must also be considered an improper payment.”<sup>19</sup>

The OIG audit team classified tuition and fee payments in the reviewed programs as improper payments if the programs were improperly approved; had missing or delayed program modification reviews; or resided at schools that employed potentially erroneous, deceptive, or misleading advertisements. The audit team identified \$1.54 million in improper Post-9/11 GI Bill tuition and fee payments made for just over 230 students enrolled in 35 of the 175 programs reviewed during the audit. The audit team considered the payments as improper because VBA either did not ensure they were made to eligible programs or VBA lacked support to show the payments were made for students enrolled in eligible programs. The audit team estimated that 11,200 of the 750,000 Post-9/11 GI Bill students enrolled during the OIG’s 12-month review

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<sup>18</sup> Federal Managers’ Financial Integrity Act and Office of Management and Budget (OMB) Circular A-123, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.

<sup>19</sup> Circular A-123, Appendix C, *Requirements for Effective Estimation and Remediation of Improper Payments*, October 20, 2014, Part I A, *Risk Assessing, Estimating, and Reporting Improper Payments*.

period attended 4,400 programs (across the 51 SAAs) where VBA lacked sufficient support for program eligibility, and for which VBA issued an estimated \$585 million in related improper payments. The audit team estimated that the risk of improper payments was particularly high at for-profit schools, which received about \$473.8 million of these improper payments (81 percent). Based on the OIG's review results, the audit team further estimated that 17,000 of the estimated 827,000 students who will enroll in the Post-9/11 GI Bill program over the next five years (2 percent) will attend more than 5,400 ineligible or potentially ineligible programs due to inadequate oversight.<sup>20</sup> VBA will issue an estimated \$2.3 billion in related improper payments during this five-year period if it does not implement the recommendations for improving SAA program review, approval, and monitoring controls.<sup>21</sup>

## What the OIG Recommended

The OIG recommended the Under Secretary for Benefits periodically review and evaluate the SAAs' supporting documentation to ensure approved programs meet Title 38 requirements. In addition, the SAAs should periodically reapprove programs to evaluate program and operational changes that might affect their eligibility.

The OIG also recommended the Under Secretary for Benefits refer potentially erroneous, deceptive, or misleading advertising practices to the Federal Trade Commission for further action; strengthen the assessment of program eligibility and the review of supporting documentation during compliance surveys; and independently assess the quality of completed compliance surveys.

Furthermore, the OIG recommended the Under Secretary for Benefits negotiate an amendment to the SAA contracts to establish quality assurance metrics and the use of SAA approval, monitoring, and compliance survey data to evaluate SAAs during their annual performance evaluations.

Finally, the OIG recommended the Under Secretary for Benefits assess whether SAA funding is sufficient to ensure the adequate review, approval, and monitoring of programs in conjunction with an external contract to update the SAA funding allocation model.

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<sup>20</sup> The OIG used exponential smoothing forecasting to estimate the number of Post-9/11 students and the number of programs in which they will be enrolled over the next five years and then applied the error rate from the OIG's review to develop these estimates. (See Appendix C for additional information.)

<sup>21</sup> The improper payment estimate for this audit was \$2.9 billion, but the potential monetary benefit estimate in the report was reduced by \$668.1 million to prevent possibly double-counting improper tuition and fee payments previously identified and reported in the *Audit of Post-9/11 GI Bill Tuition and Fee Payments* (Report No. 14-05118-147, September 30, 2016).

## Management Comments

The Under Secretary for Benefits acknowledged that several areas in the SAA oversight and monitoring process needed improvement, but the Under Secretary did not agree that the OIG's audit demonstrated VBA needed to strengthen its oversight and monitoring of the SAAs to improve accountability and program compliance with Title 38 requirements. The Under Secretary concurred or concurred in principle with all six recommendations, and VBA provided acceptable action plans for Recommendations 1, 2, and 3. However, VBA's action plans for Recommendations 4, 5, and 6—related to strengthening compliance surveys, providing supporting documentation and independent assessment of completed compliance surveys; adding quality assurance metrics to annual SAA performance reviews; and assessing and addressing SAA funding—were not fully responsive and did not fulfill the intent of the recommendations. VBA needs to provide stronger program oversight by developing a system of controls that ensures education and training programs comply with Title 38 requirements, reduces improper payments, and better protects taxpayers' and students' interests. The OIG will monitor VBA's progress as it develops responsive actions plans for those three recommendations and will follow up on the implementation of all the recommendations until the proposed actions are completed. VBA's comments are in Appendix F. The OIG's response starts on page 24.



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## Abbreviations

BDN	Benefits Delivery Network
CFR	Code of Federal Regulations
ELR	education liaison representative
FMFIA	Federal Managers' Financial Integrity Act of 1982
FTC	Federal Trade Commission
FY	fiscal year
GAO	Government Accountability Office
OIG	Office of Inspector General
OMB	Office of Management and Budget
Post-9/11 GI Bill	Post-9/11 Veterans Educational Assistance Act of 2008
SAA	State Approving Agency
U.S.C.	United States Code
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration



## Introduction

### Objective

Congress authorized the creation of State Approving Agencies (SAAs) in 1963 to help VA review, evaluate, and approve programs at schools seeking to enroll students participating in VA education benefit programs.<sup>22</sup> The VA's education benefit programs expanded to include services covered by the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill). This audit evaluated the SAAs' program review, approval, and monitoring processes that factor into the effectiveness of the Veterans Benefits Administration's (VBA) oversight of Post-9/11 GI Bill education services.

Specifically, the audit examined whether education and training programs that enrolled Post-9/11 GI Bill students were effectively reviewed and approved in accordance with Title 38 of the United States Code (U.S.C.) and whether the approved programs were monitored in ways that ensured the eligibility criteria continued to be met. The SAAs are required to approve all programs that enroll students who receive VA education benefits.<sup>23</sup> The audit, however, focuses only on programs that enrolled Post-9/11 GI Bill students because those beneficiaries account for 82 percent of VBA's education benefit disbursements. The other VBA education benefit programs also had data limitations. The audit team interviewed VBA and SAA officials and reviewed relevant documentation.

### State Approving Agency Contracts

VA contracts with SAAs to review, approve, and monitor the programs in their states to ensure the programs are effectively and efficiently administered. At the time of the OIG audit, VA had contracts with 51 operational SAAs in 47 states. VA directly oversees programs in states where there is no operational SAA. Since 2006, Congress had limited VA's annual expenditures for the SAA contracts to no more than \$19 million. For FY 2018, however, Congress increased the amount to \$21 million. VA uses a funding allocation model to establish how much of this funding each SAA is authorized to receive. VA may choose to end or not renew the contracts if it finds the SAAs are not adequately performing their contractual duties. In such cases, VA assumes all the duties of the SAA.

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<sup>22</sup> States may have SAAs in order to determine which education and training programs are appropriate for students to enroll in using their VA education benefits (see e.g., 38 U.S.C. 3671(a) and <http://www.nasaa-vetseducation.com/About.aspx>). A program of education is defined by 38 CFR § 21.5230. For purposes of this audit, a program is considered to be any curriculum or combination of subjects or unit courses that the school offers that is necessary to meet the requirement for a predetermined, identified educational, professional, or vocational objective.

<sup>23</sup> Chapters 30, 32–36 of Title 38 U.S.C.

## **Program Office Responsibilities**

VBA is responsible for managing SAA contracts and ensuring SAAs have appropriately approved eligible programs to enroll students who receive VA education benefits. VBA's education liaison representatives (ELRs) conduct an administrative quality review of the SAAs' approval packages and update VA's database of schools and programs that have been approved for payment. ELRs are also responsible for conducting SAAs' annual performance evaluations. For states that do not have SAAs, ELRs perform the SAA duties of reviewing, approving, and monitoring programs.

## **Post-9/11 GI Bill Program and Magnitude**

The Post-9/11 GI Bill provides servicemembers, veterans, and their families with educational benefits to assist them with readjustment to civilian life. The servicemember's or veteran's qualifying days of service determines the percentage of education benefits they, their spouses, or other family members receive. VA education benefits can only be paid if students are enrolled in approved programs.<sup>24</sup> According to VBA, VA paid schools about \$5.06 billion for nearly 750,000 Post-9/11 GI Bill students in FY 2017. From February 1, 2015, to January 31, 2016 (the audit period), VA and the SAAs monitored almost 82,200 programs at schools that received \$4.97 billion in Post-9/11 GI Bill tuition and fee payments for more than 750,000 students.

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<sup>24</sup> See Appendix A for program approval and continuing approval requirements.

## Results and Recommendations

### Finding 1: VA Oversight of State Approving Agencies Did Not Ensure Adequate Program Review, Approval, and Monitoring

The OIG team selected and examined seven of the 51 SAAs and found that six of the seven SAAs (86 percent) had not properly reviewed and approved 35 of the 175 education and training programs (20 percent) reviewed during the audit. The audit team's review identified three primary areas of concern: unsupported or improper program approvals;<sup>25</sup> missing or delayed program modification reporting and reviews;<sup>26</sup> and potentially<sup>27</sup> erroneous, deceptive, or misleading advertisements.<sup>28</sup> Five programs had inadequate program reviews and/or unsupported approvals, 11 programs had missing or delayed program modification reporting, and 21 programs had potentially erroneous, deceptive, or misleading advertisement practices.<sup>29</sup> These 35 programs received more than \$1.54 million in Post-9/11 GI Bill tuition and fee payments for just over 230 Post-9/11 GI Bill students during the audit's period of review. Twenty-nine programs (83 percent) at 15 for-profit schools received \$1.5 million of the payments (97 percent).

The audit team estimated that 44 of the 51 SAAs (86 percent) did not conduct annual oversight to ensure only eligible programs engaged in services authorized by the Post-9/11 GI Bill. As a result, an estimated 11,200 of the 750,000 Post-9/11 GI Bill students enrolled during the OIG's 12-month review period attended 4,400 ineligible and potentially ineligible programs, and VBA issued an estimated \$585 million in related improper payments.<sup>30</sup> This risk was particularly high at for-profit schools, which received an estimated \$473.8 million of these improper payments (81 percent). Based on the OIG's review results, more than 17,000 of the estimated 827,000 Post-9/11 GI Bill students (2 percent) who will use Post-9/11 GI Bill benefits over the next five

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<sup>25</sup> SAA Contract, Article V, Paragraph 2; and 38 CFR § 21.4150, *Designation*.

<sup>26</sup> 38 U.S.C. § 3679, *Disapproval of courses*; and SAA Contract, Article II, Paragraph 4.

<sup>27</sup> Using Federal Trade Commission (FTC) advertising guidelines, the audit team determined advertisements were potentially erroneous, misleading, or deceptive in instances where the school did not have evidence to support its claims, or where claims were not supported by available facts.

<sup>28</sup> 38 CFR § 21.4252, *Courses precluded; erroneous, deceptive, or misleading practices*.

<sup>29</sup> In total, the OIG identified 37 program errors for which the SAAs did not always properly review and approve the program, and/or ensure the adequate continuous monitoring of educational and training programs. However, some programs had more than one issue so only 35 unique schools were affected by these errors.

<sup>30</sup> Under OMB Circular A-123, App. C, Pt. I-A, *Risk Assessing, Estimating, and Reporting Improper Payments*, (October 20, 2014), improper payments are payments that should not have been made or were made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements; payments made to ineligible recipients; and payments where an agency's review is unable to discern it is proper due to insufficient documentation.

years will attend just over 5,400 ineligible or potentially ineligible programs.<sup>31</sup> During this time, VBA will issue an estimated \$2.3 billion in related improper payments if the SAAs and VBA do not fully implement OIG recommendations for improving program review, approval, and monitoring controls.<sup>32</sup>

VBA oversight of the SAAs was not sufficient to ensure they properly reviewed and approved programs that enrolled Post-9/11 GI Bill students. VBA also did not ensure the SAAs established program monitoring to guarantee schools continued to meet the conditions of their approval, even though the SAA contracts required them to maintain an inspection system for services provided to VA.<sup>33</sup>

The former Executive Director of VBA Education Service maintained the statute prohibited VBA from supervising the SAAs and that VBA had a limited role in the SAA oversight process. Thus, their roles were defined by the duties set forth in the established contract: The SAAs were primarily responsible for the review and approval of programs, and VBA was responsible only for ensuring the SAAs complied with specific statutory review requirements.

The OIG does not agree that VBA's responsibility is so narrow. VBA managers and staff are responsible for the development and maintenance of effective internal controls.<sup>34</sup> This includes ensuring the efficient and effective operation of federal programs and use of resources to achieve desired objectives. Therefore, VBA bears a shared responsibility with the SAAs for the proper review, approval, and monitoring of programs to ensure proper stewardship of Post-9/11 GI Bill funds and resources and protection of students' and taxpayers' interests. VBA must take steps to ensure compliance with the relevant provisions of Title 38 and associated portions of the Code of Federal Regulations (CFR).

Ultimately, VBA has the authority and responsibility to establish and negotiate the terms for the SAAs' performance, to evaluate that performance, and to terminate the contracts when it deems the performance is unsatisfactory.

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<sup>31</sup> The OIG used exponential smoothing forecasting to estimate the number of Post-9/11 students and the number of programs in which they will be enrolled over the next five years and then applied the error rate from the OIG's review to develop these estimates. (See Appendix C for additional information.)

<sup>32</sup> The improper payment estimate for this audit was \$2.9 billion, but the potential monetary benefit estimate in the report was reduced by \$668.1 million to prevent possibly double-counting improper tuition and fee payments previously identified and reported in *Audit of Post-9/11 GI Bill Tuition and Fee Payments* (Report No. 14-05118-147, September 30, 2016).

<sup>33</sup> SAA Contract Article XIII, Paragraph 5.

<sup>34</sup> Federal Managers' Financial Integrity Act of 1982 (FMFIA); Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, (July 15, 2016.)

Despite VBA's responsibility for the effective oversight of the SAAs and stewardship of the Post-9/11 GI Bill program, it did not

- Require ELRs to monitor SAA program approvals and decisions and assess whether the SAAs adequately evaluated compliance with Title 38 requirements and eligibility to participate in the education benefits program;<sup>35</sup>
- Require the SAAs to periodically review approved programs to identify unreported program modifications and review them to ensure the programs continued to meet the conditions of their approval;
- Ensure SAAs and ELRs reviewed schools for erroneous, deceptive, or misleading advertising practices, even though this was necessary to ensure compliance with Title 38;<sup>36</sup>
- Ensure SAAs and ELRs identified and reviewed program modifications during compliance surveys to assess continued program eligibility as required by the SAA contracts; and<sup>37</sup>
- Implement an effective annual evaluation process to ensure all the SAAs met the terms and conditions of their contracts and promoted the safeguarding of federal assets and efficient delivery of services to the public.<sup>38</sup>

## SAA Approval and Monitoring Processes

The SAAs review programs to ensure compliance with applicable state laws and Title 38 regulations, and then send their approval packages and decisions to VBA for an administrative quality review. After the approval of the programs, SAAs are required to ensure they continue to meet all the conditions of approval. The SAAs review and approve modifications that schools self-report, but both the SAAs and VBA evaluate the programs' eligibility during compliance surveys.

Table 1 summarizes the issues the audit team identified at each selected SAA.

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<sup>35</sup> 38 U.S.C. § 3673.

<sup>36</sup> 38 U.S.C. § 3696, Limitation on certain advertising, sales, and enrollment practices.

<sup>37</sup> SAA Contract, Article II, Paragraph 4.

<sup>38</sup> 38 U.S.C. § 3674A, Evaluations of agency performance; qualifications and performance of agency personnel; 38 CFR § 21.4155, Evaluations of State approving agency performance; OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control (July 15, 2016).

**Table 1. Review, Approval, and Monitoring Issues by State**

State approving agency	Inadequate program reviews and approvals	Missing and delayed program reports of modifications	Potentially erroneous, deceptive, or misleading advertisement practices
California		X	X
Mississippi	X	X	X
Nebraska		X	
New Jersey		X	X
New Mexico <sup>39</sup>			
New York	X		X
Oregon		X	X

Source: VA OIG analysis of review, approval, and monitoring issues at sampled SAAs

### Inadequate Program Reviews and Approvals

The audit team could not confirm that two of the seven SAAs (Mississippi and New York) properly reviewed and approved five nonaccredited programs for participation in the Post-9/11 GI Bill program. The SAA contracts require the SAAs to “maintain complete approval records for all approved courses or programs.” Furthermore, Title 38 requires the SAAs to obtain and evaluate the following documentation for nonaccredited programs to assess the operating conditions at the schools and quality of the training programs:<sup>40</sup>

- Catalogs that include required policies such as tuition and fee charges, standards of progress, a calendar with the days and hours of operation, and a list of faculty members including their qualifications
- Evidence of the school’s financial soundness<sup>41</sup>
- A business license for the school to operate in the state
- School calendars, course outlines, and clock hours for each course requiring approval<sup>42</sup>

<sup>39</sup> The New Mexico SAA is no longer operating because the state did not renew its contract with VBA in FY 2018.

<sup>40</sup> 38 U.S.C. § 3676.

<sup>41</sup> 38 U.S.C. § 3676 (c)(9), *Approval of nonaccredited courses*, requires proof of financial soundness but does not specify what the SAAs or VA should review to assess the schools’ financial condition. The reviewed SAAs generally relied on financial statements and/or attestation letters from certified public accounting firms for proof of financial soundness.

<sup>42</sup> 38 U.S.C. § 3676.

For accredited programs, Title 38 only requires the SAAs to ensure the programs have been accredited by a nationally recognized accrediting agency or an association for accredited schools before they approve the programs.<sup>43</sup>

The OIG's review of the sampled SAA approval packages found that the Mississippi and New York SAAs did not adequately review the quality of four nonaccredited programs and the operating conditions of the three schools that offered the programs. The two SAAs lacked specific required documents to show they properly reviewed and approved three of the four programs. In addition, one of the SAAs approved a fourth program even though the school's catalog did not include all the required information. Table 2 summarizes the documentation issues the audit team identified during its review of the sampled SAAs' approval packages.

**Table 2. Incomplete Documentation in Program Approval Packages**

State approving agency	Approved programs	Year approved	Catalog	Proof of financial soundness	Business license
New York	1	2008*	X	X	X
Mississippi	2	2014			X
Mississippi	1	2010	X		

*\*The SAA was required under the SAA contract to retain the supporting documentation for the approval of this program even though it approved the program prior to the inception of the Post-9/11 GI Bill program.*

While the audit team queried VBA and the schools to locate the missing supporting documentation for three of the four program approvals, the audit team could not locate the documents because VBA does not require its ELRs to obtain supporting documentation for the SAAs' decisions. In addition, the schools are only required to retain documents provided to the SAAs for three years after the approval of their programs.<sup>44</sup> Audit follow-up on these three programs and their schools also indicated that the SAAs may have missed significant problems when they conducted their reviews. The school in Mississippi that had two programs approved in July 2014 dissolved in December 2014. The school in New York that had a program approved in 2008 could not provide the OIG evidence that it was licensed at the time of its approval, and was operating without a business license in August 2018 when the OIG checked the State of New York's licensure website.

For the fourth program, the Mississippi SAA approved a program in 2010 even though the school's catalog did not include the policy on pro-rated refunds; a school calendar or tuition and

<sup>43</sup> 38 U.S.C. § 3675.

<sup>44</sup> 38 CFR § 21.4209, Examination of records.

fee charges; a description of the available space; and the school's policy on granting credit for other training. This information is required and must be reviewed for nonaccredited programs.<sup>45</sup> The SAA accepted the school's incomplete documentation during the review and improperly approved this program.

The audit team categorized the \$11,200 in tuition and fees VBA paid for the four students enrolled in these four programs during the audit period to be improper payments because neither the audit team nor VBA could verify that the SAAs properly reviewed and evaluated these approved programs.

### **Application of Incorrect Criteria**

The audit team also found that, due to an oversight, one SAA did not correctly apply Title 38 eligibility criteria when it approved a program in the audit team's sample. The SAA for New York improperly approved a 225-hour truck driving program at a for-profit school as an accredited program in 2007, and again in 2010 and 2011, when it was actually a nonaccredited program. The New York SAA's practice is to obtain and review the accrediting agency's official accreditation letter, which includes a list of the programs approved by the accrediting agency, to determine if a program is eligible for accredited program status. In this case, the SAA approved the program as accredited after it reviewed a letter from the Accrediting Commission of Career Schools and Colleges issuing accreditation to the school. However, the accreditation letter stated that although the "accreditation is institutional in nature, the commission must approve all programs" and the accreditation only applied to the specific programs identified in the letter. The SAA did not notice that the truck driving program was not listed as one of the accredited programs on the accreditation letter and that the letter specifically stated the accreditation only applied to the listed programs. Subsequently, the SAA assumed the program was accredited and did not review and evaluate the school's proof of financial soundness, business license, school calendars, course outlines, and clock hours as required before it approved the program to receive VBA education benefits, including Post-9/11 GI Bill benefits.<sup>46</sup> In addition, the ELR's administrative quality review of the SAA's decision package did not identify the SAA's error.

After the audit team notified the SAA in July 2016 that the program was approved as an accredited program when it should not have been, the SAA indicated it planned to have the school submit a new application and to conduct a full review of the school and program, applying the nonaccredited program requirements. As of October 2017, the ELR stated that the SAA had not yet reviewed the program as a nonaccredited program, but the school had agreed to

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<sup>45</sup> 38 U.S.C. § 3676.

<sup>46</sup> 38 U.S.C. § 3676.

submit an application for the SAA to review and approve this program as a nonaccredited program.

The audit team categorized the \$789,000 in tuition and fees paid for 114 truck driving students during the audit period as improper payments because the SAA improperly reviewed and approved this program as accredited when it was not. As a result, VBA did not have the opportunity to ensure this program met Title 38 eligibility requirements for nonaccredited programs. According to the Office of Management and Budget (OMB), improper payments occur when an agency must pay benefits but it does not have the information to confirm the payment's accuracy at the time of the payment and/or the agency lacks the supporting documentation to confirm the recipient's eligibility when it attempts to verify the accuracy of the payment during a review.<sup>47</sup>

### **Missing or Delayed Program Modification Reporting and Reviews**

The audit team found five of the reviewed SAAs (California, Mississippi, Nebraska, New Jersey, and Oregon) had a combined 11 programs where the schools either had not reported program modifications or did not report the modifications to their SAA until years after the change occurred. Title 38 does not require the SAAs or VA to periodically reevaluate programs or perform reapprovals after program modifications. However, Title 38 and the SAA contracts require the programs to continue to meet the conditions of their approval.<sup>48</sup> Furthermore, VA and the SAAs are required to take immediate action to suspend or withdraw a program's approval if they determine a program no longer meets Title 38 requirements after a modification.<sup>49</sup>

Because VA and the SAAs have the authority to add other "fair and reasonable" provisions that they consider necessary to administer the review and approval process,<sup>50</sup> VA and the SAAs implemented their own review processes to help programs satisfy continuing eligibility requirements. Schools are required to immediately self-report all program and school modifications to the SAAs for review and approval, and the SAAs are required to submit the modifications to the ELRs for administrative review and processing. The SAAs inform the schools in their approval letters of the requirement to report modifications as a condition of their approval.<sup>51</sup>

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<sup>47</sup> OMB Circular A-123, Risk Assessing, Estimating, and Reporting Improper Payments.

<sup>48</sup> 38 U.S.C. § 3679.

<sup>49</sup> 38 U.S.C. § 3679.

<sup>50</sup> 38 U.S.C. § 3678, Notice of approval of courses.

<sup>51</sup> 38 U.S.C. § 3678(3).

Examples of modifications that schools should report to the SAAs and VBA because they could affect the conditions of a program's approval include changes in

- Address, to ensure the program's new location has adequate space, equipment, instructional material, and instructor personnel to provide training of good quality;<sup>52</sup>
- Clock hours and curriculum, to make certain the program is still consistent in quality, content, and length with similar programs in the state; and<sup>53</sup>
- Policies, to ensure required information such as tuition and fee charges, standards of progress, and the school calendar are updated and available in the catalog to students.<sup>54</sup>

The OIG's audit, however, determined that eight schools with 25 Post-9/11 GI Bill students enrolled significantly delayed reporting or did not report modifications. Seven schools that had nine program modifications had not reported the modifications to their SAAs at the time of the audit, and one school that had modifications affecting two programs did not report the modifications until about 4.5 years later, when it became aware the SAA planned to conduct a reapproval. The SAAs could not ensure the affected programs continued to meet the conditions of their approval after the implementation of the program modifications. This meant that VBA often lacked adequate support for the programs' continued eligibility and could not ensure the payments it made for students enrolled in these programs were appropriate.

These schools violated the programs' conditions of approval when they did not immediately report their program modifications to the SAAs. The audit team considered the programs' existing approvals invalid and the almost \$146,000 in tuition and fees VBA paid these eight schools during the review period to be improper payments.<sup>55</sup>

After notification from the audit team, the SAAs initiated reviews of unreported program modifications for the nine programs. Four SAAs reviewed the program modifications made by four schools for six programs and determined the programs still met Title 38 requirements. As of August 2018, three SAAs were still reviewing the program modifications that affected three programs at as many schools. VA and the SAAs need to establish more effective controls to ensure program modifications and other changes potentially affecting programs' conditions of approval are promptly identified and reviewed to ensure continuing eligibility.

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<sup>52</sup> 38 U.S.C. § 3676(c)(2).

<sup>53</sup> 38 U.S.C. § 3676(c)(1).

<sup>54</sup> 38 U.S.C. § 3676 (b) and (c).

<sup>55</sup> For the school that self-reported the two program modifications more than 4.5 years after they occurred, the OIG only included payments made during the OIG's review period that occurred before the school reported the program modifications.

## Potentially Erroneous, Deceptive, or Misleading Advertising Practices

The audit team found that five of the reviewed SAAs (California, Mississippi, New Jersey, New York, and Oregon) had not identified 10 schools using what appeared to be “erroneous, deceptive, or misleading” advertisement practices to promote enrollment. Title 38 specifically prohibits the enrollment of students in programs at schools that engage in these practices.<sup>56</sup> Under a Federal Trade Commission (FTC) Act, “advertising must be truthful and nondeceptive, and advertisers must have evidence to back up their claims.”<sup>57</sup> The audit team consulted with the FTC and applied the same criteria used in its deceptive advertisement inquiries to evaluate the advertisements and claims of the schools and 175 programs in the OIG’s sample:<sup>58</sup>

- The advertisements were considered from the point of view of the “reasonable consumer—the typical person looking at the ad.” Rather than focus on certain words, the audit team examined the ad in the context of the related words, phrases, and pictures to determine what it conveyed.
- The “expressed” (literal) and “implied” (indirect and inferred) claims made in the advertisements and their support were reviewed. The law requires advertisers—in this case the schools and programs—to have proof to back up the expressed and implied claims taken from the advertisements.
- The impact of missing information was considered; specifically, the audit team reviewed whether the failure to include information left students with a misimpression about the programs or the schools.
- The effect of claims on enrollment were assessed. That is, the audit team evaluated whether the claim would be material or important to the student’s decision to enroll in the programs or schools.

The audit team’s review of the advertisements and claims schools made in catalogs, websites, and brochures at the time of the audit disclosed that 10 schools with a total of 21 approved programs used what appeared to be deceptive advertisements based on the review of support for the claims. In addition, five of these schools had these advertisements in place at the time their programs were approved. For the remaining five schools, the audit team could not determine when these advertisements were put in place because the SAAs lacked the supporting

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<sup>56</sup> 38 U.S.C. § 3696(a); 38 CFR § 21.4252.

<sup>57</sup> 15 U.S.C. § 45, Unfair methods of competition unlawful; prevention by Commission; 15 U.S.C. § 49, Documentary evidence; depositions; witnesses.

<sup>58</sup> Federal Trade Commission, “Advertising FAQ’s: A Guide for Small Business,” FAQ, April 2001. <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>. (The website was accessed in November 2016.)

documentation for the initial approvals. Eight of the 10 schools that appeared to employ deceptive advertisements were for-profit schools.

Smith & Solomon, a truck driving school that had two programs approved in November 1994, advertised in its 2015 and 2016 catalogs that its placement services division helped “find jobs for over 90 percent of the students within one month of graduation.” The FTC requires businesses to have proof to support claims in advertisements; however, the school could not provide any supporting documentation or evidence for the claimed job placement rate. This advertised claim may have been in the school’s course catalog at the time of approval or placed in the catalog after its approval. After the programs were approved, the SAA reviewed and approved six program modifications, including the one in August 2016, but it did not identify the unsupported deceptive advertisement in the school’s catalog. When the audit team discussed the advertisement with the school, it stated it would omit this statement when it published a new catalog within the year.

The Mississippi College of Beauty Culture, which had a program approved by the SAA in October 2013, had a statement on its website in September 2016 that “salon professionals can average up to \$50,000 annually including tips.” However, the Department of Labor reported the median pay for a salon professional was just over \$23,700, and the State of Mississippi reported the average salary for salon professionals was just over \$28,900. The school’s failure to include the Department of Labor’s or the State of Mississippi’s salary information left students with a misimpression of the earning potential of salon professionals. The SAA was unaware of how long the advertisement had been on the website, but the SAA and school agreed that the advertisement was misleading after discussing it with the audit team. The school revised the advertisement on its website to include the median salary reported by the Department of Labor.

DeVry University, which had nine programs in the audit sample, claimed in its admission guide that 90 percent of students who actively sought employment achieved it within six months of graduation. The audit team reviewed the California SAA’s approvals of the DeVry University programs but did not find any evidence indicating the SAA had reviewed or assessed DeVry University’s advertisements for potentially erroneous, deceptive, or misleading practices. The audit team reviewed the claimed employment rate with the SAA and the ELR and agreed that DeVry University should be able to provide support for this claim. The audit team did not discuss this claim with DeVry University officials because the university was the subject of an FTC lawsuit at the time. In addition, DeVry University did not provide the FTC sufficient data to support this claim during the lawsuit. DeVry University settled with the FTC in December 2017 and was required to refrain from future deceptive advertisements or misrepresentations. It was also required to keep records of all future advertising. As part of a \$100 million December 2016 FTC settlement, DeVry agreed to pay \$49.4 million in cash to students who were harmed by deceptive ads touting high employment success rates and income levels after graduation. As of August 2018, DeVry University’s website no longer claimed 90 percent of its students who

actively sought employment were employed within six months after graduation, because it could not support this claim.<sup>59</sup>

In total, VBA paid more than \$598,000 to 10 schools in the audit sample that employed potentially deceptive advertisements. These schools received these payments for the enrollment of 91 students in 21 SAA-approved programs. All seven of the reviewed SAAs indicated that they reviewed the appropriateness of the schools' and programs' advertisements during the initial approval of the programs, but none of the seven SAAs maintained supporting documentation for this part of the review. The SAAs were generally unsure how long they should maintain documentation for approved programs because the SAA contracts stated only that they should maintain complete approval records for all approved courses or programs, not for how long. Furthermore, three of the seven SAAs did not note any problems in the advertisements identified as potentially erroneous, deceptive, or misleading, even though they were in place at the time of the most recent approval.

Subsequently, the audit team concluded that 10 schools with 21 programs (approved by five of the seven reviewed SAAs) did not meet eligibility requirements to enroll students and receive payments at the time of the review. These schools did not meet the requirements because the schools engaged in potentially erroneous, deceptive, or misleading advertisement practices. After the audit team reviewed and discussed the advertisements and claims with the SAAs, the ELRs, and/or the schools, seven of the 10 schools deleted or revised the advertisements on their websites, revised their brochures, or agreed to revise their catalogs.<sup>60</sup>

## **Factors Contributing to SAA Oversight Weaknesses**

VBA believed it had a very restricted role in the SAA oversight process and subsequently did not identify its weaknesses. The former Executive Director stated VBA is prohibited under federal law from exercising control over the SAAs, referring to Title 38, which states in pertinent part:

No department, agency, or officer of the United States, in carrying out this chapter, shall exercise any supervision or control, whatsoever, over any State approving agency, or State educational agency, or any educational institution. Nothing in this section shall be deemed to prevent any department, agency, or officer of the United States from exercising any supervision or control which such department, agency, or officer is authorized by law to exercise over any federal educational institution or to prevent the furnishing of education under this chapter

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<sup>59</sup> See Appendix D for a complete list of potential erroneous, deceptive, or misleading advertisements and claims identified by the audit.

<sup>60</sup> The OIG included DeVry University's inappropriate advertisements in its results but did not specifically discuss the advertisements with DeVry University officials because, as previously discussed, the school was the subject of an FTC investigation and lawsuit at the time of the audit.

or chapter 34 or 35 of this title in any institution over which supervision or control is exercised by such other department, agency, or officer under authority of law.<sup>61</sup>

The former Executive Director stated that the primary responsibility for the review, approval, and continuous monitoring of the programs resided with the SAAs and that VBA had no control over what the SAAs did. He maintained this position even though VBA has the authority to establish and negotiate contracts with the SAAs.<sup>62</sup>

VBA has the authority to determine whether an SAA is complying with the standards and provisions of the law.<sup>63</sup> VBA can establish requirements for the SAAs' performance of the program reviews, approvals, and monitoring in the terms and conditions of these contracts. VBA also has the right not to renew the contracts with the states, as it did in the cases of Hawaii and Vermont in FY 2015, and the authority to assume the SAA's program review, approval, and monitoring responsibilities if it determines the SAA is not performing satisfactorily.<sup>64</sup>

VBA's position does not acknowledge that VBA and the SAAs have the authority to institute additional requirements to ensure programs meet Title 38 and protect students' and taxpayers' interests. Moreover, Title 38 provides VBA with a mechanism to implement program review requirements it deems necessary across all the SAAs through the establishment of the SAA contracts. VBA and the SAAs exercised this authority when they required schools to self-report program modifications for review and approval to ensure schools and programs continued to meet the conditions of their approvals, even though it was not specifically required in Title 38. One SAA required its schools to reapply periodically for program approvals whenever its catalogs expired and were reissued, even though Title 38 does not specifically require periodic program reapprovals. This SAA tracked the expiration of catalogs and proactively requested schools submit their programs for reapproval.

VA is required under federal law to negotiate a contract or agreement with the SAAs to pay reasonable and necessary expenses incurred by the SAA to approve schools' programs.<sup>65</sup> Subsequently, VBA's Education Service establishes annual contracts with the SAAs to approve and monitor programs within their states. The contracts detail the SAAs' responsibilities for the "review, evaluation, and approval of quality programs of education and training under state and federal criteria," which are specifically established under Title 38.<sup>66</sup> VA education benefits can

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<sup>61</sup> 38 U.S.C. § 3682.

<sup>62</sup> 38 CFR § 21.4153 and 38 U.S.C. § 3674, *Reimbursement of expenses*.

<sup>63</sup> 38 CFR § 21.4152.

<sup>64</sup> 38 U.S.C. § 3671(b)(1).

<sup>65</sup> 38 U.S.C. § 3674.

<sup>66</sup> National Association of State Approving Agencies, "About SAA." <http://nasaa-vetseducation.com/About.aspx>. (The website was accessed on May 16, 2018).

only be paid if students are enrolled in educational and training programs approved by the SAAs, or by VA where appropriate.<sup>67</sup> This helps safeguard veterans' interests and taxpayers' funds as veterans pursue their educational goals.

VBA's position also does not address its responsibilities under the Federal Managers' Financial Integrity Act of 1982 (FMFIA) and OMB Circular A-123, which state that agency managers and staff are responsible for the proper stewardship of federal resources. Agency managers and staff are expected to ensure programs operate and resources are used to meet agency missions with minimal potential for waste, fraud, and mismanagement.

VBA generally took a hands-off approach to the review, approval, and monitoring processes in its contractual relationship with the SAAs, even though it is ultimately responsible for the proper disbursement of education benefit payments to eligible programs. This was primarily because it believed VBA and the SAAs only had to comply with the exact requirements spelled out in the statute. By way of example, the former Executive Director of VBA Education Service maintained that VBA and SAA oversight and monitoring controls only had to meet the specific requirements set forth in the statutes and regulations governing the SAA process. Neither VBA nor the SAAs felt they were responsible for addressing gaps or weaknesses in SAA program review, approval, and monitoring processes if the statutes did not expressly address an issue or require specific program controls. Significantly, VBA did not

- Require ELRs to conduct thorough reviews of SAA program approvals and decisions;
- Establish effective controls to foster the identification, review, and approval of program modifications;
- Require that SAAs periodically monitor schools' advertisements for erroneous, deceptive, or misleading advertising practices;
- Adequately assess program eligibility during the compliance survey process to ensure programs continued to meet Title 38 requirements; and
- Conduct adequate annual performance evaluations of SAAs.

Although VBA technically complied with statutory requirements, it did not provide the SAAs effective oversight to ensure continued compliance with Title 38 requirements and prevent the possible abuse of education benefits by schools, and thus did not ensure the adequate protection of students and taxpayers.

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<sup>67</sup> 38 U.S.C § 3672.

## ELR Review

VBA only required ELRs to perform limited reviews of the SAAs' approvals and decisions and did not require the submission and review of supporting documentation. The ELRs applied a checklist of the Title 38 requirements to review the decision packages, but VBA did not require the SAAs to submit supporting documentation with the approval. The ELRs only had to review the limited documentation that VBA required the SAAs to submit under the contract terms.<sup>68</sup>

According to the former Executive Director of VBA's Education Service, the SAAs are responsible for the approval of programs and ensuring the quality and effective administration of programs that enroll students. VBA contended that the ELRs only had to perform an administrative quality review of the SAAs' decision packages to ensure the SAAs addressed the applicable Title 38 requirements during their reviews. The former Executive Director also stated that the ELRs rely on the SAAs' determinations and approvals, and they do not have to review any supporting documentation unless the SAAs choose to submit it. Subsequently, if the ELRs determine the SAAs have addressed the applicable requirements in their decisions and deem the programs eligible, VBA is authorized to pay the schools for the students enrolled in the approved programs. VBA's position that the ELRs only have to perform an administrative review does not ensure the SAAs complete quality program reviews before they approve programs to participate in VBA education benefit programs.

VBA has the authority under Title 38 to establish additional "fair and reasonable" requirements for administering the review and approval processes. It can also work with the SAAs on the terms and conditions in SAA contracts to ensure program reviews comply with Title 38 requirements. However, the audit results show that the ELR review process is not sufficient to identify deficiencies in SAA program reviews and approvals, nor to prevent potential improper payments for ineligible programs. For the five approved programs where the audit team identified deficiencies in the SAAs' initial approvals, the ELRs did not know what the SAAs reviewed to reach their decisions, lacked an objective means to assess the completeness and quality of the SAAs' reviews, and could not evaluate the appropriateness of the SAAs' decisions. This occurred because VBA did not require the SAAs to submit the supporting documentation for their decisions to the ELRs for review.

The ELR reviews do not address the completeness, accuracy, or quality of the SAAs' review and approval processes. VBA had not developed adequate ELR review guidance or statements of work in the SAA contracts to establish standards and requirements for the performance of adequate program reviews, approvals, and monitoring. As a result, the ELR review process and related monitoring of the SAA contracts do not adequately address federal law. The law states that VBA and the SAAs should work cooperatively in the enforcement of approval standards and

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<sup>68</sup> See list of documents in Appendix A.

exchange information about the activities of educational institutions to ensure the quality and effective administration of programs.<sup>69</sup>

VBA did not fulfill its financial responsibility to effectively monitor the SAAs and ensure the accuracy and correctness of the SAA decisions it relies on to properly disburse education benefit payments to eligible recipients.

## **Review of Program Modifications**

VBA and many of the reviewed SAAs relied on schools to self-report program modifications that might affect their conditions of approval. All seven of the reviewed SAAs included statements in their approval letters notifying the schools that they were required to self-report program modifications.

VBA and the SAAs have the authority to establish additional review and approval requirements to ensure programs comply with Title 38.<sup>70</sup> Subsequently, they established controls to comply with requirements to ensure programs continue to meet the conditions of their approvals.<sup>71</sup> However, these controls were not effective in addressing situations where schools did not self-report program modifications. VBA and six of the seven reviewed SAAs could not guarantee they consistently reviewed and approved all program modifications to ensure programs continued to meet the conditions of their approvals. They were unaware of the nine unreported program modifications the audit team identified during the audit and did not become aware of two program modifications until more than 4.5 years after the changes occurred.

One SAA, which did not have any unreported modifications among the 18 programs the audit team reviewed, had not established any additional controls regarding program modifications. However, the other SAA, which also did not have any unreported modifications among its 27 reviewed programs, required its schools to reapply periodically for program approvals at the time their catalogs expired and were reissued. Consequently, this SAA could reliably identify, review, and approve program modifications even if schools or programs did not report the changes as soon as they occurred.

The former Executive Director of VBA Education Service agreed that program modifications should be reviewed and approved. However, he also stated that VBA and the SAAs are only required to review and approve program modifications that are self-reported by the schools, even though the SAA contracts require schools to report each amendment, modification, suspension, or withdrawal of any course or program approval and the reasons for the action to VA.<sup>72</sup> The

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<sup>69</sup> 38 U.S.C. § 3673.

<sup>70</sup> 38 U.S.C § 3678 (7).

<sup>71</sup> 38 U.S.C § 3679.

<sup>72</sup> 38 U.S.C. §§ 3675–3676.

former Executive Director of VBA Education Service further explained that SAAs are not required to conduct a full reapproval of programs. He indicated that Congress had limited the funding for the SAA contracts to \$19 million for the past 10 years and there was only so much the SAAs could be asked and expected to do given the funding and resources.<sup>73</sup>

The SAA contract requires SAAs to maintain an inspection system covering the services provided to VA, ensuring conformance with the contract requirements. In addition, SAAs are required to disapprove formerly approved courses once they fail to meet program requirements.<sup>74</sup> While compliance surveys may help SAAs satisfy their inspection requirements and identify courses that no longer meet program requirements, the compliance survey process did not identify the unreported program modifications the audit team found.<sup>75</sup> Furthermore, VBA had not established any SAA contract requirements to conduct periodic reapprovals or inquiries to identify unreported program modifications because Title 38 does not expressly require these controls.

The Senior Management Program Analyst who oversees the VBA SAA Contract Management Team and SAAs said that periodic review of the SAAs' continuous monitoring processes was not needed because schools tended to submit certifications for programs that met eligibility requirements. The analyst added that most SAAs already have a process in place to conduct reapprovals. She said that SAAs initiate reapprovals when they receive new catalogs from the schools, review the programs for continued eligibility, and forward a copy of the schools' catalogs to the ELRs. Furthermore, she stated the SAAs reported the number of re-approvals completed each year to Education Service in their annual self-evaluations.

The former Executive Director of VBA Education Service generally maintained that strengthened controls were not required by statute or necessarily possible, given SAA budgetary limitations. However, the audit results show that VBA still needs to work closely with the SAAs to establish more effective controls and ensure schools and programs continue to meet eligibility requirements after they are approved. Although VBA may comply with a strict interpretation of Title 38 requirements, it is not effectively overseeing the program to safeguard students' interests and taxpayers' funds and ensure the proper stewardship of federal resources as required by FMFIA and OMB Circular A-123.

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<sup>73</sup> During the OIG's audit, 38 U.S.C. § 3674 limited funding to \$19 million. Congress increased the funding for the SAAs to \$21 million in FY 2018.

<sup>74</sup> 38 U.S.C. § 3679.

<sup>75</sup> See discussion of Compliance Survey process on page 20.

## Monitoring of Advertisement Practices

VBA did not ensure SAAs monitored advertisements to detect erroneous, deceptive, or misleading advertising at schools, even though federal law specifically prohibits the enrollment of students in programs at schools that engage in these types of practices.<sup>76</sup> Under federal law and SAA contracts, the SAAs are responsible for ensuring programs continue to meet the conditions of their approvals.<sup>77</sup> VA, at the time of this audit, also had an agreement with the FTC to assist with the investigation of potentially erroneous, deceptive, or misleading school and/or program advertisements.<sup>78</sup>

After applying FTC guidelines, the audit team found that 10 schools with 21 approved programs employed these types of advertisements at the time of the audit, without the apparent knowledge of their five SAAs.<sup>79</sup> For the remaining two SAAs where the audit team did not identify any schools or programs with deceptive advertisements, only one SAA checked the advertisements when it required schools to reapply periodically for program approvals. The other SAA did not perform any additional reviews for deceptive advertising after the initial approval.

In response to the audit findings, both VBA and the SAAs claimed they did not have to check for deceptive advertising after the initial approval, except during the compliance surveys, because the statute did not specifically require it. The former Executive Director of VBA Education Service stated that VBA did not expect the SAAs to review advertisement practices of schools and programs at any other point except during the program's initial review and approval and during the compliance surveys. He also indicated that VBA had developed other controls in its review of student complaints—the GI Bill Comparison Tool and Principles of Excellence Guidelines—to protect students and deter schools and programs from engaging in erroneous, deceptive, or misleading advertising practices. Six of the seven SAAs examined for the audit concurred with the former Executive Director and maintained they were not required to check for deceptive advertisements after the initial approval except during the compliance surveys.

Like the previous discussion of the ELR reviews and review of program modifications, the limited role VBA and the SAAs defined regarding the monitoring of schools and program advertisements allowed these practices to go undetected at schools and programs enrolling Post-9/11 GI Bill students.

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<sup>76</sup> 38 U.S.C. § 3696(a); 38 CFR § 21.4252.

<sup>77</sup> 38 U.S.C. § 3693(a), *Compliance surveys*.

<sup>78</sup> 38 U.S.C. § 3696(c).

<sup>79</sup> Federal Trade Commission, "Advertising FAQ's: A Guide for Small Business," FAQ, April 2001. <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business> (The website was accessed in November 2016.)

## Compliance Surveys

VBA's compliance survey process did not ensure programs and schools met the conditions of their approvals and maintained eligibility. Under federal law, VBA is required to conduct compliance surveys of schools that receive education benefit payments to ensure the schools and programs continuously meet federal requirements.<sup>80</sup> VBA is required to design and conduct compliance surveys to review the accuracy of tuition and fee payments and assess the continuing eligibility of programs. During the audit period, VBA was required to conduct annual compliance surveys at all schools with 300 or more students receiving VBA education benefits and at non-college degree schools, unless a waiver was granted.<sup>81</sup> VBA can grant a two-year waiver to either non-college degree schools or schools with 300 or more students whose prior compliance survey did not have more than two errors. According to VBA's Education Service Chief of Compliance and Liaison, almost 5,700 compliance surveys were conducted in FY 2016. Education compliance survey specialists and ELRs (VBA staff) conducted nearly 2,900 compliance surveys and SAAs conducted just over 2,800.

VBA and SAA compliance survey reviews addressed some program eligibility issues, such as the verification of the refund policy, tuition and fee schedules, and standards of progress in catalogs. However, the compliance surveys did not include evaluations of the schools' financial soundness, active business licenses, or the accreditations of all approved and newly approved programs. As a result, the audit identified 24 approved programs with deficiencies at 12 schools that had compliance surveys within the past three fiscal years (FYs).<sup>82</sup> Seven of these compliance surveys had been completed by SAAs and five had been completed by VBA staff.

The compliance survey form includes the review of advertisements for erroneous, deceptive, or misleading practices, but the audit team could not verify these reviews were completed because SAA and VBA staff did not maintain supporting documentation for their reviews. Five schools that had a compliance survey during FYs 2014–2016 were responsible for 14 of the 21 approved programs for which the audit team identified inappropriate advertisements. Three of these compliance surveys were conducted by SAAs and two were performed by VBA staff. As a result, the audit team did not find the review of advertisements during the compliance surveys to be an effective control to detect and prevent inappropriate advertising practices.

Annually, VBA conducts quality reviews of 12 of its VBA-completed compliance surveys and approximately 1,000 of the SAA-completed compliance surveys. Each quarter, VBA reviews

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<sup>80</sup> 38 U.S.C. § 3693.

<sup>81</sup> This requirement changed on December 16, 2016. VBA is now required to perform compliance surveys once every two years for any school with a population of 20 or more students receiving VBA education benefits (U.S.C. § 3693, *Compliance surveys*).

<sup>82</sup> Deficiencies included issues related to the application of the incorrect accreditation criteria, missing business licenses, unapproved changes of address, and missing school policies.

three compliance surveys that have been completed by VBA's education compliance survey specialists or ELRs and five compliance surveys completed by each of the SAAs. During these quality reviews, VBA does not examine any of the supporting documentation the education compliance survey specialists, ELRs, or SAA staff used to complete the compliance surveys. In addition, VBA does not ensure the compliance surveys include assessments of program eligibility. Instead, VBA's quality reviews focus on whether VBA and SAA staff reviewed the required number of student records, whether they reviewed the accuracy of benefit payments, and whether the SAAs completed the compliance survey reports within 30 days of the exit meetings with the schools.

Without reviewing the supporting documentation, VBA has no means to determine whether the results of the compliance surveys are complete, accurate, and reliable. Furthermore, VBA does not consider the quality of the completed SAAs' compliance surveys and does not consider this as a factor in the SAAs' annual performance evaluations. The audit team concluded that the compliance survey process did not ensure the adequate continuous monitoring and eligibility of programs. To ensure compliance with all applicable provisions of Title 38, VBA needs to strengthen the compliance survey process to address program eligibility, require maintenance of supporting documentation, and improve quality review processes.<sup>83</sup>

## **Annual Contract Performance Evaluations**

VBA evaluates the SAAs' performance annually based on the agreed-upon performance metrics in the SAA contracts, including the ELR's annual evaluation of the SAA and the SAA's self-evaluation.<sup>84</sup> The SAA's self-evaluation consists of three parts: a rating, descriptive data, and a narrative describing the performance of their functions throughout the year.<sup>85</sup>

According to the former Executive Director of VBA Education Service, VBA considers the SAAs' self-evaluations, which include the number of completed approvals and reapprovals during the FY, to be a confirmation that the reviewed programs met all the applicable Title 38 requirements. Based on the results of the OIG audit, however, the SAAs' self-evaluations cannot be considered a reliable indicator of the quality of the SAAs' reviews and do not provide reasonable assurance that the approved programs are complying with Title 38 requirements. Furthermore, VBA and many of the SAAs reviewed have a differing view of what is evaluated when SAAs report reapprovals on their self-evaluations. The Senior Management and Program Analyst stated that the reapprovals on the self-evaluations indicated the SAAs reviewed the programs' continuing eligibility. However, six of the seven SAAs examined for the audit stated

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<sup>83</sup> 38 U.S.C. § 3693(a)(1)(A).

<sup>84</sup> 38 U.S.C. § 3674A.

<sup>85</sup> Descriptive data includes data such as the number of approvals, including initial and revised approvals, and compliance surveys conducted.

that they reported their review and approval of specific program modifications as reapprovals on the self-evaluations. The OIG confirmed the statements that they did not perform complete reviews of the programs' eligibility.

The SAA contract performance metrics focus on the timeliness of the initial approvals and number of completed compliance surveys, rather than the quality of the SAAs' performance. VBA did not consider and assess whether SAAs properly granted initial approvals or ensured programs continued to meet all eligibility requirements during this annual contract performance evaluation. VBA lacked information needed to evaluate the quality, completeness, and accuracy of the SAAs' reviews and decisions. This occurred because VBA generally does not require the SAAs to provide any supporting documentation, nor does it verify the information the SAAs have evaluated—even when it conducts its own quality reviews.

Consequently, VBA relied heavily on the SAAs' self-evaluations during the annual performance reviews, and all seven of the SAAs reviewed received satisfactory performance ratings for the FY 2014–2016 period. Under Title 38, VBA has the authority to work with the SAAs to set the standards and criteria for annual performance evaluations.<sup>86</sup> The audit results demonstrated that VBA also needs to consider

- The accuracy and quality of the SAAs' initial program and program modification approvals;
- The effectiveness of compliance surveys and related quality assurance reviews in identifying and addressing eligibility issues; and
- The quality, completeness, and accuracy of the SAAs' decisions and monitoring during the annual SAA evaluations.

## Conclusion

In FY 2018, VA estimated it would issue about \$5.5 billion in Post-9/11 GI Bill tuition and fee payments to schools and programs for nearly 800,000 students. However, the OIG's audit results show that VBA has not provided effective oversight of the SAAs to ensure that schools and programs meet Title 38 requirements and are making proper use of the Post-9/11 GI Bill program. VBA can address the general requirements in Title 38 that lack specific implementation language by cooperatively establishing with the SAAs additional fair and reasonable review and approval requirements in the SAA contracts. The audit results also show that VBA and the SAAs are not adequately reviewing, approving, and monitoring programs to ensure programs and schools are eligible to participate in the Post-9/11 GI Bill program and meet all applicable Title 38 requirements. As a result, neither VBA nor the SAAs can provide students and taxpayers

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<sup>86</sup> 38 U.S.C. § 3674A.

reasonable assurance that programs approved to participate in the Post-9/11 GI Bill program are effectively and efficiently administered and providing students quality education and training in accordance with federal eligibility requirements.

Due to the weaknesses in VA's oversight and monitoring of the SAA contracts, VBA has made a significant number of improper payments, including more than \$1.54 million in improper Post-9/11 GI Bill tuition and fee payments from February 1, 2015, to January 31, 2016.<sup>87</sup> These payments were made for just more than 230 students attending 35 ineligible or potentially ineligible programs at 20 schools. Of this total, VA made nearly \$1.5 million of these improper payments (97 percent) to 15 for-profit schools for 29 programs. As a result, the audit team concluded that for-profit schools posed a higher risk for improper payments than other types of schools in the audit sample.

Based on the results from the 12-month audit period, the audit team projected that annually

- Forty-four of the 51 SAAs (86 percent) improperly approve programs and do not ensure the effective review of program changes and advertisements,
- Approximately 11,200 Post-9/11 GI Bill students will attend 4,400 ineligible or potentially ineligible programs where the SAAs and VBA lack adequate support for the programs' continued eligibility, and
- Approximately 8,500 of these 11,200 students (76 percent) will attend 3,800 ineligible or potentially ineligible programs (86 percent) at for-profit schools.

In total, the audit team projected that VBA annually issues an estimated \$585 million in related improper Post-9/11 GI Bill tuition and fee payments to ineligible or potentially ineligible schools and that \$473.8 million of this amount will be paid to for-profit schools. The audit team estimated that VBA will place students' educational goals and taxpayers' funds at risk and issue an estimated \$2.3 billion in improper Post-9/11 GI Bill tuition and fee payments<sup>88</sup> to 5,400 ineligible or potentially ineligible programs for an estimated 17,000 enrolled students over the next five years<sup>89</sup> if SAA oversight and monitoring controls are not strengthened by implementing OIG recommendations.

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<sup>87</sup> This amount has been adjusted to include only payments made during periods when the program's eligibility was not supported or in question due to inadequate SAA reviews, approvals, or monitoring.

<sup>88</sup> The improper payment estimate for this audit was \$2.9 billion, but the potential monetary benefit estimate in the report was reduced by \$668.1 million to prevent possibly double-counting improper tuition and fee payments previously identified and reported in *Audit of Post-9/11 GI Bill Tuition and Fee Payments* (Report No. 14-05118-147, September 30, 2016).

<sup>89</sup> The OIG used exponential smoothing forecasting to estimate the number of Post-9/11 students and the number of programs in which they will be enrolled over the next five years and then applied the error rate from the OIG's review to develop these estimates. (See Appendix C for additional information.)

## Recommendations 1–6

1. The Under Secretary for Benefits negotiates an amendment to State Approving Agency contracts to clarify requirements for program approvals and require, subject to the availability of resources, quarterly samples and reviews and evaluations of supporting documentation for State Approving Agency approvals to ensure approved programs meet Title 38 of the United States Code requirements.
2. The Under Secretary for Benefits negotiates amendments to State Approving Agency contracts that, subject to available resources, require the State Approving Agencies to periodically reapprove programs and evaluate program changes and other operational changes, such as advertisement practices, that may affect a program's continued eligibility and compliance with Title 38 of the United States Code.
3. The Under Secretary for Benefits refers schools identified during the audit with potentially erroneous, deceptive, or misleading advertising practices to the Federal Trade Commission for it to decide whether any further reviews or actions are needed.
4. The Under Secretary for Benefits revises and strengthens compliance surveys to improve the assessment of program eligibility and compliance survey quality reviews to include the review of supporting documentation and an independent assessment of the quality of the completed compliance surveys.
5. The Under Secretary for Benefits negotiates an amendment to the State Approving Agency contracts to establish quality assurance metrics and ensure the Veterans Benefits Administration collects and uses quality assurance data from its reviews of the State Approving Agencies' approvals, monitoring, and compliance surveys in its annual evaluations of the State Approving Agencies.
6. The Under Secretary for Benefits assesses whether funding for State Approving Agencies is sufficient to ensure the adequate review, approval, and monitoring of programs, in conjunction with the establishment of a contract to update the State Approving Agency funding allocation model.

## Management Comments and OIG Response

VBA acknowledged in its response that several areas in the SAA oversight and monitoring processes needed improvement and provided acceptable action plans for Recommendations 1, 2, and 3. The action plans for Recommendations 4, 5, and 6 were not fully responsive and did not meet the intent of the recommendations. The OIG will monitor VBA's progress as it develops

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responsive action plans for the remaining three recommendations and will follow up on the implementation of all the recommendations until the proposed actions are completed.

Although VBA concurred or concurred in principle with all six of the report's recommendations, VBA did not agree that the OIG's audit demonstrated that VA needed to strengthen its oversight and monitoring of the SAAs and improve accountability and program compliance with Title 38 requirements. VBA provided general and technical comments, which the OIG addresses below.

## **VBA's General Comments**

VBA's general comments to the report are provided in their entirety as follows:

The Veterans Benefits Administration (VBA) appreciates the Office of the Inspector General's (OIG) review of State Approving Agencies and VBA's oversight. We acknowledge that the report highlights several areas for improvement, and we concur or concur in principle with the OIG recommendations. However, VBA does not agree with the finding and conclusions of the OIG regarding the Department of Veterans Affairs' (VA) oversight and monitoring of the State Approving Agency (SAA) Program for Post-9/11 G.I. Bill students.

The draft report demonstrates a lack of understanding or appreciation of the complexities of the VA and SAA relationship as contained in Title 38 United States Code (U.S.C.) and Title 38 Code of Federal Regulations (C.F.R.), particularly that SAAs are primarily responsible for approvals and are given this authority nearly exclusively under the law. VBA maintains a strong partnership with SAAs characterized by strong communication, collaboration, and mutual respect for the authorities, roles, and responsibilities laid out in statutory and regulatory requirements. This report does not accurately characterize this strong and effective partnership that has been in place for decades, nor does it accurately reflect the high quality of work performed by most SAAs and VBA employees in the realm of compliance and oversight.

VBA does not agree that there has been weak oversight and a lack of accountability for program oversight functions. SAA accountability requirements in the contract have increased over time, and VBA has demonstrated that it will make the hard decision not to contract with a SAA in the case of sustained poor performance. The SAA evaluation process has yielded numerous substandard ratings. These are always followed by additional training for the SAAs receiving such ratings. VA has even exercised its exclusive authority to suspend payments to beneficiaries attending a school where an SAA approved the school with insufficient legal basis. Additionally, VBA Education Liaison Representatives

(ELRs) work tirelessly with their respective SAAs to both enforce the contract requirements, clarify federal requirements, and generally help SAAs be successful.

VBA believes that the OIG mischaracterizes several aspects of VBA's perspective on the role of SAAs; at one point alleging that VBA's Education Service believed they had "no control" over SAA actions. Contrary to the language in this report, VBA thoroughly understands what it can and cannot do under the authorities specified in Title 38 U.S.C. and Title 38 C.F.R., having received innumerable formal and informal opinions from VA's Office of General Counsel (OGC) as VBA has worked through numerous complex SAA issues. The statute indicates that no federal agency will exercise control over SAAs. At the same time, the statute gives VA the authority to enter contractual relationships with SAAs. Consistent with the law, VBA requires SAAs to perform certain functions and tasks, and then monitor and evaluate that performance. SAA contracts are negotiated annually and requirements are added or subtracted through intense discussions, resulting in the inclusion of laws, new requirements and performance quality measures.

According to VA OGC, SAAs have nearly exclusive authority to approve, suspend, or withdraw programs for the Post-9/11 G.I. Bill, not the VA, and this SAA authority is largely unchallengeable. VA holds certain approval authorities as well, but mostly in the context of when acting in the role of the SAA (i.e., in situations where the state has no SAA). Therefore, SAAs hold the authority and VA fully expects them to do the job according to the terms of the contract, while VBA ELRs review SAA work to determine the degree to which contract requirements are met. Contrary to assertions in the OIG report, ELRs identify many deficiencies in approval submissions and work diligently with SAAs to ensure that program approvals are complete and accurate.

VBA strongly disagrees with OIG's assertion that VBA does not work to protect taxpayers' interests (FMFIA and OMB Circular A-123). This commitment is at the core of VA's countless internal controls, oversight, and compliance efforts. VBA's Education Compliance Survey Specialists work diligently engaging schools, reviewing approval criteria, and most importantly, identifying overpayments and underpayments to schools and VA beneficiaries. While the OIG report is critical that VA and SAAs did not fully reapprove every program during a compliance survey, to do so is not within the realm of possibility given the time and resources available for this work.

Significantly, the report omits the record of overpayments and underpayments that VBA has identified and corrected through its oversight and compliance processes. Over the last five years, VBA has identified and corrected \$9.6 million in underpayments and \$78.8 million in overpayments as part of fulfilling VA's duty to beneficiaries and be good stewards of the taxpayers' dollars.

Many SAAs do provide supporting documentation and ELRs review this documentation to determine the completeness and appropriateness of SAA approvals. We have continuously worked with SAAs collaboratively to improve compliance survey methodology and continue to do so today. VBA Education Service commissioned a year-long study by the MITRE Corporation to review and make recommendations on our compliance work. Additionally, as part of implementation of the Harry W. Colmery Veterans Educational Assistance Act of 2017 (commonly referred to as the "Forever G.I. Bill"), we are working with SAAs on the development of school risk factors and improved processes for conducting risk-based surveys. VA and SAAs have a joint working group to implement these changes. Further, in fiscal year (FY) 2018, Education Service deployed a new information technology system, built on the Salesforce platform, that streamlines and simplifies the compliance survey preparation, data collection, and reporting processes.

VBA notes the statistical methodology fails to transparently disclose the high margin of error and is biased toward for-profit schools, a fact that brings into question the report's conclusions and assertions of inadequate program review, approval, and monitoring. For example, nationwide for-profit institutions represent approximately one in five institutions where VA beneficiaries receive education benefits. This report sampled 70 schools, over seven states and fifty of those institutions were for-profit. In addition, throughout the report, OIG made overly broad conclusions based on a review of only 0.2 percent of the 82,200 Post-9/11 G.I. Bill approved programs.

Finally, the report does not correctly characterize the alleged future potential for improper payments. First, there is the problem with the statistical methodology. Second, VBA disagrees with the repeated use of the term, "potential ineligible programs." If OIG cannot establish factually that a program is ineligible, then the program should not be included in the possible improper payment calculations and extrapolations.

## OIG Response to VBA's General Comments

The OIG views VBA's opposition to its findings and conclusions to be unconvincing. The VBA comments acknowledge that there are several areas in need of improvement and concur, or concur in principle, with the audit recommendations. Moreover, VBA's response takes a contradictory approach by arguing that VBA provides SAA oversight and holds the SAAs accountable, while at the same time asserting that the SAAs have the exclusive, unchallengeable authority to approve, suspend, and withdraw programs in their state. This contradictory understanding of VBA's role and authority is an impediment to providing the SAAs more effective oversight and ensuring approved programs and their schools comply with Title 38 requirements. The OIG does not agree with several assertions in VBA's response—namely, that the OIG does not fully understand and appreciate the nuanced complexities of the VA and SAA contractual relationship; the effectiveness of the VA and SAA contractual relationship; and the roles of the SAAs and the VBA/SAA contractual relationship as it pertains to the cooperation and coordination of approval activities.

VBA's response, which portrays most of its actions in laudatory terms with few admissions that improvements are needed, is disappointing given the acknowledgment in VBA's general comments that several areas needed improvement.

## The VBA/SAA Partnership

VBA stated that “this report does not accurately characterize the strong and effective partnership that has been in place for decades, nor does it accurately reflect the high quality of work performed by most SAAs and VBA employees in the realm of compliance and oversight.” The OIG understands that VBA has had a long-standing, collaborative, contractual relationship with the SAAs established under law and that this contractual relationship places a significant amount of work on SAA and VBA staff. However, this audit specifically assessed whether VBA and SAA developed an effective system of oversight and controls to ensure education and training programs complied with Title 38 requirements, and this report speaks to the VBA–SAA relationship solely within that context. Therefore, the OIG does not agree with VBA's statement that that this report inaccurately characterizes the relationship between VBA and the SAAs.

The OIG also does not agree with the statement that that SAAs are primarily responsible for approvals and are given this authority nearly exclusively under the law. The provisions of 38 CFR § 21.4152, *Control by agencies of the United States*, prohibits VA from supervising or controlling the SAAs, but also specifically states that VA retains the right to determine whether the SAAs are complying with Title 38. Furthermore, 38 U.S.C. § 3679, *Disapproval of courses*, also allows VA to approve or disapprove schools, courses, or licensing or certification tests and does not include any limitations stating VA can only exercise this authority when acting in the role of an SAA. The OIG also noted that the statement about the nearly exclusive authority of the SAAs, except in cases where the state does not have an SAA, directly contradicts prior VBA

actions: VBA stopped an Arizona college in 2015 from enrolling additional students in flight training programs approved by the Arizona SAA until the college complied with Title 38 regulations and suspended payments to Ashford University after the Arizona SAA approved the university's programs in 2017.

## **Oversight and Accountability**

VBA stated that it does not concur with the OIG's conclusion that there has been weak oversight and a lack of accountability for program oversight functions. VBA provided examples of actions it has taken to provide oversight for SAAs and ensure accountability. For example, VBA stated it has "not renewed SAA contracts, suspended payments in selected cases, and required ELRs to work with their respective SAAs to enforce contract requirements, clarify federal requirements, and generally help the SAAs be successful." While it is accurate that VBA took action in some instances, VBA's performance of selected SAA oversight actions and functions does not negate the fact that the audit identified systemic weaknesses in SAA program approval and monitoring. These processes were meant to protect 800,000 Post-9/11 GI Bill students enrolled in over 100,000 education and training programs.

Moreover, absent supporting documentation and context, the OIG questioned several of VBA's statements concerning accountability. For example, VBA stated it has held SAAs accountable and that "the SAA evaluation process had yielded numerous substandard ratings." However, the OIG's review of FY 2014–2015 SAA evaluations during this audit noted that VBA gave unsatisfactory ratings to only three of 57 SAAs in FY 2014 (5 percent) and only two of 55 SAAs in FY 2015 (4 percent). In short, VBA's response discusses its oversight of the SAAs in terms of the legal and technical requirements of Title 38 but does not address the development of an effective system of controls. A control system would ensure VBA and the SAAs work collaboratively to properly approve and monitor educational and training programs and guarantee programs continue to meet the conditions of their approval.

## **Role of the SAAs and VBA**

VBA believed the OIG mischaracterized several aspects of VBA's understanding of what it can and cannot do under the authorities in Title 38 and related implementing regulations. VBA stated that it has obtained numerous formal and informal VA Office of General Counsel (OGC) opinions to support its positions. Subsequently, VBA's response states the following:

According to VA OGC, SAAs have nearly exclusive authority to approve, suspend, or withdraw programs for the Post-9/11 G.I. Bill, not the VA, and this SAA authority is largely unchallengeable. VA holds certain approval authorities as well, but mostly in the context of when acting in the role of the SAA (i.e., in situations where the state has no SAA).

VBA has not provided the OIG with a copy of the OGC opinion cited in its response. Absent more information, the OIG can only state it disagrees with VBA's assertion that it has a limited role in the approval, suspension, and withdrawal of programs.

The OIG acknowledged in the report that VBA does not directly control the SAAs and that VBA has a contractual relationship with the SAAs. Subsequently, the OIG prefaced its recommendations for VBA to clarify approval and monitoring requirements and strengthen quality assurance metrics. The OIG recognizes that VBA would have to negotiate contract amendments, which would also be subject to the availability of SAA resources, to effect these changes. VBA's response asserted that ELRs identify many deficiencies in approval submissions and work diligently with SAAs to ensure that program approvals are complete and accurate, but the response did not provide the OIG any support for this statement. In fact, the OIG cannot agree with the assertion that ELRs identify many deficiencies because the ELR review of the SAA approvals did not identify deficiencies in the 175 reviewed SAA approvals, while the OIG's audit review identified 35. Furthermore, the OIG's review of the SAA contracts, interviews with SAA and ELR staff, and reviews of SAA approval documentation disclosed that the ELRs primarily performed an administrative review of SAA approval—VBA did not require ELRs to review supporting documentation to ensure programs met Title 38 approval requirements.

### **Protection of Taxpayers' Interest**

VBA strongly disagreed with the OIG's assertion that it needs to improve its compliance with FMFIA and OMB Circular A-123 requirements to enhance protection of taxpayer funds. Subsequently, VBA cited the completion of compliance surveys and the identification of over- and underpayments to schools as evidence that it has met FMFIA of 1982 and OMB Circular A-123 requirements.

VBA's presentation of the OIG's position is not accurate. The OIG report did not state VBA has no management controls in place to protect taxpayers, only that it needs to do more to strengthen them. Subsequently, 38. U.S.C § 3673, *Approval activities: cooperation and coordination of activities*, shows that VBA and the SAAs are jointly responsible for ensuring only eligible programs and schools enroll Post-9/11 GI Bill students. Many of the steps VBA cited as steps it has taken to strengthen compliance surveys began after this audit started. Moreover, the VBA did not provide the OIG any support for its assertion that "many SAAs do provide supporting documentation and ELRs review this documentation to determine the completeness and appropriateness of SAA approvals."

The OIG conducted extensive interviews with SAA and ELR staff, as well as reviews of SAA's school approval documentation. The OIG found that the reviewed SAAs did not provide documentation to support their approvals, and more importantly, VBA did not require the SAAs to provide supporting documentation for their approvals. Furthermore, the OIG's compliance

survey reviews and interviews with ELRs and SAA officials established that compliance surveys focused primarily on accuracy of payments, rather than the eligibility of the reviewed programs. However, 38 U.S.C. § 3693, *Compliance surveys*, states that surveys shall be designed to ensure approved courses are in compliance with all applicable provisions. The OIG maintains that preventing ineligible programs from enrolling Post-9/11 GI Bill students and receiving improper payments is as important as the identification of over- and underpayments for complying with FMFIA and OMB Circular A-123 requirements.

VBA stated that the OIG report criticized VA and the SAAs because they did not fully reapprove every program during a compliance survey. VBA also stated that to do so is not within the realm of possibility given the time and resources available for this work. The OIG reiterated that VBA is required under U.S.C. § 3693, *Compliance surveys*, and as part of the implementation of the Harry W. Colmery Veterans Educational Assistance Act of 2017, to ensure programs meet Title 38 requirements. The OIG's issue with VBA's compliance survey process was that it focused primarily on payment accuracy and did not ensure adequate reviews of key areas affecting eligibility, such as unreported program modifications. Moreover, the OIG did not agree with VBA that it was beyond the realm of possibility for compliance surveys to include aspects of eligibility, given time and resources. If VBA and the SAAs implemented a system of controls that ensured the continuous monitoring of programs, such as the timely approval of all program modifications, reapprovals during compliance surveys might not be necessary. In addition, an inordinate amount of time would not be needed because all the required documentation to reapprove programs should be readily available for review at the schools during the compliance surveys. Finally, if VBA confirms program reapprovals cannot be completed using the currently available resources, VBA should address this as part of its evaluation of the sufficiency of the current SAA funding, which the OIG included in its recommendations.

### **Use of the Term Potentially Ineligible Programs**

The Under Secretary for Benefits disagreed with the OIG's use of the term "potentially ineligible programs" because they believe the OIG cannot factually establish that a program was ineligible. The OIG used this term in the report to refer to cases in which neither VBA nor the SAA could affirm programs were eligible, either because the SAAs did not retain required documentation for the initial approvals or the schools did not report program modifications to SAAs.

Subsequently, neither the SAAs nor VBA had any assurance the programs continued to meet the conditions of their approvals after the modifications, even though they were responsible for ensuring the programs' eligibility. The OIG used the term "potentially ineligible programs" in the report to recognize that neither VBA nor the SAAs can document that they established the programs' eligibility since the initial approval or program modification.

VBA further argued that if the OIG cannot establish that a program is in fact ineligible, then the program's payments should not be included in the OIG's improper payment calculations and

extrapolations. The OIG noted that neither VBA nor the SAAs could establish the payments were proper due to insufficient payment documentation. Thus, these payments met the definition of improper payments in OMB Circular A-123, App. C, Pt. I-A, *Risk Assessing, Estimating, and Reporting Improper Payments*, and VA's Financial Reporting Policy, *Payment Integrity and Fraud Reduction*, Volume VII, Chapter 9. VA's Financial Reporting Policy identifies three categories of improper payments, including "instances where the documentation for a payment is so insufficient that the reviewer is unable to discern whether a payment is proper." As such, these payments are correctly included in the OIG's improper payment calculations.

### **The OIG' Statistical Sampling Methodology**

VBA's response included several statements in its general and technical comments that raise questions about the OIG's conclusions and improper payment projections. As a general matter, VBA stated that the OIG reached questionable conclusions and extrapolated improper payments from "a small handful of cases" where the OIG identified SAA mistakes. First, VBA's statement discounts the fact that the OIG's conclusions are also based on the results of multiple interviews with SAA staff and VBA ELRs, as well as several document reviews. The interviews and reviews assessed SAA and VBA policies and procedures used to review, approve, and monitor education and training programs. Second, the OIG disagrees with VBA's repeated assertions that the OIG used a flawed and biased statistical sampling methodology. As a result, the OIG will not make VBA's requested revisions pertaining to the presentation of the audit's sampling methodology in the report.

The sampling methodology the OIG used to prepare its improper payment projections is valid under the principles of statistical sampling. The fundamental premise behind statistical sampling is that if one objectively calculates a sample size and selects a small subset of items to test, the results of the evaluation can be used to make an inference about the larger target population. The sample for this audit is a valid statistical sample because it meets the two basic assumptions for probability sampling: (1) all items or payments in the population had a known chance of being selected, and (2) a random method or procedure was used to avoid selection bias. Furthermore, using probability sampling principles, the OIG applied a statistical formula to the improper payments identified at each state/school/program in the sample to estimate values for the entire population and to calculate margins of error for estimates.

VBA's response included repeated requests for the OIG to explain its statistical sampling methodology and add information about the number and types of educational and training schools in the OIG's sample. In doing so, the response implied that the OIG had not been transparent in its discussions with VBA and the presentation of its statistical sampling in the report. However, the OIG obtained VBA's concurrence on the sampling methodology at the start of the audit and then subsequently held two meetings with VBA officials to discuss the sampling methodology after VBA raised questions at the end of the audit.

## VBA Technical Comments

### **Section: Executive Summary Pages iv-v**

VBA criticized the paragraph in the draft Executive Summary where the OIG presents its ineligible program and improper payment projections, and estimates for programs where VBA lacked sufficient support for the programs' eligibility. Specifically, VBA requested an explanation for the significant changes to the dollar and percentage amounts presented in this paragraph compared to the amounts in the original draft report:

- “Estimated \$585 million in related improper payments.” Modified from the original draft of \$416.5 million.
- “Estimated 11,200 Post-9/11 GI Bill students (76 percent) and receive about \$473.8 million of these improper payments (81 percent).” Modified from the original draft of \$405.9 million and 97 percent.
- “In addition, VBA will issue and [sic] estimated \$2.3 billion in related improper payments during this period if it does not strengthen SAA program review, approval, and monitoring controls.” Modified from the original draft of \$1.6 billion.

VBA also requested the OIG specify the profit status of the 70 schools selected for this audit and requested the addition of the following text after the first sentence of the paragraph:

Subsequently, the audit team identified \$1.54 million in improper Post-9/11 GI Bill tuition and fee payments made for just over 230 students enrolled in 35 of the 175 programs reviewed during the audit. Out of the 70 schools selected in the audit team's sample, 50 of the 70 were for-profit institutions.

OIG's Response: VBA referred to significant changes in the OIG's projections without acknowledging that the OIG disclosed all these statistical calculations and projections in Appendix C of the report. As explained earlier, VBA representatives raised concerns about the high margin of error for one of the improper payment estimates during one of the meetings between the OIG and VBA to discuss the audit's projections. Subsequently, the OIG statistician performed additional calculations to address VBA's concern and account for the variation in the value of the improper payments. These calculations decreased the margin of error, increased the resulting precision of the midpoint estimate, and increased the midpoint projection for the improper payments to \$585 million. The increase in the midpoint estimate caused the related dollar projections to also increase.

The OIG did not agree to revise the audit report to show the number of for-profit and not-for-profit schools in the OIG's sample because VBA's request is rooted in the assertion that the OIG's sample is biased towards for-profit schools. The OIG's sample is not biased towards for-profit schools. The OIG randomly selected 70 schools after the OIG stratified the universe

into three groups: 1) accredited private for-profit, 2) accredited private, nonprofit and public, and 3) nonaccredited, which included private for-profit, nonprofit, and public schools. All the schools had a known chance of being selected and the sampling weights account for the differences in the sample and population proportions in all stages of the selections. Thus, the OIG did not consider it necessary to include the number of for-profit versus nonprofit schools in the report.

**Page 3, Section: Results and Recommendations:**

VBA questioned the paragraph of the Results and Recommendations section, where the OIG presents its projections and estimates of the number of ineligible programs, students enrolled in ineligible programs, and related improper payments. Subsequently, VBA requested an explanation and the basis for the following significant changes in this report:

- “Estimated \$585 million in related improper payments.” Modified from the original draft report of \$416.5 million.
- “Estimated \$473.8 million (81 percent) of these improper payments.” Modified from the original draft report of \$405.9 million and 97 percent.
- “Consequently, more than 17,000 of the estimated 827,000 Post-9/11 GI Bill students will be enrolled in just over 5,400 ineligible or potentially ineligible programs over the next five years. During this time, VBA will issue an estimated \$2.3 billion in related improper payments if the SAAs and VBA do not strengthen program review, approval, and monitoring controls.” Modified from the original draft report of \$1.6 billion.

VBA also requested the OIG modify the paragraph to identify the types of educational institutions represented in the 70 sampled schools and requested that language similar to the following be added to the report: “Out of the 70 randomly selected facilities, 50 were for-profit private institutions, 11 were non-profit private institutions, and 9 were public institutions.”

OIG's Response: VBA referred to the significant changes in the OIG's projections without acknowledging that the OIG disclosed all these statistical calculations and projections in Appendix C of the report. During one of the discussions of the audit's projections, VBA representatives raised concerns about the high margin of error for one of the improper payment estimates. Subsequently, the OIG statistician performed additional calculations to address VBA's concern and account for the variation in the value of the improper payments. These calculations decreased the margin of error, increased the resulting precision of the midpoint estimate, and increased the midpoint projection for the improper payments to \$585 million.

The OIG did not revise the audit report to include the number of randomly selected for-profit or not-for-profit schools in the sample because the sample was not biased towards any type of

educational or training institution. The OIG randomly sampled and selected 70 schools after it stratified the universe into three groups: 1) accredited private for-profit, 2) accredited private, nonprofit and public, and 3) nonaccredited, which included private for-profit, nonprofit, and public schools. All the schools had a known chance of being selected and the sampling weights account for the differences in the sample and population proportions in all stages of the selections. Thus, the sample is not biased as VBA alleges.

**Page 9:**

This paragraph discussed the five SAAs for which OIG identified unreported or delayed reporting of 11 program modifications. VBA specifically requested the addition of the following statement to this paragraph:

“During the period covered by the audit, those five SAAs provided oversight for a total of \*X approved programs at \*X number of public, \*X number of private for-profit, and \*X number of private non-profit, educational institutions.”

\*VBA did not have this information available for a revision to add the number of approved programs at public, for-profit private, and nonprofit private schools chosen by the OIG for this audit.

OIG Response: The OIG did not add this statement to the report because the paragraph discussed the specific oversight the five SAAs provided the sampled programs relative to the review of program modification. The OIG could not affirmatively attest to the oversight the SAAs provided all of the approved educational institutions in their states.

**Draft Pages 15-16 [Final Page 14-15]:**

This section of the report discussed VBA’s general hands-off approach to the SAAs, as VBA felt it did not have to establish any controls for SAA oversight beyond those expressly required by statute. The paragraph identified the specific gaps or weaknesses the OIG found in VBA’s oversight of SAA program review, approval, and monitoring processes.

VBA objected to the statement, “VBA generally took a hands-off approach to the SAA’s review, approval, and monitoring processes in its contractual relationship with the SAAs...”

Furthermore, VBA asserted

This statement is incorrect and we request it be stricken from the report. ELRs provide hands-on assistance, collaboration with, and monitoring of SAAs throughout the year to ensure compliance with contractual requirements. ELRs conduct thorough reviews of approvals. Program modifications are reviewed by SAAs when reported; marketing materials are reviewed during compliance surveys; many approval requirements are reviewed during compliance surveys. VA has been unable to conduct more robust audits of approval requirements due

to resource constraints. SAAs are in fact, evaluated against contractual requirements and rated annually through a mutually agreed upon process with participation of VA and SAA leaders. Additionally, significant time and effort are expended each year negotiating changes to the VA-SAA contract which includes performance measures for SAAs.

OIG's Response: VBA objected to the OIG's characterization that VBA took a hands-off approach to the SAA's review, approval, and monitoring processes in its contractual relationship with the SAAs. The OIG found VBA's objection without merit when VBA asserted in its own response that SAAs have nearly exclusive authority to approve, suspend, or withdraw programs for the Post-9/11 GI Bill. VA added that this SAA authority is largely unchallengeable except when a state does not have an SAA. The OIG never contended that the ELRs do not work with the SAAs throughout the year to assist them and to ensure compliance with the contractual requirements, or that their efforts were not valued. However, the ELRs could not perform thorough reviews of approvals because VBA did not require SAAs to provide the ELRs any supporting documentation for review. Thus, the ELRs performed attestation reviews of the SAA's approvals and did not identify the problems the OIG identified during the audit.

In addition, VBA has not worked with the SAA to address the gap in monitoring when schools do not report program modifications, and has instead insisted the SAAs have sufficiently met Title 38 requirements if the SAAs review all the reported program modifications. Likewise, VBA asserted that initial program approvals and marketing materials were reviewed during compliance surveys. However, as discussed in the report, the OIG found that VBA compliance surveys generally focused on payment accuracy rather than ensuring the programs' continued compliance with approval requirements. Although VBA evaluates SAAs annually against contract requirements, its performance evaluations focus on the number of compliance surveys the SAAs have completed and the timeframes for completion rather than the quality or thoroughness of the completed surveys.

Finally, while VBA claimed it expends significant time and effort each year negotiating changes to the VBA-SAA contracts, including changes to performance measures, the OIG noted VBA only made one significant contractual change from FY 2014-2017. VBA added a contract requirement for SAAs to review and approve non-college degree programs after Congress made these programs eligible for Post-9/11 GI Bill payments. The OIG did not find VBA's objections compelling and stands by its characterization of VBA's monitoring and oversight of the SAAs as "hands-off" due to the limitations it noted in the quality and depth of VBA's SAA monitoring and oversight.

**Draft Page 16, Section: ELR Review [Final Page 15]**

In this draft paragraph, the OIG attributed the following statement: “The SAAs are responsible for the approval of programs and ensuring the quality and effective administration of programs that enroll students” to the Executive Director of VBA Education Service.<sup>90</sup> VBA requested OIG remove, “According to the Executive Director, Education Service” from this sentence and insert “Under current law,” in its place.

OIG's Response: The OIG wishes to clarify that the Executive Director did make this statement during a meeting with the OIG on May 22, 2017. Furthermore, as discussed earlier, the OIG does not agree with VBA that the law states only the SAAs are responsible for the approval of programs and ensuring the quality and effective administration of programs that enroll students. The OIG noted that 38 U.S.C. § 3673, *Approval activities: cooperation and coordination of activities*, provides that SAAs and VA are both responsible for the oversight and monitoring of programs:

The Secretary and each State approving agency shall take cognizance of the fact that definite duties, functions, and responsibilities are conferred upon the Secretary and each State approving agency under the educational programs established under this chapter and chapters 34 and 35 of this title. To assure that such programs are effectively and efficiently administered, the cooperation of the Secretary and the State approving agencies is essential.

Accordingly, the OIG did not agree to change this statement in the report.

**Page 18 [Final Pages 16-17]:**

This draft paragraph discussed one SAA for which the OIG did not identify any unreported modifications among the 27 programs examined and noted that this SAA had implemented controls to help it detect and review unreported program modifications. VBA requested the OIG add the following information about a second reviewed SAA for which the OIG did not identify any unreported modifications:

“One SAA, which did not have any unreported modifications among the 18 programs the OIG reviewed, had not established any additional controls regarding program modifications.”

OIG's Response: The OIG agreed to restore the requested information to the report, which had been inadvertently removed during the editorial process.

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<sup>90</sup> The former Executive Director of VBA Education Service was appointed the Houston Regional Office Director on November 9, 2018. The OIG has updated the report to refer to the “former” Executive Director but did not revise his title in the Management Response and OIG Comments section of the report because this change did not occur until after VBA provided its management response.

**Draft Pages 19-20, Section: Monitoring of Advertisement Practices [Final Pages 18-19]:**

This section set forth the fact that VBA did not ensure SAAs monitored advertisements to ensure they were not engaging in deceptive advertising. The OIG found that several schools, without the knowledge of their SAAs, were employing such advertising. The section also explained the OIG's application of FTC guidelines to assess the schools' advertisements. Finally, it discussed VBA's and SAAs' contentions that they are not required to check for deceptive advertisements after the programs' initial approval, except during compliance surveys.

VBA's comments about this section are presented in their entirety below:

It is untrue to assert that the VA did not ensure SAAs monitored advertisements to detect deceptive practices. SAAs review marketing materials at the time of program approval, and are engaged when beneficiary complaints related to marketing are received. The Federal Trade Commission (FTC) guidelines referenced in this section are extremely subjective and were applied by the OIG in the most critical manner; even to the point of identifying a comment in a school website saying, "VA Approved" when it is most technically correct to say, "SAA approved." By the "reasonable person" standard, the test applied by the FTC, there is little to no distinction between, "SAA Approved" and "VA Approved". It is unreasonable to conclude that such a statement, ipso facto, constitutes willful deception. Therefore, any school identified by the OIG as engaging in deceptive practices for this reason should be removed from the improper payments calculation. Because of these inaccuracies, OIG should revise those paragraphs to state the following:

VBA and the SAAs periodically monitor advertisements to detect erroneous, deceptive, or misleading advertising at schools as required by federal law, which specifically prohibits the enrollment of students in programs at schools that engage in these types of practices. Under federal law and the SAA contracts, the SAAs are responsible for ensuring programs continue to meet the conditions of their approvals. VA, at the time of our audit, also had an agreement with the FTC to assist with the investigation of potential erroneous, deceptive, or misleading school and/or program advertisements.

After applying FTC guidelines, the audit team found that eight schools with 18 approved programs employed these types of advertisements at the time of the audit without the apparent knowledge of their four SAAs. For the remaining three SAAs where the audit team did not identify any schools or programs with deceptive advertisements, one SAA proactively checked the advertisements when it required schools to reapply periodically for program approvals.

The Executive Director, Education Service stated that VBA requires SAAs to review the advertisement practices of schools and programs during a program's initial review and approval and during compliance surveys. He also indicated that VBA had developed other controls in its review of student complaints—the GI Bill Comparison Tool and Principles of Excellence Guidelines—to protect students and deter schools and programs from engaging in erroneous, deceptive, or misleading practices. The Executive Director, Education Service, and six of the seven reviewed SAAs maintained they were not required by law to check for deceptive advertisements after the initial approval except during the compliance surveys.

Like the previous discussion of the ELR reviews and review of program modifications, the circumscribed role VBA and SAAs took regarding the monitoring of schools and program advertisements practices allowed these practices to go undetected at schools and programs enrolling Post-9/11 G.I. Bill students. This lasted for longer periods of time than would be the case if VBA required SAAs to review advertising practices more often.

OIG's Response: VBA contended that SAAs monitor advertisements to detect deceptive practices. However, the OIG could not verify that the reviewed SAAs examined advertisements when they granted approvals because they did not retain required documentation for initial approvals. Additionally, five of the seven reviewed SAAs did not monitor advertisements after the initial approval to ensure schools did not employ deceptive or potentially deceptive advertisements after they were approved. Title 38 specifically prohibits the enrollment of students in programs at schools that engage in erroneous, deceptive, or misleading practices. Thus, the OIG disagreed with VBA's contention that the SAAs' involvement in addressing deceptive practices in response to student complaints about deceptive practices sufficiently safeguards students and meets the continuous monitoring requirements in Title 38.

Furthermore, VBA contended that the FTC standards are extremely subjective and that the OIG applied them in a critical manner in assessing the advertising practices of the reviewed schools. The OIG specifically identified the 10 cases where schools employed deceptive practices in Appendix D of the report. The OIG consulted the FTC to ensure that OIG applied the FTC's guidelines appropriately in evaluating the advertisements. Moreover, seven schools included unsupported, incorrect, or misleading information or data in their advertisements about their accreditation, post-graduation employment rates, and/or graduates' salaries. One school even used the VA seal and the title, "Department of Veterans Affairs Education," on its website, potentially leading visitors to believe it was part of VA. VBA did not mention that many of these schools agreed to remove or change their advertisements when they were contacted by the OIG.

Instead, VBA's response focused on two cases where the OIG cited the schools for claiming they were approved by VA. VBA portrays these two cases as evidence of the OIG's overly critical application of the FTC's "subjective" guidelines and an issue of semantics. Based on VBA's

application of the FTC's "reasonable person" standard, VBA contended in its response that there was little to no distinction between, "SAA Approved" and "VA-Approved." The OIG cannot agree with VBA that it is acceptable for educational institutions to claim they are VA-approved and will not adjust its improper payment projections. First, the National Association of SAAs issued guidance to SAAs reiterating that VA does not approve programs, the SAAs do, and that school advertisements indicating schools or programs have been "VA-Approved" target veterans and are misleading. Second, the OIG's discussion with the FTC confirmed the use of language indicating VA has approved a program or school is misleading because it can be construed that the "VA-Approved" schools are better than those which do not claim they are VA-Approved. Finally, the OIG contends the use of "VA-Approved" in advertisements is contrary to Executive Order 13607, which required VA to take appropriate steps to ensure GI Bill recipients were not targeted by deceptive and fraudulent marketing.<sup>91</sup> Subsequently, VA trademarked the term "GI Bill" on October 16, 2012, to prohibit parties from using the GI Bill to imply a relationship, affiliation, or endorsement by the VA. One of the two schools the OIG cited for using "VA-Approved" on its website also violated VA's trademark by stating the school was "approved by the VA to accept GI BILL."

**Draft Page 21 [Final Page 20]:**

This sentence presented the annual number of quality reviews conducted by VBA for SAA- and VBA-completed compliance surveys. VBA requested that the presentation be revised to break down this information by quarter. VBA requested the following revision:

VBA performs annual quality reviews of approximately 1,000 of the SAA-completed compliance surveys and three compliance surveys are performed by VBA staff each quarter. These quarterly quality reviews are completed on each Education Compliance Survey Specialist (ECSS) and Education Liaison Representative (ELR). VBA also completes five quality reviews on each SAA per quarter.

OIG Response: Based on interviews with VBA staff and supporting documentation, the OIG agreed to add quarterly information about VBA's quality reviews. However, the revisions on page 21 of the final report are based on the documentary evidence and supporting information the OIG obtained during the audit, and they do not exactly mirror the changes requested by VBA in its response.

**Draft Pages 22–23, Section: Annual Contract Performance Evaluations [Final Pages 20-21]:**

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<sup>91</sup> Executive Order 13607, *Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members*, April 27, 2012.

This section noted that VBA evaluates SAA performance based on SAA self-evaluations, and that the SAA contract performance metrics focus on the timeliness of the initial approvals and the number of completed compliance surveys rather than the quality of the SAAs' performance. Subsequently, VBA asserted the following in its comments:

This section has incomplete and inaccurate information relating to the SAA annual evaluation process, as specified in 38 U.S.C. § 3674A(a)(1)(A) and 38 C.F.R. § 21.4155(a)(1) particularly the narrative related to the view ascribed to the Executive Director, Education Service. The SAA self-evaluation is just one input in the overall SAA annual evaluation process. The fact that this self-evaluation is likely to place the SAA in the most positive light is not lost on Education Service. Therefore, the VBA ELR also provides an assessment of the SAA's contract performance for the year.

The SAA self-evaluation and the ELR's independent evaluation are both reviewed and discussed during the annual Joint Peer Review Group (JPRG) meeting, consisting of VBA and SAA participants. This process provides checks and balances and does not rely solely on a potentially biased or erroneous SAA self-evaluation. The JPRG applies human judgment and fairness during the review of the SAA's and ELR's written evaluations. Additionally, there is an incorrect statement in this section asserting that VBA does not consider and assess whether SAAs properly grant initial approvals or ensure programs continue to meet all eligibility requirements during the annual contract performance evaluation. The annual evaluations do cover an SAA's performance with respect to approvals. For example, the Arizona SAA received a "minimally satisfactory" rating for FY 2017 because it was determined that the approval of one of the school's programs was legally insufficient. While OIG is correct that timeliness factors are in the SAA contract, ELRs also review qualitative factors specifically related to compliance with the applicable requirements codified in Title 38 U.S.C. and Title 38 C.F.R.

Because of these inaccuracies, OIG should revise those paragraphs to state the following:

"VBA and representatives from the National Association of State Approving Agencies evaluate the SAA performance annually based on the agreed-upon performance metrics in the SAA contracts, the ELR's annual evaluation of the SAA and the SAA's self-evaluation. The SAA's self-evaluation consists of three parts: a rating, descriptive data (such as the number of approvals, including initial and revised approvals, and compliance surveys conducted), and a narrative describing the performance of their functions throughout the year.

VBA and many of the SAAs have a differing view of what is evaluated when SAAs report re-approvals on their self-evaluations. The Senior Management

and Program Analyst stated that the re-approvals on the self-evaluations indicated the SAAs reviewed the programs' continuing eligibility. However, six of the seven reviewed SAAs stated that they reported their review and approval of specific program modifications as re-approvals on the self-evaluations and they did not perform complete reviews of the programs' eligibility.

The SAA performance metrics focus on the timeliness of the initial approvals and the number of completed compliance surveys, as well as the quality of the SAAs' performance. The OIG found that VBA often lacked information needed to evaluate the adequacy of the quality, completeness, and accuracy of the SAAs' reviews and decisions. This occurred because VBA generally does not require the SAAs to provide any supporting documentation or verify the information the SAAs have evaluated—even when it conducts its own quality reviews.

The audit results indicated that VBA should place more focus on the following criteria in its annual evaluations of SAA performance:

- The accuracy and quality of the SAAs' initial program and program modification approvals
- The effectiveness of compliance surveys and related quality assurance reviews in identifying and addressing eligibility issues; and
- The quality, completeness, and accuracy of the SAAs' decisions and monitoring during the annual SAA evaluations"

OIG's Response: VBA asserted that the OIG had not accurately portrayed the performance evaluation process and that the SAAs' self-assessments were counterbalanced by the assessments provided by the ELRs. VBA considers the Joint Peer Review Group, which includes both VBA and SAA members and considers both the SAA self-assessments and the ELR's assessments, an adequate system of checks and balances. The annual ELR assessments do rate the SAAs on several factors, including the number of program approvals, number of returned approvals, type of returned approvals, number of programs the SAAs have disapproved, number of site visits, and number of completed compliance surveys. However, the SAA performance assessments prepared by the ELRs focus only on quantitative measurements of SAA performance, consistent with the terms of the SAA contracts. The SAA contracts do not include any qualitative performance metrics to address the quality of initial approvals or continued monitoring of programs. Therefore, the ELR assessment provides an incomplete counterbalance for the SAA self-assessment. VBA offered the minimally satisfactory rating received by the Arizona SAA as evidence of the rigor of its review processes, but that was an extreme case where the SAA approved a program even though the school did not appear to have any teaching locations in the

state. VBA was compelled to suspend the school after the SAA approved it. The OIG did not agree with VBA's contention that that it had incomplete and inaccurate information about the annual SAA evaluation process. Thus, it did not make the report revisions VBA requested.

**Draft Pages 23–24, Section: Conclusion [Final Pages 21-22]:**

The report's conclusion section summarized VBA's lack of effective SAA oversight and presented the consequences in terms of the estimated number of ineligible SAA-approved programs, amount of improper payments, and number of students enrolled in ineligible programs. VBA asserted that the conclusions reached in this report are questionable because of a flawed and biased statistical methodology, and disagrees with the following draft OIG statement and requested it be removed from the report:

However, audit results show that VBA has not provided the SAAs effective oversight to ensure schools and programs meet Title 38 requirements and are not abusing the Post 9/11 G.I. Bill program.

First, VBA believed the report disregarded the significant and impactful work being done to provide proper oversight and enforcement of compliance with statutory and regulatory requirements. Second, VBA contended that while the OIG may have uncovered some mistakes made by SAAs in a small handful of cases, the OIG has not established, nor in any way made a case for, abuse of the Post-9/11 GI Bill program. Furthermore, VBA argued that the OIG's analysis extrapolating the amount of projected potential improper payments should either be eliminated, recalculated, or, at a minimum, include language in the report identifying the extremely high margin of error associated with the projected numbers.

VBA stated the OIG should revise the final paragraph before its recommendations as follows:

In total, the OIG projected that VBA annually issues an estimated \$585 million (based on OIG's sampling of 70 schools, 50 being for-profit institutions) in related improper Post-9/11 G.I. Bill tuition and fee payments to ineligible or potentially ineligible schools, and that \$473.8 million of this amount will be paid to for-profit schools. In addition, it should be noted that VA for-profit institutions represent one-fifth of the total student population and that for-profit institutions were over sampled for this audit. The \$585 million represents a projection of the tuition and fees paid under the Post-9/11 GI Bill and is based on the school samples selected for this audit and extrapolated based on the total amount of tuition and fees paid.

VBA again requested an explanation of and the basis for the significant changes to dollar and percentage amounts from the draft report, as stated previously and continued throughout this report.

OIG Response: The OIG decided for editorial reasons to revise the report language to omit the reference to the risk of schools and programs abusing the Post-9/11 GI Bill program from this

section of the report. However, the OIG stands by the overall results and findings of this audit. VBA stated that the OIG has reached questionable conclusions and extrapolated improper payments from “a small handful of cases” where the OIG identified SAA mistakes. VBA’s statement discounted the fact that the OIG’s conclusions were also based on the results of numerous interviews with several SAAs and VBA ELRs, as well as several document reviews performed during the audit. The OIG used these interviews and reviews to assess the policies and procedures the SAAs and VBA used to review, approve, and monitor education and training programs.

Second, the OIG disagreed with VBA’s assertion that the OIG used a flawed and biased statistical sampling methodology and will not make VBA-requested revisions pertaining to the audit’s sampling methodology. As stated earlier, the fundamental premise behind statistical sampling is that if one objectively calculates a sample size and selects a small subset of items to test, the results of the evaluation can be used to make an inference about the larger target population. The sample for this audit is a valid statistical sample because it meets the two basic assumptions for probability sampling: (1) all items or payments in the population had a known chance of being selected, and (2) a random method or procedure was used to avoid selection bias. Furthermore, using probability sampling principles, the OIG applied a statistical formula to the improper payments identified at each state/school/program in the sample to estimate values for the entire population and to calculate margins of error for estimates.

Again, VBA referred to significant changes in the OIG’s projections without acknowledging that the OIG disclosed all these statistical calculations and projections in Appendix C of the report. Furthermore, VBA did not acknowledge that the significant changes in the projections occurred after the OIG addressed concerns that VBA representatives raised about the high margin of error for one of the audit’s improper payment estimates. After VBA raised its concerns, the OIG statistician performed additional calculations to address the concerns and account for the variation in the value of the improper payments. These calculations decreased the margin of error, increased the resulting precision of the midpoint estimate, and increased the midpoint projection for the improper payments to \$585 million.

Also, as stated previously, OIG is not asserting that VBA and the SAAs do not provide any program oversight. Instead, the OIG’s results and findings showed that VBA and the SAAs need to do more to provide proper program oversight and ensure educational and training institutions and their programs comply with statutory and regulatory requirements.

**Additional VBA Technical Comments Regarding the OIG’s Sampling Methodology:**

The OIG addressed VBA’s general criticism of the OIG’s sampling methodology earlier in the Management and OIG Response section of the report. Additional VBA technical comments

regarding the OIG's sampling methodology and the OIG's response are presented in Appendix C.

## Appendix A: Background

### Approval and Continuing Approval Requirements for VA Education Programs

VBA's Education Service administers benefits to help veterans and eligible family members fulfill their educational goals. Students can only use their education benefits to enroll in SAA- or VA-reviewed and approved programs. For accredited programs, SAAs must confirm that the program is accredited and approved by a nationally recognized accrediting agency or association, ensure schools maintain adequate records to show students' progress and grades, and ensure schools enforce satisfactory standards related to academic progress and conduct.<sup>92</sup>

Under Title 38, all schools must submit an application and a catalog that includes the school's policies and regulations relative to standards of progress—grading system, graduation requirements, and attendance requirements—and student conduct.<sup>93</sup> The SAA must evaluate accredited and nonaccredited programs to ensure

- The courses, curriculum, and instruction are consistent in quality, content, and length with similar courses in public schools and other private schools in the state, with recognized accepted standards;
- There is adequate space, equipment, instructional material, and instructor personnel to provide training of good quality;
- Directors, administrators, and instructors are qualified and possess adequate education and experience; and
- Compliance with any additional reasonable criteria established by the SAA.<sup>94</sup>

SAAs must also perform more in-depth reviews when programs are not accredited. For nonaccredited programs, the SAA must ensure the course catalog contains

- A calendar showing legal holidays;
- The beginning and ending date of each quarter, term, or semester;
- Other important dates;
- Detailed schedules of fees;

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<sup>92</sup> 38 U.S.C. §§ 3675(a)(1)(A) and (b)(1).

<sup>93</sup> 38 U.S.C. §§ 3675–3676.

<sup>94</sup> 38 U.S.C. § 3676; 38 CFR § 21.4253(d).

- Charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits;
- All other charges; and
- Policies and regulations relative to the refund of unused portions of tuition, fees, and other charges in the event of student withdrawals or the discontinuance of a program or course.<sup>95</sup>

Schools must comply with all local, city, county, municipal, state, and federal regulations—such as fire, building, and sanitation codes—and be financially sound and capable of fulfilling their commitments to educate and train enrolled students.

In 1963, Congress requested the states create or designate a state department or agency as the SAA for all educational programs at schools receiving VA education benefits under Title 38. The SAAs operate under a contract with VA to perform their duties of approving, reviewing, and evaluating education programs at schools. In addition, SAAs provide technical assistance to schools, conduct outreach activities that link veterans to the SAA and VA, act as liaisons for veterans to collaborate with VA, and ensure contract compliance by preparing self-evaluations and timely invoices.

Under the terms of the SAA contracts, the SAAs are required to submit accurate approval packages to the ELRs, which include a

- Completed application,
- Catalog,
- Decision letter,
- Inspection report for nonaccredited courses, and
- Administrative forms.

The ELRs use checklists developed by VBA's SAA contract management team, the Chief Education Liaison Officers, and the ELRs to perform administrative quality reviews of the approval packages. The ELRs use the applicable checklists based on the type of program to ensure that all required VA forms have been submitted and are complete. They also verify that all applicable policies are in the school catalog, such as attendance standards, student conduct, and standards of progress.

The most recent contract, issued in FY 2014, is currently in its fourth option year. VA is required to conduct annual evaluations of SAAs, during which VBA's ELRs assess the SAAs to ensure

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<sup>95</sup> 38 U.S.C. § 3676.

they diligently perform their duties and comply with federal laws.<sup>96</sup> The contract establishes the minimum performance standards each SAA needs to meet to obtain a satisfactory evaluation and details the goals the SAAs are expected to meet during the contract year or FY. Each FY, ELRs evaluate the SAAs' performances based on metrics outlined in the contracts and provide the SAAs with a rating. The SAAs also submit ratings and self-evaluations of their performance for the year. The Joint Peer Review Board, composed of four Chief Education Liaison Officers and four representatives from the SAAs, assesses the evaluations and makes a final determination regarding the rating.

## Compliance Survey Process

During the audit period, Congress required VBA to complete annual compliance surveys for non-college degree schools and schools with 300 or more students receiving VBA education benefits, unless a waiver was granted.<sup>97</sup> The compliance surveys included reviews of student records such as transcripts, financial ledgers, and approved courses. The compliance surveys are designed to

- Ensure continued program approval eligibility,
- Identify and minimize errors,
- Take corrective action in areas where schools have not submitted accurate and complete tuition and fee certifications, and
- Prevent deficiencies or violations due to misunderstandings or misinterpretations of the law.

On December 16, 2016, Congress superseded the prior requirement and began requiring VBA to conduct compliance surveys once every two years for any school with a population of 20 or more students receiving VBA education benefits.

## For-Profit Schools

A U.S. Senate Committee on Health, Education, Labor, and Pension report, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, raised serious concerns about for-profit schools. The investigative report detailed problems related to student recruitment, substandard academic offerings, high tuition and executive compensation, low student retention rates, and the issuance of credentials of questionable value. The report contained profiles of 30 for-profit schools, including large for-profit schools such as Apollo

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<sup>96</sup> 38 U.S.C. § 3674A.

<sup>97</sup> 38 U.S.C. § 3693.

Group Inc., which operates the University of Phoenix and Western International University; Corinthian Colleges, Inc.; ITT Educational Services, Inc.; and DeVry, Inc. Since this report, some for-profit schools have been the subject of legal complaints, lost their eligibility for federal student aid funding, and ultimately been forced to close campuses and schools. The closures of Corinthian Colleges, Inc. and ITT Educational Services in 2015 and 2016, respectively, demonstrated the significant effect closures have on Post-9/11 GI Bill students. Subsequently, members of Congress introduced H.R. 1216, Protecting Veterans From School Closures Act of 2017, on February 24, 2017.

## Related OIG and GAO Reports

Four prior OIG reports have identified significant financial risks and issues in VBA's administration of the Post-9/11 GI Bill program, including delayed payment processing, improper payments, and missed recoupments in the Post-9/11 GI Bill program:

- The VBA *Audit of Post-9/11 G.I. Bill Tuition and Fee Payments* (Report No. 14-05118-147, September 30, 2016) disclosed VBA and Regional Processing Office staff made 85 improper payments and missed recoupments totaling more than \$187,000, and that improper payments and missed recoupments could total an estimated \$2.3 billion over the next five academic years if VBA did not improve program controls.
- The VBA *Audit of Post-9/11 G.I. Bill Monthly Housing Allowance and Book Stipend Payments* (Report No. 13-01452-214, July 11, 2014) found that students experienced delays in the payment of about \$60.8 million in benefits, and that improper payments and missed recoupments would total about \$205 million over five years if VBA did not strengthen processing controls.
- The *Audit of Education Claims and Payments for the Post-9/11 G.I. Bill* (Report No. 09-03458-18, November 3, 2010) identified processing delays and systemic errors due to software functionality and inadequate staffing levels.
- The *Review of Alleged Improper Emergency Payments for Education Benefits* (Report No. 10-01248-249, September 14, 2010) found that VA emergency payments to ineligible military servicemembers and veterans who did not participate in VA education programs resulted in about \$87 million in unrecoverable debts.

Three Government Accountability Office (GAO) reports also identified problems related to SAA approval processes and oversight:

- In its report *VA Education Benefits: Actions Taken, but Outreach and Oversight Could Be Improved* (Report No. GAO 11-256, February 2011), GAO found that VA lacked comprehensive information on the effectiveness of its oversight of SAAs and schools.

- In its report *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices* (Report No. GAO-10-948T, August 4, 2010), GAO identified deceptive practices that were occurring at for-profit schools.
- In its report *VA Student Financial Aid: Management Actions Needed to Reduce Overlap in Approving Education and Training Programs and to Assess State Approving Agencies* (Report No. GAO-07-384, March 2007), GAO found VA lacked adequate outcome measures to evaluate the SAAs' performance.

## Appendix B: Scope and Methodology

### Scope

The audit team conducted its work from March 2016 through April 2018. The audit focused on SAAs that approve programs at schools that received Post-9/11 GI Bill tuition and fee payments for students during the 12-month period ending January 31, 2016. The audit team developed a sampling methodology that resulted in the review of seven out of 51 SAAs. These SAAs were located in California, Mississippi, Nebraska, New Jersey, New Mexico, New York, and Oregon, and were responsible for the review and approval of about 33,000 programs at over 1,900 schools. The audit team sampled 175 programs at 70 schools approved by these seven SAAs.

### Methodology

For each statistically reviewed program, the audit team obtained information from the schools, SAAs, and ELRs. Specifically, the audit team reviewed the programs' and schools' information, such as approval files, catalogs, accreditation packages, licenses, advertising practices, and financial records, to evaluate the SAAs' approval processes. The audit team also obtained, reviewed, and assessed the SAAs' FY 2015 and FY 2016 contracts to determine if SAAs effectively met the terms. The audit team reviewed this information to determine if the SAAs properly approved programs, ensured the continued eligibility of approved programs in accordance with applicable laws, and adequately ensured only eligible programs participated in VBA education benefit programs.

The audit team also randomly reviewed a maximum of five programs at each school to evaluate and test the SAAs' review and approval processes. Finally, the audit team interviewed SAA staff and VBA officials and staff to obtain information about SAAs' contracts, schools' program approvals, and controls. The OIG shared all of its findings with the SAAs and ELRs and received their concurrence on reported issues. The OIG attempted to share and review all of its findings with schools, but was unable to secure concurrence on all the reported issues because the team either was unable to reach them following contact attempts, or in one case, the school disagreed that it could not use the VA emblem.

### Scope Limitations

The audit team only included Post-9/11 GI Bill tuition and fee payments as part of the sampling frame for programs and schools due to the data limitations on payments for other education benefit programs. These limitations did not affect the audit results because the information obtained from the schools, SAAs, and VBA was sufficient to support the audit's results and conclusions. The audit sample was representative of the population because VA estimated the Post-9/11 GI Bill program accounts for about 82 percent of VA education benefits disbursements. Other education programs, including the Montgomery GI Bill and Vocational

Rehabilitation and Employment, are included in the remaining 18 percent of the education benefit disbursements.

## **Fraud Assessment**

The audit team assessed the risk of fraud, violations of legal and regulatory requirements, and abuse during this audit. The audit team exercised due diligence and stayed alert to fraud indicators. The audit team

- Solicited the OIG's Office of Investigations for potential fraud cases involving schools in the audit sample, and
- Assessed school and program eligibility and student data for fraud indicators, such as payments made to unapproved programs.

The OIG referred two schools to the OIG Office of Investigations for further evaluation when it identified potential fraud.

## **Data Reliability**

To achieve the audit objective, the audit team relied on computer-processed data contained in VA's Benefits Delivery Network (BDN) reporting system. The audit team assessed the reliability of these data by tracing the accuracy of school information using source documents stored in another VA system, the Web Enabled Approval Management System. Additional data reliability tests included steps to identify any missing data in key fields, calculation errors, and data outside the period of performance. Based on these tests and assessments, the audit team concluded the data were sufficiently reliable to use to meet the audit's objectives.

## **Government Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix C: Statistical Sampling Methodology

The audit team obtained Post-9/11 GI Bill tuition and fee payments from VA's Benefits Delivery Network for the 12-month period ending January 31, 2016. From this universe, the audit team used a multistage stratified sampling approach with a combination of sampling techniques, including simple random and stratified sampling, to select its sample. At the first stage, a simple random design was used to select seven of 51 SAAs that had a contract during the audit period under review. The audit team excluded states that did not have a contract with VA and all U.S. territories. The audit team then selected 10 schools from each sampled SAA (for 70 schools) at the second stage using probability proportional to size. The sample of schools was stratified based on school type: accredited/public nonprofit (to include Institutes of Higher Learning), accredited for-profit, and nonaccredited schools. From the 70 schools, a sample of five programs per school was selected at the third stage using simple random sampling. However, some schools had less than five programs and in those cases all programs at that school were reviewed, for a total of 175 reviewed programs.

The audit team obtained approval documentation related to accreditations, licenses, catalogs, advertisements, and financial records to determine if the SAAs correctly approved programs and continued to ensure their compliance with Title 38 requirements as required by federal law. The audit team used the most current 12-month period of data available at the start of the audit.

### Population

The audit team selected the population based on the parameters of the audit objective by identifying just under 82,200 programs totaling \$4.97 billion in tuition and fee payments from VA's BDN. These payments were made on behalf of more than 750,000 Post-9/11 GI Bill students to nearly 8,200 schools during the 12-month review period.

### Sampling Design

The audit team developed a multistage simple random and stratified sample. A multistage sampling design is efficient and valid because it gives larger accounts and locations more chance to be selected while also controlling for time and travel; there is no need to use other allocation methods for dollar coverage. The sample was based on the number of states that had a contract with the SAAs, schools within those states—accredited nonprofit, accredited for-profit, and nonaccredited—and the programs within those schools. Using these strata in the sampling methodology, the audit team segregated the universe to give all states, schools, and programs a known chance of being selected. This methodology allowed the audit team to project its results over the whole population and the different SAAs. The sampling design was representative of the sample and ensures projections describe the entire population. In addition, this sample methodology is dictated by the structure of the SAA approval and monitoring program that gives

the SAAs authority over the programs operating within their states. It also requires the SAAs to adhere to different requirements for the review and approval of accredited and nonaccredited programs. The sampling methodology resulted in the review of 175 randomly reviewed programs of study, for which VBA made tuition and fee payments totaling just under \$7 million.

## Weights

The audit team calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling.

Since each SAA had a different number of programs and schools and the sample sizes were varied across all SAAs, the sampling weights also varied in size. This accounts for the percentages calculated from the raw sample numbers being different from the percentages calculated from the weighted projections.

## Projections and Margins of Error

The margins of error and confidence intervals are indicators of the precision of the estimates. If the audit team repeated this audit with multiple samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time.

The audit team used the point estimate amounts for each of the projections. The OIG's statistician projected a midpoint estimate of \$416.5 million in improper payments directly from the sample payment values for cases in error. This projection had a 90 percent confidence interval of \$26.4 million and an upper limit of \$806.5 million. The wide confidence interval—the variation of the lower and upper limits from the midpoint—indicated the midpoint estimate had low precision.

Further review and analysis determined that the high variation in the values of the improper payments in the population was a contributing factor to the estimate's low precision. The improper payment values identified by the audit ranged from approximately \$2,000 to \$800,000. Subsequently, the OIG statistician calculated a combined school and program error rate of 12 percent and then multiplied that by the average payment value in the population. Using the combined school and program error rates and the average population payment value of \$2,400 instead of the individual error rates and the values of the improper payments from the sample controlled the variability in the identified improper payments and improved the precision of the resulting midpoint estimate.<sup>98</sup> The resulting midpoint estimate, \$585 million, based on the

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<sup>98</sup> The average population payment value is a conservative estimate of the errors identified by the audit because it is lower than the average payment error of \$2,900 in our sample.

combined school and program error rate, has a 90 percent confidence interval of \$389.9 million to \$780 million. (See Table 3.)

Based on the \$4.97 billion in tuition and fee payments made during the 12-month period, the audit team projected that more than 11,200 students will attend just under 4,400 ineligible school programs from 44 of 51 SAAs (86 percent). Furthermore, VBA will issue an estimated \$585 million in education benefits annually and that it had an error rate of 12 percent.

**Table 3. Statistical Projections Summary for Program Eligibility  
(Dollars in Thousands)**

Error types	Lower limit	Point estimate	Upper limit	Margin of error
Error payments sample estimate	\$26,400	\$416,500	\$806,500	\$390,000
For-profit amount	\$15,900	\$405,900	\$795,900	\$390,000
For-profit percentage amount	92%	97%	100%	5%
Combined total value of errors	\$389,900	\$585,000	\$780,000	\$242,000
Combined total value of errors for-profit	\$315,800	\$473,800	\$631,800	\$196,100
Average value of payments with errors	\$1,500	\$2,900	\$4,300	\$1,400
Combined school and program error rate	8%	12%	16%	4%
Student count	5,000	11,200	17,400	6,200
Program count	2,800	4,400	6,100	1,600
Program error rate	3%	5%	7%	2%
School count	780	1,200	1,500	380
School error rate	8%	13%	17%	4%
SAAs count	30	44	51	7
SAA error rate	58%	86%	100%	14%

Source: *OIG statistical analysis performed in consultation with the Office of Audits and Evaluations statistician*

Note: *Projected using a 90 percent confidence interval*

Because the number of students and programs are not constant each year, the audit team used an exponential smoothing forecasting technique to project the number of students and programs that could be put at risk over the next five years if education program approval monitors are not strengthened. The Microsoft Excel formula predicts a value that is based on the forecast for FY 2014–2015, adjusted for the error in that prior forecast. The audit team multiplied the

payment amounts in Table 3 by five years to project the potential payments made to these ineligible schools. Over the next five years, VBA could issue an estimated \$2.3 billion in payments for 5,400 programs, putting 17,000 students' education benefits at risk, if it does not strengthen education program approval monitoring.<sup>99</sup>

## **VBA Technical Sampling Methodology Comments and OIG Response**

### **Draft Page 33, Appendix C: Population [Final Page 51]:**

This paragraph described the audit population from which the OIG sampled and calculated its projections. Based on the sampling methodology information provided earlier by the OIG statistician, VBA contended that audit universe needed to be adjusted. Specifically, the OIG statistician had reported to VBA the audit universe included all types of schools and the sample was selected based on a multistage stratified design. The OIG statistician noted that no schools were excluded; however, SAAs in the states and territories of Alaska, American Samoa, Washington DC, Federated States of Micronesia, Guam, Hawaii, Northern Mariana Islands, Puerto Rico, Palau, Virgin Islands, and Vermont were excluded because they did not have SAA contracts in place at the time of the audit. In addition, the OIG statistician informed VBA that the random sample for the first stage was based on the number of states in the universe, so all states had an equal chance of being selected regardless of their size.

Based on this information, VBA requested that the total population and dollar amount be reduced by the 11 states and territories that were excluded from the sampling plan, and that the related improper payment projections also be reduced after the reduction. In addition, VBA requested OIG revise or add language in the report to clarify that not every state or territory had an equal chance of being selected since some were excluded for not having an SAA contract.

OIG Response: The 11 states and territories cited by VBA were not included in the OIG's analysis. The population originally totaled \$5.2 billion with the 11 states and territories. The population the OIG used for its samples and projections totaled \$4.9 billion after the removal of the 11 states and territories. The OIG did not agree to revise the language in the report because the audit team clearly states in Appendix C, Statistical Sampling Methodology that the OIG only reviewed SAAs with contracts and excluded states and territories that did not have a contract with VA at the time of the audit. Only states and territories that had contracts had an equal chance of being selected in the sample.

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<sup>99</sup> The five-year potential monetary benefit estimate of \$2.9 billion (\$585 million multiplied by 5 years) has been reduced by \$668.1 million to prevent the possible double-counting of improper tuition and fee payments reported in OIG's *Audit of Post-9/11 GI Bill Tuition and Fee Payments* (Report No.14-05118-147, September 30, 2016).

**Draft Page 33, Appendix C: Sampling Design [Final Page 51]:**

In the paragraph at issue, the OIG described in detail the multistage simple random and stratified sample used to conduct the audit that allowed the OIG to project the audit results over the population and the different SAAs. VBA requested in its response that the OIG revise or add language clarifying that multistage simple random and stratified sampling is another term for cluster sampling. VBA based its response on an answer the OIG statistician provided earlier where he stated, “The sample was based on a Multi-Stage Cluster Stratified Sampling approach using a combination of sampling techniques, like Simple Random and Stratified sampling approach.” VBA contended that the clarifying term “cluster sampling” should be added to highlight that the samples may not be representative of the total population. In addition, VBA further requested an explanation of what “while also controlling time and travel” meant and why this did not affect the population of the selected locations.

OIG Response: The OIG did not agree to revise the report language to include that it used “cluster sampling” because the OIG disagrees with VBA’s position that a multistage, simple random and stratified sample is simply another term for cluster sampling. The OIG’s multistage sampling approach was designed to ensure the representation of all records in the population in the sample. Use of the term “cluster sampling” to describe the OIG’s sampling methodology would be a mischaracterization and oversimplification of the sampling methodology.

The OIG did take into consideration the amount of time and travel in selecting the number of SAAs the OIG visited to assess controls and practices in place at the time of the audit. This consideration did not affect the population of the locations the OIG audit team visited. The OIG fully disclosed in the report the population consisted of only those states and territories that had SAA contracts and that these locations had a known chance of being selected regardless of the location.

**Draft Page 34, Appendix C: Projections and Margins of Error [Final Page 52]:**

These paragraphs presented all the point estimates for the OIG’s sample projections and discussed the variations in the confidence intervals and the precision of the resulting OIG projections. VBA’s response to these paragraphs included several interrelated criticisms and individual comments; thus, VBA’s comments have been grouped by area and the OIG response follows immediately after each section.

**Exclusion of States and Territories**

VBA repeatedly requested the OIG exclude the 11 states and territories from the population and its projections. In addition, it stated that the 11 excluded states and territories should be excluded from the OIG’s summary of the statistical projections in Table 3 in Appendix C of the Statistical Sampling Methodology. Finally, it contended the OIG’s upper limit of 51 SAAs was incorrect because this number should not have included the excluded states and territories.

OIG Response: VBA was incorrect when it asserted the OIG's analysis did not exclude the 11 states and territories. The population under review originally totaled \$5.2 billion with the 11 states and territories. The OIG used a \$4.9 billion population for its samples and projections after it removed the 11 states and territories. All the data and projections presented in Table 3 exclude the 11 states and territories that did not have SAA contracts at the time of the audit. The number of SAAs presented in Table 3 is correct because the count includes multiple states which have more than one SAA and excludes the 11 states and territories discussed above.

### **Alleged Oversampling of For-Profits**

VBA alleged in its comments that while for-profit schools accounted for a larger amount of the tuitions and fees in the OIG's previous audit, the current SAA audit over-samples this school population. VBA cited sample information the OIG provided earlier, which showed that for-profit schools made up 50 of the 70 schools selected for review from the seven sampled SAAs (71 percent), as its evidence that the OIG over sampled for-profit schools. VBA requested the OIG highlight this point in its sampling methodology to clarify for the reader that for-profit institutions were selected at a higher rate than public or nonprofit private institutions. VBA argued that OIG's assertion that every institution had the same chance of being selected in the seven states audited did not explain why the sample appears to be biased against for-profit institutions. Subsequently, VBA wanted the OIG to specify how many deficiencies would be at for-profit, private nonprofit, and public institutions when it stated an estimated 44 of the 51 SAAs have approval and monitoring deficiencies. Also, VBA wanted the OIG to clarify in the report that for-profit institutions were selected for 71.4 percent of the facilities audited and explain how this statistically affected the outcome of improper payments.

OIG Response: The OIG's sample was not biased toward the selection of for-profit schools. The OIG randomly selected 70 schools after it stratified the universe into three groups: 1) accredited private for-profit, 2) accredited private, nonprofit, and public, and 3) nonaccredited, which included private for-profit, nonprofit, and public schools. All the schools had a known chance of being selected and the sampling weights accounted for the differences in the sample and population proportions in all stages of the selections. The probabilities of selection were accounted for in the weighting of the sample to ensure that any differences in the proportions in the population and sample did not bias the results. The number of for-profit institutions in the OIG's sample did not bias the audit's results or the projected improper payment amounts as VBA alleges. The OIG did not "oversample" for-profit schools as VBA alleges and the OIG did not make VBA's requested report revisions.

### **Significant Changes in OIG Projections**

Throughout its response, VBA referred to significant changes in the OIG's projections and a "high margin of error," and requested an explanation of and the basis for the significant changes to the dollar and percentage amounts.

OIG Response: VBA did not provide these comments in the proper context and did not acknowledge the OIG already provided it with an explanation. The significant changes occurred in the projections after VBA representatives raised concerns about a high margin of error in one of the OIG's improper payment estimates. Subsequently, the OIG statistician performed additional calculations to address VBA's concern and account for the variation in the value of the improper payments. These calculations decreased the margin of error, increased the resulting precision of the midpoint estimate, and increased the midpoint projection for the improper payments to \$585 million. The OIG explained these changes in a meeting with VBA and disclosed all these statistical calculations and projections in Appendix C of the report.

### **Presentation of Margins of Error in Table 3**

VBA specifically requested the OIG

1. Add that the margin of error was reduced from 47 percent to 26 percent;
2. Revise Table 3 to show the margin of error in percentages, not dollar amounts, and that the OIG add the projections for other school types besides for-profit schools to the table; and
3. Label its margin of error estimation of \$1.6 billion (\$416.5 million) with a +/- margin of error.

OIG Response: The OIG did not add a +/- margin of error to the discussion of the original \$1.6 billion estimate (based on the \$416,500 point estimate) because it was a supporting calculation and not the audit's primary projection, which is presented in the "Combined total value of errors" row in the table. The OIG did not agree to add projections for the other types of schools because those types of schools represent such a small portion of the projected errors compared to the for-profit schools. Finally, the OIG did not revise the report to show the decrease in the margin of error after the OIG statistician used an average payment amount to control for the variability in payments because, as previously stated, it is not OIG practice to present the margin of errors in percentages rather than dollars. More importantly, the difference in the margins of errors is shown in dollars in Table 3 when one compares the "Error payments sample estimate" presented in row 1 with the "Combined total value of errors" in row 4. These calculations were explained and disclosed in Appendix C, and the OIG did not see the need to present the differences between these values as a percentage when the specific dollar differences in the margins of error are reported in Table 3.

### **Presentation of Student, Program, and School Counts in Table 3**

VBA contended that the Student count, Program count, and School count should be excluded from Table 3 because these are not Error types, or OIG should create a separate table to display these counts.

OIG Response: The OIG's practice is to place all projections related to identified exception cases in a table in the Statistical Sampling Appendix to provide the reader a sense of the magnitude of the deficiencies. For this audit, that meant if a SAA-approved programs did not meet Title 38 requirements, the OIG projected the number of programs, schools, and students the exceptions affected. The OIG will not exclude this information from Table 3 or place it in a separate table as requested by VBA

### **VBA Request for OIG Datasets**

VBA commented that it requested the OIG provide its datasets to VBA so that it could independently verify the OIG's statistical analysis. Specifically, VBA stated in its comments that it requested OIG include all the variables within the dataset that would be expected to be in Education Service's usual data fields and any variables created for Table 3 under "Error types."

OIG Response: VBA failed to disclose that the OIG provided VBA with all the information and data it needed to replicate the OIG's statistical sampling results on June 4, 2018. The OIG provided VBA a description and explanation of the statistical sampling methodology, the specific SAS® code and software (WesVar) used to run the projections, all the sample data, and the weighting of the samples.

### **Draft Page 36, Appendix C: Statistical Sampling Methodology [Final Page 51]:**

VBA requested a notation be added to Appendix C stating that VBA could not replicate the same results with the assistance of an independent statistician, and therefore could not verify the conclusions OIG made from the sampling methodology. VBA alleged that based on the information the OIG provided, the second stage sampling weights were not provided and were unknown. As a result, VBA could not verify the OIG's results because the OIG provided sample weights for the overall study, but not for each stage of the sample. Specifically, VBA stated that

Education Service was most concerned with the selection of schools in this audit and wanted to calculate the second stage sample weights but information was not provided that could assist in the that calculation of the 2<sup>nd</sup> stage sample and sample weights (where the type of school was chosen for the audit). Sampling information should be transparent and straightforward without a large effort to replicate using the same information to conduct this audit. The precise computations at each interval should be accessible for confirmation.

OIG Response: The OIG did not make the requested annotation because the notation does not include critical information. VBA failed to disclose that the statistician retained by Education Service to replicate the OIG's sample was neither independent nor adequately equipped to conduct the analysis, and that the OIG provided VBA with all the information and data it needed to replicate the OIG's statistical sampling results on June 4, 2018. As discussed above, the OIG provided VBA a description and explanation of the statistical sampling methodology, the specific SAS® code and software (WesVar) used to run the projections, all the sample data, and

the weighting of the samples. Moreover, VBA was provided the sampling weights for the audit and was specifically told that the provided weights applied to all stages of the sample. The weights did not change based on the stage of the sample.

## Appendix D: Potentially Erroneous, Deceptive, or Misleading Advertisements Identified

Table 4 lists the potential erroneous, deceptive, or misleading advertisements and claims the audit team identified at the 10 schools after consulting with the FTC and applying the FTC guidelines.<sup>100</sup>

**Table 4. Potential Erroneous, Deceptive, or Misleading Advertisements and Claims Identified at Schools<sup>101</sup>**

State	School	Type of school	School status	No. of veterans	No. of programs	Dollar value	Potentially deceptive practices
CA	DeVry University-California	Accredited	For-Profit	31	9	\$316,000	<p><b>Unsupported Data in School Admission Guide</b></p> <p>This school claimed in its admission guide that for those students who actively sought employment, 90 percent of them received employment within six months after they graduated. The school could not provide the Federal Trade Commission sufficient data to support this claim during a lawsuit and removed the claim from its website after it reached a settlement with the Federal Trade Commission.</p>

<sup>100</sup> Federal Trade Commission, “Advertising FAQ's: A Guide for Small Business,” FAQ, April 2001. <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>. (The website was accessed in November 2016.)

<sup>101</sup> Schools are listed in order of dollar value from highest to lowest. Columns may not sum due to rounding.

State	School	Type of school	School status	No. of veterans	No. of programs	Dollar value	Potentially deceptive practices
NJ	PC AGE (Jersey City)	Accredited	For-Profit	7	1	\$114,000	<p><b>Incorrect Data in School Advertisements</b>                      An article on the school's website and a brochure stated that IT certificate holders earn more income than those holding a bachelor's degree. This claim was misleading because it did not provide the context for the claim, such as, "A study shows that IT certificates make more than a bachelor's degree." Furthermore, the school relied on an article and study prepared by another school to support its claim. A review of the article and the study made it clear that an individual with an IT certificate earned more income than someone with a bachelor's degree only under certain circumstances.</p>
CA	Independent Training & Apprenticeship Program	Accredited	For-Profit	4	1	\$66,000	<p><b>Misleading Statement in School Advertisement</b>                      An advertisement in the school catalog claimed the school and all of the programs were accredited. However, the accrediting agency had not accredited one of the programs in the OIG's sample.</p>
NJ	Smith & Solomon	Nonaccredited	For-Profit	8	2	\$29,400	<p><b>Incorrect and Unsupported Data in School Advertisement</b>                      An advertisement in the school's catalog stated that its placement services division "helps find jobs for over 90 percent of the students within one month of graduation." However, the school could not provide any data to support this claim.</p>

State	School	Type of school	School status	No. of veterans	No. of programs	Dollar value	Potentially deceptive practices
MS	Real Estate Training Institute	Nonaccredited	For-Profit	30	2	\$21,600	<b>Inappropriate Use of VA Seal on Website</b> The school's website led visitors to believe the school was part of VA by using the Department of Veterans Affairs seal and the title, "Dept. of Veterans Affairs Education" on its website.
OR	National Personal Training Institute	Nonaccredited	For-Profit	3	1	\$16,400	<b>Incorrect and Unsupported Data in School Advertisement</b> The school's flyer stated that 70 percent of students have jobs before they graduate. However, the school was not able to provide evidence to support this claim.
MS	Mississippi College of Beauty Culture	Accredited	For-Profit	1	1	\$12,300	<b>Website Overstated Projected Annual Income After Graduation</b> The school's website claimed its graduates could average up to \$50,000 per year in earnings. However, the Department of Labor's estimate is \$23,710.
NY	Anthony Jerone's School of Dog Training & Career Inc.	Nonaccredited	For-Profit	3	1	\$11,400	<b>Misleading Statement on Website</b> The school's website stated that this school was "approved by the VA to accept GI BILL." VA does not approve schools/programs. They are approved by the SAA.
OR	Canby Bible College	Nonaccredited	Nonprofit	2	1	\$8,800	<b>Incorrect and Unsupported Data in Handbook</b> The school's catalog stated that over 75 percent of all graduates had gone on to serve in full- or part-time ministry or have continued their education at other colleges. However, the school could not provide evidence to support this claim.

State	School	Type of school	School status	No. of veterans	No. of programs	Dollar value	Potentially deceptive practices
OR	Pacific Bible College	Nonaccredited	Nonprofit	2	2	\$2,300	<b>Misleading Statement on Website</b> The school's website stated the school was "approved by the VA." VA does not approve schools/programs. They are approved by the SAA.
<b>Totals</b>	<b>10</b>			<b>91</b>	<b>21</b>	<b>\$598,200</b>	

## Appendix E: Potential Monetary Benefits in Accordance with Inspector General Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs
1-4	Improve program approval controls to reduce improper payments.	\$0	\$2.3 billion
	<b>Total</b>	<b>\$0</b>	<b>\$2.3 Billion</b>

*Note: The audit team calculated the \$2.3 billion by multiplying \$585 million for the 12-month period by five years. The audit team then reduced the total amount by \$668.1 million to prevent possibly double-counting improper tuition and fee payments previously identified and reported in the Audit of Post-9/11 GI Bill Tuition and Fee Payments (Report No. 14-05118-147, September 30, 2016).*

## Appendix F: VBA Management Comments

### Department of Veterans Affairs Memorandum

Date: September 6, 2018

From: Acting Under Secretary for Benefits (20)

Subj: OIG Updated Draft Report – VA's Oversight of State Approving Agency Program Monitoring for Post-9/11 G.I. Bill Students [Project No. 2016-00862-R7-0058]

To: Assistant Inspector General for Audits and Evaluations (52)

1. Attached is VBA's response to the updated OIG Draft Report: VA's Oversight of State Approving Agency Program Monitoring for Post-9/11 G.I. Bill Students.
2. Questions may be referred to Christine Ras, Program Analyst, at (202) 461-9057.

Paul R. Lawrence, Ph. D.

Attachments

**Veterans Benefits Administration (VBA)  
Comments on OIG Updated Draft Report  
VA's Oversight of State Approving Agency Program Monitoring for Post-9/11 G.I. Bill Students**

**VBA provides the following general comments:**

The Veterans Benefits Administration (VBA) appreciates the Office of the Inspector General's (OIG) review of State Approving Agencies and VBA's oversight. We acknowledge that the report highlights several areas for improvement, and we concur or concur in principle with the OIG recommendations. However, VBA does not agree with the finding and conclusions of the OIG regarding the Department of Veterans Affairs' (VA) oversight and monitoring of the State Approving Agency (SAA) Program for Post-9/11 G.I. Bill students.

The draft report demonstrates a lack of understanding or appreciation of the complexities of the VA and SAA relationship as contained in Title 38 United States Code (U.S.C.) and Title 38 Code of Federal Regulations (C.F.R.), particularly that SAAs are primarily responsible for approvals and are given this authority nearly exclusively under the law. VBA maintains a strong partnership with SAAs characterized by strong communication, collaboration, and mutual respect for the authorities, roles, and responsibilities laid out in statutory and regulatory requirements. This report does not accurately characterize this strong and effective partnership that has been in place for decades, nor does it accurately reflect the high quality of work performed by most SAAs and VBA employees in the realm of compliance and oversight.

VBA does not agree that there has been weak oversight and a lack of accountability for program oversight functions. SAA accountability requirements in the contract have increased over time, and VBA has demonstrated that it will make the hard decision not to contract with a SAA in the case of sustained poor performance. The SAA evaluation process has yielded numerous substandard ratings. These are always followed by additional training for the SAAs receiving such ratings. VA has even exercised its exclusive authority to suspend payments to beneficiaries attending a school where an SAA approved the school with insufficient legal basis. Additionally, VBA Education Liaison Representatives (ELRs) work tirelessly with their respective SAAs to both enforce the contract requirements, clarify federal requirements, and generally help SAAs be successful.

VBA believes that the OIG mischaracterizes several aspects of VBA's perspective on the role of SAAs; at one point alleging that VBA's Education Service believed they had "no control" over SAA actions. Contrary to the language in this report, VBA thoroughly understands what it can and cannot do under the authorities specified in Title 38 U.S.C. and Title 38 C.F.R., having received innumerable formal and informal opinions from VA's Office of General Counsel (OGC) as VBA has worked through numerous complex SAA issues. The statute indicates that no federal agency will exercise control over SAAs. At the same time, the statute gives VA the authority to enter contractual relationships with SAAs. Consistent with the law, VBA requires SAAs to perform certain functions and tasks, and then monitor and evaluate that performance. SAA contracts are negotiated annually and requirements are added or subtracted through intense discussions, resulting in the inclusion of laws, new requirements and performance quality measures.

According to VA OGC, SAAs have nearly exclusive authority to approve, suspend, or withdraw programs for the Post-9/11 G.I. Bill, not the VA, and this SAA authority is largely unchallengeable. VA holds certain approval authorities as well, but mostly in the context of when acting in the role of the SAA (i.e., in situations where the state has no SAA). Therefore, SAAs hold the authority and VA fully expects them to

do the job according to the terms of the contract, while VBA ELRs review SAA work to determine the degree to which contract requirements are met. Contrary to assertions in the OIG report, ELRs identify many deficiencies in approval submissions and work diligently with SAAs to ensure that program approvals are complete and accurate.

VBA strongly disagrees with OIG's assertion that VBA does not work to protect taxpayers' interests (FMFIA of 1982 and OMB Circular A-123). This commitment is at the core of VA's countless internal controls, oversight, and compliance efforts. VBA's Education Compliance Survey Specialists work diligently engaging schools, reviewing approval criteria, and most importantly, identifying overpayments and underpayments to schools and VA beneficiaries. While the OIG report is critical that VA and SAAs did not fully reapprove every program during a compliance survey, to do so is not within the realm of possibility given the time and resources available for this work.

Significantly, the report omits the record of overpayments and underpayments that VBA has identified and corrected through its oversight and compliance processes. Over the last five years, VBA has identified and corrected \$9.6 million in underpayments and \$78.8 million in overpayments as part of fulfilling VA's duty to beneficiaries and be good stewards of the taxpayers' dollars.

Many SAAs do provide supporting documentation and ELRs review this documentation to determine the completeness and appropriateness of SAA approvals. We have continuously worked with SAAs collaboratively to improve compliance survey methodology and continue to do so today. VBA Education Service commissioned a year-long study by the MITRE Corporation to review and make recommendations on our compliance work. Additionally, as part of implementation of the Harry W. Colmery Veterans Educational Assistance Act of 2017 (commonly referred to as the "Forever G.I. Bill"), we are working with SAAs on the development of school risk factors and improved processes for conducting risk-based surveys. VA and SAAs have a joint working group to implement these changes. Further, in fiscal year (FY) 2018, Education Service deployed a new information technology system, built on the Salesforce platform, that streamlines and simplifies the compliance survey preparation, data collection, and reporting processes.

VBA notes the statistical methodology fails to transparently disclose the high margin of error and is biased toward for-profit schools, a fact that brings into question the report's conclusions and assertions of inadequate program review, approval, and monitoring. For example, nationwide for-profit institutions represent approximately one in five institutions where VA beneficiaries receive education benefits. This report sampled 70 schools, over seven states and fifty of those institutions were for-profit. In addition, throughout the report, OIG made overly broad conclusions based on a review of only 0.2 percent of the 82,200 Post-9/11 G.I. Bill approved programs.

Finally, the report does not correctly characterize the alleged future potential for improper payments. First, there is the problem with the statistical methodology. Second, VBA disagrees with the repeated use of the term, "potential ineligible programs." If OIG cannot establish factually that a program is ineligible, then the program should not be included in the possible improper payment calculations and extrapolations.

**VBA provides the following technical comments:<sup>102</sup>**

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<sup>102</sup> Page numbers referred to by VBA in the following sections may have changed in this final report due to subsequent editing and layout. The updated page numbers are indicated on pages 28–45 in which the OIG responds to VBA's comments and on pages 56–61 for VBA technical sampling methodology comments and the OIG response.

**Section: Executive Summary Page iv, paragraph 7 and Page, v paragraph 1**

“Based on these results, the audit team estimated that 11,200 Post-9/11 GI Bill students annually attend 4,400 programs where VBA lacks sufficient support for program eligibility, and that VBA will issue an estimated \$585 million in related improper payments. The audit team estimated that the risk of improper payments was particularly high at for-profit schools, which will enroll roughly 8,500 of the estimated 11,200 Post-9/11 GI Bill students (76 percent) and receive about \$473.8 million of these improper payments (81 percent). Furthermore, the audit team estimated that 17,000 of the estimated 827,000 students enrolling in the Post-9/11 GI Bill program over the next five years (2 percent) will attend more than 5,400 ineligible or potentially ineligible programs due to inadequate oversight.<sup>11</sup> In addition, VBA will issue an estimated \$2.3 billion in related improper payments during this period if it does not strengthen SAA program review, approval, and monitoring controls.”

VBA Comment: VBA requests an explanation and the basis for the significant changes to dollar and percentage amounts in this paragraph. Specifically, the following changes from the original draft report:

- “estimated \$585 million in related improper payments.” Modified from the original draft of \$416.5million.
- “estimated 11,200 Post-9/11 GI Bill students (76 percent) and receive about \$473.8 million of these improper payments (81 percent).” Modified from the original draft of \$405.9 million and 97 percent.
- “In addition, VBA will issue and estimated \$2.3 billion in related improper payments during this period if it does not strengthen SAA program review, approval, and monitoring controls.” Modified from the original draft of \$1.6 billion.

VBA also requests that the OIG specify the profit status of the 70 schools selected for this audit. A revision should be added after the first sentence, “Subsequently, the audit team identified \$1.54 million in improper Post-9/11 GI Bill tuition and fee payments made for just over 230 students enrolled in 35 of the 175 programs reviewed during the audit. Out of the 70 schools selected in the audit team’s sample, 50 of the 70 were for-profit institutions.”

**Page 3, Section: Results and Recommendations, paragraph 1:**

“The audit team estimated that 44 of 51 SAAs (86 percent) did not conduct annual oversight to ensure only eligible programs participated in the Post-9/11 GI Bill. As a result, an estimated 11,200 Post-9/11 GI Bill students annually attend 4,400 ineligible and potentially ineligible programs, and VBA will issue an estimated \$585 million in related improper payments. This risk is particularly high at for-profit schools, which will receive an estimated \$473.8 million (81 percent) of these improper payments. Consequently, more than 17,000 of the estimated 827,000 Post-9/11 GI Bill students will be enrolled in just over 5,400 ineligible or potentially ineligible programs over the next five years. During this time, VBA will issue an estimated \$2.3 billion in related improper payments if the SAAs and VBA do not strengthen program review, approval, and monitoring controls.”

VBA Comment: VBA requests an explanation and the basis for the significant changes to dollar and percentage amounts in this paragraph. Specifically, the following changes from the original draft report:

- “estimated \$585 million in related improper payments.” Modified from the original draft of \$416.5million
- “estimated \$473.8 million (81 percent) of these improper payments.” Modified from the original draft of \$405.9 million and 97 percent
- “Consequently, more than 17,000 of the estimated 827,000 Post-9/11 GI Bill students will be enrolled in just over 5,400 ineligible or potentially ineligible programs over the next five years. During this time, VBA will issue an estimated \$2.3 billion in related improper payments if the SAAs and VBA do not strengthen program review, approval, and monitoring controls.” Modified from the original draft of \$1.6 billion.

In addition, VBA requests the paragraph be modified to include the 70 facilities selected for this audit and the type of facility associated with each sample. For example, “Out of the 70 randomly selected facilities, 50 were for-profit private institutions, 11 were non-profit private institutions, and 9 were public institutions.”

**Page 9, paragraph 4, first sentence:**

“The audit team found five of the reviewed SAAs (California, Mississippi, Nebraska, New Jersey, and Oregon) had a combined 11 programs where the schools either had not reported program modifications or did not report the modifications to their SAA until years after the change occurred.”

VBA Comment: VBA requests this paragraph be revised to specifically include the following: “During the period covered by the audit, those five SAAs provided oversight for a total of \*X approved programs at \*X number of public, \*X number of private for-profit, and \*X number of private non-profit, educational institutions.”

\*VBA does not have this information available to insert for a revision to add the number of approved programs at public, for-profit private, and non-profit private schools chosen by the OIG for this audit.

**Page 15, last paragraph through page 16:**

“VBA generally took a hands-off approach to the review, approval, and monitoring processes in its contractual relationship with the SAAs even though it is ultimately responsible for the proper disbursement of education benefit payments to eligible programs. Neither VBA nor the SAAs felt they were responsible for addressing gaps or weaknesses in SAA program review, approval, and monitoring processes if the statutes did not expressly address an issue or require specific program controls. Significantly, VBA did not

- Require ELRs to conduct thorough reviews of SAA program approvals and decisions;
- Establish effective controls to foster the identification, review, and approval of program modifications;
- Require SAAs periodically to monitor schools’ advertisements for erroneous, deceptive, or misleading advertising practices;
- Adequately assess program eligibility during the compliance survey process to ensure programs continued to meet Title 38 requirements; and
- Conduct adequate annual performance evaluations of SAAs.

Although VBA technically complied with statutory requirements, it did not provide the SAAs effective oversight to prevent the possible abuse of education benefits by schools, and thus did not ensure the adequate protection of students and taxpayers.”

VBA Comment: VBA objects to the statement, “VBA generally took a hands-off approach to the SAA’s review, approval, and monitoring processes in its contractual relationship with the SAAs...” This statement is incorrect and we request it be stricken from the report. ELRs provide hands-on assistance, collaboration with, and monitoring of SAAs throughout the year to ensure compliance with contractual requirements. ELRs conduct thorough reviews of approvals. Program modifications are reviewed by SAAs when reported; marketing materials are reviewed during compliance surveys; many approval requirements are reviewed during compliance surveys. VA has been unable to conduct more robust audits of approval requirements due to resource constraints. SAAs are in fact, evaluated against contractual requirements and rated annually through a mutually agreed upon process with participation of VA and SAA leaders. Additionally, significant time and effort are expended each year negotiating changes to the VA-SAA contract which includes performance measures for SAAs.

**Page 16, Section: ELR Review, paragraph 2, lines 1-3:**

“According to the Executive Director, Education Service, the SAAs are responsible for the approval of programs and ensuring the quality and effective administration of programs that enroll students.”

VBA Comment: VBA requests OIG remove, “According to the Executive Director, Education Service” from this sentence and insert “Under current law,” in its place.

**Page 18, paragraphs 2:**

“The one SAA, which did not have any unreported modifications among its 27 reviewed programs, required its schools to reapply periodically for program approvals at the time their catalogs expired and were reissued. Consequently, this SAA could reliably identify, review, and approve program modifications even if schools or programs did not report the changes as soon as they occurred.”

VBA Comment: VBA requests this statement be modified to read as follows:

“One SAA, which did not have any unreported modifications among the 18 programs the OIG reviewed, had not established any additional controls regarding program modifications. However, the other SAA, which also did not have any unreported modifications among its 27 reviewed programs, required its schools to reapply periodically for program approvals at the time their catalogs expired and were reissued. Consequently, this SAA could reliably identify, review, and approve program modifications even if schools or programs did not report the changes as soon as they occurred”.

**Page 19, Section: Monitoring of Advertisement Practices, paragraph 4 and into page 20:**

“VBA did not ensure SAAs monitored advertisements to detect erroneous, deceptive, or misleading advertising at schools even though federal law specifically prohibits the enrollment of students in programs at schools that engage in these types of practices. Under federal law and the SAA contracts, the SAAs are responsible for ensuring programs continue to meet the conditions of their approvals. VA, at the time of our audit, also had an agreement with the FTC to assist with the investigation of potential erroneous, deceptive, or misleading school and/or program advertisements.

After applying FTC guidelines, the audit team found that 10 schools with 21 approved programs employed these types of advertisements at the time of the audit without the apparent knowledge of their five SAAs. For the remaining two SAAs where the audit team did not identify any schools or programs with deceptive advertisements, one SAA checked the advertisements when it required schools to reapply periodically for program approvals and the other SAA did not perform any additional reviews for deceptive advertising after the initial approval.

In response to the audit findings, both VBA and the SAAs claimed they did not have to check for deceptive advertising after the initial approval, except during the compliance surveys, because the statute did not specifically require it. The Executive Director, Education Service stated that VBA did not expect the SAAs to review advertisement practices of schools and programs at any other point except during the program's initial review and approval and during the compliance surveys. He also indicated that VBA had developed other controls in its review of student complaints—the GI Bill Comparison Tool and Principles of Excellence Guidelines—to protect students and deter schools and programs from engaging in erroneous, deceptive, or misleading practices. Six of the seven reviewed SAAs concurred with the Executive Director, Education Service and maintained they were not required to check for deceptive advertisements after the initial approval except during the compliance surveys.

Like the previous discussion of the ELR reviews and review of program modifications, the circumscribed role VBA and SAAs took regarding the monitoring of schools and program advertisements practices allowed these practices to go undetected at schools and programs enrolling Post-9/11 G.I. Bill students.”

**VBA Comment:** It is untrue to assert that the VA did not ensure SAAs monitored advertisements to detect deceptive practices. SAAs review marketing materials at the time of program approval, and are engaged when beneficiary complaints related to marketing are received. The Federal Trade Commission (FTC) guidelines referenced in this section are extremely subjective and were applied by the OIG in the most critical manner; even to the point of identifying a comment in a school website saying, “VA Approved” when it is most technically correct to say, “SAA approved.” By the “reasonable person” standard, the test applied by the FTC, there is little to no distinction between, “SAA Approved” and “VA Approved”. It is unreasonable to conclude that such a statement, ipso facto, constitutes willful deception. Therefore, any school identified by the OIG as engaging in deceptive practices for this reason should be removed from the improper payments calculation. Because of these inaccuracies, OIG should revise those paragraphs to state the following:

“VBA and the SAAs periodically monitor advertisements to detect erroneous, deceptive, or misleading advertising at schools as required by federal law, which specifically prohibits the enrollment of students in programs at schools that engage in these types of practices. Under federal law and the SAA contracts, the SAAs are responsible for ensuring programs continue to meet the conditions of their approvals. VA, at the time of our audit, also had an agreement with the FTC to assist with the investigation of potential erroneous, deceptive, or misleading school and/or program advertisements.

After applying FTC guidelines, the audit team found that 8 schools with 18 approved programs employed these types of advertisements at the time of the audit without the apparent knowledge of their four SAAs. For the remaining three SAAs where the audit team did not identify any schools or programs with deceptive advertisements, one SAA

checked the advertisements when it required schools to reapply periodically for program approvals.

The Executive Director, Education Service stated that VBA requires SAAs to review the advertisement practices of schools and programs during the program's initial review and approval and during the compliance surveys. He also indicated that VBA had developed other controls in its review of student complaints—the GI Bill Comparison Tool and Principles of Excellence Guidelines—to protect students and deter schools and programs from engaging in erroneous, deceptive, or misleading practices. The Executive Director, Education Service, and six of the seven reviewed SAAs maintained they were not required by law to check for deceptive advertisements after the initial approval except during the compliance surveys.

Like the previous discussion of the ELR reviews and review of program modifications, the circumscribed role VBA and SAAs took regarding the monitoring of schools and program advertisements practices allowed these practices to go undetected at schools and programs enrolling Post-9/11 G.I. Bill students for longer periods of time than would be the case if VBA required SAAs to review advertising practices more often.”

**Page 21, paragraph 4, first sentence:**

“VBA performs annual quality reviews of approximately 1,000 of the SAA-completed compliance surveys and 12 compliance surveys performed by VBA staff.”

VBA Comment: VBA requests the sentence be revised as follows:

“VBA performs annual quality reviews of approximately 1,000 of the SAA-completed compliance surveys and three compliance surveys are performed by VBA staff each quarter. These quarterly quality reviews are completed on each Education Compliance Survey Specialist (ECSS) and Education Liaison Representative (ELR). VBA also completes five quality reviews on each SAA per quarter.”

**Page 22, Section: Annual Contract Performance Evaluations, paragraph 2, through page 23, paragraph 3:**

“VBA evaluates the SAAs' performance annually based on the agreed-upon performance metrics in the SAA contracts, including the ELR's annual evaluation of the SAA and the SAA's self-evaluation. The SAA's self-evaluation consists of three parts: a rating, descriptive data (such as the number of approvals, including initial and revised approvals, and compliance surveys conducted), and a narrative describing the performance of their functions throughout the year.

According to the Executive Director, Education Service, VBA considers the SAAs' self-evaluations, which include the number of completed approvals and re-approvals during the FY, to be a confirmation that the reviewed programs met all the applicable Title 38 requirements. Based on the results of the OIG audit, however, the SAAs' self-evaluations cannot be considered a reliable indicator of the quality of the SAAs' reviews and do not provide reasonable assurance that the approved programs are complying with Title 38 requirements. Furthermore, VBA and many of the SAAs the reviewed have a differing view of what is evaluated when SAAs report re-approvals on their self-evaluations. The Senior Management and Program Analyst stated that the re-approvals on the self-evaluations indicated the SAAs reviewed the programs'

continuing eligibility. However, six of the seven reviewed SAAs stated that they reported their review and approval of specific program modifications as re-approvals on the self-evaluations and they did not perform complete reviews of the programs' eligibility.

The SAA contract performance metrics focus on the timeliness of the initial approvals and number of completed compliance surveys rather than the quality of the SAAs' performance. VBA does not consider and assess whether SAAs properly grant initial approvals or ensure programs continue to meet all eligibility requirements during this annual contract performance evaluation. VBA lacked information needed to evaluate the adequacy of the quality, completeness, and accuracy of the SAAs' reviews and decisions. This occurred because VBA generally does not require the SAAs to provide any supporting documentation or verify the information the SAAs have evaluated—even when it conducts its own quality reviews.

Consequently, VBA relied heavily on the SAAs' self-evaluations during the annual performance reviews, and all seven of the SAAs reviewed received satisfactory performance ratings for the FYs 2014–2016 period. Under Title 38, VBA has the authority to work with the SAAs to set the standards and criteria for annual performance evaluations. The audit results demonstrated that VBA also needs to consider:

- The accuracy and quality of the SAAs' initial program and program modification approvals;
- The effectiveness of compliance surveys and related quality assurance reviews in identifying and addressing eligibility issues; and
- The quality, completeness, and accuracy of the SAAs' decisions and monitoring during the annual SAA evaluations.”

VBA Comment: This section has incomplete and inaccurate information relating to the SAA annual evaluation process, as specified in 38 U.S.C. § 3674A(a)(1)(A) and 38 C.F.R. § 21.4155(a)(1) particularly the narrative related to the view ascribed to the Executive Director, Education Service. The SAA self-evaluation is just one input in the overall SAA annual evaluation process. The fact that this self-evaluation is likely to place the SAA in the most positive light is not lost on Education Service. Therefore, the VBA ELR also provides an assessment of the SAA's contract performance for the year.

The SAA self-evaluation and the ELR's independent evaluation are both reviewed and discussed during the annual Joint Peer Review Group (JPRG) meeting, consisting of VBA and SAA participants. This process provides checks and balances and does not rely solely on a potentially biased or erroneous SAA self-evaluation. The JPRG applies human judgment and fairness during the review of the SAA's and ELR's written evaluations. Additionally, there is an incorrect statement in this section asserting that VBA does not consider and assess whether SAAs properly grant initial approvals or ensure programs continue to meet all eligibility requirements during the annual contract performance evaluation. The annual evaluations do cover an SAA's performance with respect to approvals. For example, the Arizona SAA received a “minimally satisfactory” rating for FY 2017 because it was determined that the approval of one of the school's programs was legally insufficient. While OIG is correct that timeliness factors are in the SAA contract, ELRs also review qualitative factors specifically related to compliance with the applicable requirements codified in Title 38 U.S.C. and Title 38 C.F.R.

Because of these inaccuracies, OIG should revise those paragraphs to state the following:

“VBA and representatives from the National Association of State Approving Agencies evaluate the SAA performance annually based on the agreed-upon performance metrics in the SAA contracts, the ELR’s annual evaluation of the SAA and the SAA’s self-evaluation. The SAA’s self-evaluation consists of three parts: a rating, descriptive data (such as the number of approvals, including initial and revised approvals, and compliance surveys conducted), and a narrative describing the performance of their functions throughout the year.

VBA and many of the SAAs have a differing view of what is evaluated when SAAs report re-approvals on their self-evaluations. The Senior Management and Program Analyst stated that the re-approvals on the self-evaluations indicated the SAAs reviewed the programs’ continuing eligibility. However, six of the seven reviewed SAAs stated that they reported their review and approval of specific program modifications as re-approvals on the self-evaluations and they did not perform complete reviews of the programs’ eligibility.

The SAA performance metrics focus on the timeliness of the initial approvals and the number of completed compliance surveys, as well as the quality of the SAAs’ performance. The OIG found that VBA often lacked information needed to evaluate the adequacy of the quality, completeness, and accuracy of the SAAs’ reviews and decisions. This occurred because VBA generally does not require the SAAs to provide any supporting documentation or verify the information the SAAs have evaluated—even when it conducts its own quality reviews.

The audit results indicated that VBA should place more focus on the following criteria in its annual evaluations of SAA performance:

- The accuracy and quality of the SAAs’ initial program and program modification approvals;
- The effectiveness of compliance surveys and related quality assurance reviews in identifying and addressing eligibility issues; and
- The quality, completeness, and accuracy of the SAAs’ decisions and monitoring during the annual SAA evaluations.”

**Page 23, Section: Conclusion paragraph 1, through page 24:**

“In FY 2018, VA will issue about \$5.5 billion in Post-9/11 G.I. Bill tuition and fee payments to schools and programs for just under 800,000 students. However, the audit results show that VBA has not provided the SAAs effective oversight to ensure schools and programs meet Title 38 requirements and are not abusing the Post-9/11 G.I. Bill program. VBA can address the general requirements in Title 38 that lack specific implementation language cooperatively with the SAAs through establishment of additional fair and reasonable review and approval requirements and the SAA contracts. However, VBA and the SAAs are not adequately reviewing, approving, and monitoring programs to ensure programs and schools are eligible to participate in the Post-9/11 G.I. Bill program and meet all applicable Title 38 requirements. As a result, neither VBA nor the SAAs can provide students and taxpayer’s reasonable assurance that programs approved to participate in the Post-9/11 G.I. Bill Program are effectively and efficiently administered, and provide students quality education and training in accordance with federal eligibility requirements.

Due to these weaknesses in VA's oversight and monitoring of the SAAs' contracts, VBA has made a significant number of improper payments. VBA made more than \$1.54 million in improper Post-9/11 G.I. Bill tuition and fee payments for just over 230 students attending 35 ineligible or potentially ineligible programs at 20 schools from February 1, 2015 to January 31, 2016. Of this total, VA made just under \$1.5 million of these improper payments (97 percent) to 15 for-profit schools for 29 programs (83 percent). Thus, the audit team concluded for-profit schools posed a higher risk for improper payments than other types of schools in the audit sample. Based on the audit results, the audit team projected that annually

- Forty-four of the 51 SAAs (86 percent) improperly approve programs and do not ensure the effective review of program changes and advertisements;
- Approximately 11,200 Post-9/11 G.I. Bill students will attend 4,400 ineligible or potentially ineligible programs where the SAAs and VBA lack adequate support for the programs' continued eligibility; and
- Approximately 8,500 of these students (76 percent) will attend 3,800 of 4,400 (86 percent) ineligible or potentially ineligible programs at for-profit schools.

In total, the OIG projected that VBA annually issues an estimated \$585 million in related improper Post-9/11 G.I. Bill tuition and fee payments to ineligible or potentially ineligible schools, and that \$473.8 million of this amount will be paid to for-profit schools. The audit team estimated that VBA will place students' educational goals and taxpayers' funds at risk and issue an estimated \$2.3 billion in improper Post-9/11 GI Bill tuition and fee payments to 5,400 ineligible or potentially ineligible programs for an estimated 17,000 enrolled students over the next five years if SAA oversight and monitoring controls are not strengthened."

VBA Comment: The conclusions reached in this report are questionable because of a flawed and biased statistical methodology. VBA disagrees with the statement, "However, audit results show that VBA has not provided the SAAs effective oversight to ensure schools and programs meet Title 38 requirements and are not abusing the Post 9/11 G.I. Bill program" and requests it be removed from the report. First, VBA believes the report disregards the significant and impactful work being done to provide proper oversight and enforcement of compliance with statutory and regulatory requirements. Second, while the OIG may have uncovered some mistakes made by SAAs in a small handful of cases, the OIG has not established, nor in any way made a case for, abuse of the Post-9/11 GI Bill program. Furthermore, OIG's analysis extrapolating the amount of projected potential improper payments should either be eliminated, recalculated, or, at a minimum, include language in the report identifying the extremely high margin of error associated with the projected numbers.

OIG should revise the final paragraph before its recommendations as follows:

"In total, the OIG projected that VBA annually issues an estimated \$585 million (based on OIG's sampling of 70 schools, 50 being for-profit institutions) in related improper Post-9/11 G.I. Bill tuition and fee payments to ineligible or potentially ineligible schools, and that \$473.8 million of this amount will be paid to for-profit schools. In addition, it should be noted that VA for-profit institutions represent one-fifth of the total student population and that for-profit institutions were over sampled for this audit. The \$585 million represents a projection of the tuition and fees paid under the Post-9/11 GI Bill and

is based on the school samples selected for this audit and extrapolated based on the total amount of tuition and fees paid.”

VBA again requests an explanation and the basis for the significant changes to dollar and percentage amounts from the draft report as stated previously and continued throughout this report.

**Page 33, Appendix C: Population, paragraph 3:**

“The audit team selected the population based on the parameters of the audit objective by identifying just under 82,200 programs totaling \$4.97 billion in tuition and fee payments from VA’s BDN. These payments were made on behalf of more than 750,000 Post-9/11 GI Bill students to nearly 8,200 schools during the 12-month review period.”

VBA Comment: In Attachment A, Scope and Methodology Answers, OIG’s statistician responded to question 10 that, “Describes that the audit universe includes all types of schools and the sample was selected based on a multi-stage stratified design. No schools were excluded. Only the following SAAs/states and territories were excluded (due to not having a contract during the time of our audit): AK, AS, DC, FM, GU, HI, MP, PR, PW, VI, VT.” In addition, OIG responded to question 2 stating, “The random sample for the first stage was based on number of states in the universe, and so all states will have equal chance of being selected regardless of their size.”

VBA requests that the total population and dollar amount be reduced by the 11 states and territories that were excluded from the sampling plan. The extrapolation should include a reduction in improper payment amounts after the total population and tuition and fee dollar amounts are also reduced. In addition, VBA requests OIG revise or add language in their report clarifying that not every state or territory had an equal chance of being selected since some were excluded for not having an SAA contract.

**Page 33, Appendix C: Sampling Design, paragraph 4, lines 1-9:**

“The audit team developed a multi-stage simple random and stratified sample. A multi-stage sampling design is efficient and valid, because it gives larger accounts/locations more chance to be selected, while also controlling time and travel, and there is no need to use other allocation methods for dollar coverage. The sample was based on the number of states that had a contract with the SAAs, schools within those states (accredited non-profit, accredited for-profit, and nonaccredited), and the programs within those schools. Using these strata in the sampling methodology, the audit team segregated the universe to give all states, schools, and programs a known chance of being selected. This methodology allowed the audit team to project its results over the whole population and the different SAAs.”

VBA Comment: VBA requests OIG revise or add language clarifying that multi-state simple random and stratified sampling is another term for cluster sampling. This can be added with an asterisk in a footnote or parenthesis.

In Attachment A, Scope and Methodology Answers, OIG’s statistician responded in question 2 stating, “The sample was based on a Multi-Stage Cluster Stratified Sampling approach using a combination of sampling techniques, like Simple Random and Stratified sampling approach”. Clarifying the term “cluster sampling” will highlight that the samples may not be representative of the total population.

VBA further requests an explanation of, “while also controlling time and travel,” which would also in turn affect the population of the locations selected.

**Page 34, Appendix C: Projections and Margins of Error, paragraphs 5 and 6:**

“The audit team used the point estimate amounts for each of the projections. The OIG’s statistician projected midpoint estimates of the \$416.5 million improper payments directly from the sample payment values for cases in error. This projection had a 90 percent confidence interval of \$26.4 Million and an upper limit of \$806.5 million. The wide confidence interval (the variation of the lower and upper limits from the midpoint) indicated the midpoint estimate had low precision.

Further review and analysis determined that the high variation in the values of the improper payments in the population was a contributing factor to the estimate’s low precision. The improper payment values identified by the audit ranged from approximately \$2,000 to \$800,000. Subsequently, the OIG statistician calculated a combined school and program error rate for the sample (12 percent) and then multiplied that by the average payment value in the population. Use of the combined school and program error rates and the average population payment value, \$2,400, instead of the individual error rates and the values of the improper payments from the sample controlled the variability in the identified improper payments and improved the precision of the resulting midpoint estimate. 83 The resulting midpoint estimate, \$585 million, based on the combined school and program error rate, has a 90 percent confidence interval of \$389.9 million to \$780 million (see Table 3 below).

Based on the \$4.97 billion in tuition and fee payments made during the 12-month period, the audit team projected that more than 11,200 students will attend just under 4,400 ineligible school programs from 44 of 51 SAAs (86 percent). Furthermore, VBA will issue an estimated \$585 million in education benefits annually and that it had an error rate of 12 percent.”

VBA Comment: The OIG’s statistical analysis did not exclude the previously mentioned 11 states and territories from the overall population that were excluded from the original sampling plan. The \$4.97 billion projected for tuition and fees should have been reduced by this amount along with the projected error rate.

In addition, in question 2 of Attachment A, VBA asked for the schools that were selected during the audit and found that 50 of the 70 schools selected were for-profit schools. This represents an over sampling of for-profit schools or 71.4 percent of the schools selected in the seven states audited. VBA requests that OIG highlight this point in their sampling methodology so it is clear to the reader that for-profit institutions were selected at a higher rate than public or non-profit private institutions. OIG’s assertion that every institution had the same chance of being selected in the seven states audited does not explain why the sample appears to be biased against for-profit institutions.

Also, out of the 86 percent, or 44 of 51 SAAs, VBA requests OIG clarify how many will be at a private for-profit, private non-profit, and at public institutions.

VBA again requests an explanation and the basis for the significant changes to dollar and percentage amounts from the original draft report as stated previously and continued throughout this report.

Page 35, Table 3.

**Table 3. Statistical Projections Summary for Program Eligibility  
(Dollars in thousands)**

Error Types	Lower Limit	Point Estimate	Upper Limit	Margin of Error
Error Payments Sample Estimate	\$26,400	\$416,500	\$806,500	\$390,000
For-Profit Amount	\$15,900	\$405,900	\$795,900	\$390,000
For-Profit Percentage Amount	92%	97%	100%	5%
Combined Total Value of Errors	\$389,900	\$585,000	\$780,000	\$242,000
Combined Total Value of Errors For-Profit	\$315,800	\$473,800	\$631,800	\$196,100
Average Value of Payments with Errors	\$1,500	\$2,900	\$4,300	\$1,400
Combined School and Program Error Rate	8%	12%	16%	4%
Student Count	5,000	11,200	17,400	6,200
Program Count	2,800	4,400	6,100	1,600
Program Error Rate	3%	5%	7%	2%
School Count	780	1,200	1,500	380
School Error Rate	8%	13%	17%	4%
SAA's Count	30	44	51	7

**VBA Comment:** The dollar figures are based on the assumptions that all payments in the population have an equal chance of being selected and a random method was used to select the sample. VBA would like OIG to clarify in the report that for-profit institutions were selected for 71.4 percent of the facilities audited and explain how this statistically affected the outcome of improper payments.

Attachment A, questions 17 b and 17c requested that the OIG label their margin of error estimation of \$1.6 billion (\$416.5 million) with a +/- margin of error. While for-profits accounted for a larger amount in

OIG's previous audit of tuition and fees, their current audit of State Approving Agencies is based on over-sampling the school population.

VBA has concerns with the margin-of-error in Table 3, Appendix C. VBA requests a revision to the table and that the OIG clearly state their margin-of-error in percentages and not dollar amounts. Table 3 clearly segregates for-profit schools, we request the additional school types be included in the proposed revision. As discussed in the prior meeting with the OIG's statistician along with VBA's Under Secretary for Benefits, we request that be it added that the margin-of-error was reduced from 47 percent to 26 percent.

Attachment B details the 70 schools selected and the breakdown of public, non-profit private, and for-profit private schools. The OIG also sets the upper limit to 51 SAAs. However, as reported by the OIG in Attachment A, several SAAs were excluded from the testing and should not be reflected in this table. In addition, in Table 3, "Student Count", "Program Count," and "School Count" are not "Error Types" and should be excluded from this table or OIG should create a separate table to display these counts.

In addition, VBA Education Service requested OIG provide their datasets to enable independent verification of OIG's statistical analysis. VBA also requested that OIG include all of the variables within the dataset that would be expected to be in Education Service's usual data fields and any variables created for Table 3 under "Error Types

**Page 36, Appendix C: Statistical Sampling Methodology:**

VBA Comment: VBA requests a notation be added to Appendix C stating that VBA could not replicate the same results with the assistance of an independent statistician and therefore, could not verify the conclusions made from the sampling methodology. Based on the information provided by the OIG to VBA the second stage sampling weights are unknown, not provided and therefore, cannot be verified (OIG provided sample weights for the overall study and not at each stage of the sample).

Education Service was most concerned with the selection of schools in this audit and wanted to calculate the second stage sample weights but information was not provided that could assist in the that calculation of the 2<sup>nd</sup> stage sample and sample weights (where the type of school was chosen for the audit). Sampling information should be transparent and straightforward without a large effort to replicate using the same information to conduct this audit. The precise computations at each interval should be accessible for confirmation.

**The following comments are submitted in response to the recommendations in the OIG draft report:**

Recommendation 1: The Under Secretary for Benefits negotiates an amendment to State Approving Agency contracts to clarify requirements for approvals and require, subject to the availability of resources, quarterly samples and reviews and evaluations of supporting documentation for State Approving Agency approvals to ensure approved programs meet Title 38 of the United States Code requirements.

VBA Response: Concur. VBA will work to negotiate an amendment to the fiscal year (FY) 2020 State Approving Agency (SAA) contracts to clarify requirements for approvals. Beginning on October 1, 2018 (FY 2019), VBA will also develop and implement a quarterly sample review and evaluations of supporting documentation for SAAs to ensure approved programs meet Title 38 of the United States Code requirements.

Target Completion Date: October 1, 2019

Recommendation 2: The Under Secretary for Benefits negotiates amendments to State Approving Agency contracts that, subject to available resources, require the State Approving Agencies to periodically re-approve programs and evaluate program changes and other operational changes, such as

advertisement practices, that may affect a program's continued eligibility and compliance with Title 38 of the United States Code.

VBA Response: Concur. VBA will work to negotiate an amendment to the FY 2020 SAA contracts to require the SAAs to periodically re-approve programs and evaluate program changes and other operational changes, such as advertisement practices, that may affect a program's continued eligibility and compliance with Title 38 of the United States Code.

Target Completion Date: October 1, 2019

Recommendation 3: The Under Secretary for Benefits refers schools identified during the audit with potentially erroneous, deceptive, or misleading advertising practices to the Federal Trade Commission for it to decide whether any further reviews or actions are needed.

VBA Response: Concur. VBA will consult with the Federal Trade Commission (FTC) regarding the schools identified in the report and the advisability of formal referral under VA's memorandum of agreement with FTC.

Target Completion Date: December 31, 2018

Recommendation 4: The Under Secretary for Benefits revises and strengthens compliance surveys to improve the assessment of program eligibility and compliance survey quality reviews to include the review of supporting documentation and an independent assessment of the quality of the completed compliance surveys.

VBA Response: Concur. VBA will update the compliance survey checklist to include additional program approval criteria to assess program eligibility. Quality reviews will be conducted at a national level by the Education Service Quality Assurance Team. Reviews will be conducted on a quarterly basis from a national random sampling and will include a review of supporting documentation of completed compliance surveys.

Target Completion Date: December 31, 2018

Recommendation 5: The Under Secretary for Benefits negotiates an amendment to the State Approving Agency contracts to establish quality assurance metrics and ensure the Veterans Benefits Administration collects and uses quality assurance data from its reviews of the State Approving Agencies' approvals, monitoring, and compliance surveys in its annual evaluations of the State Approving Agencies.

VBA Response: Concur in principle. Quality assurance metrics are already included in the SAA contracts, both for approvals and compliance, and the results are used in the annual evaluations of the performance of the SAA. VA negotiated language prior to the FY 2018 contract year that required the SAA contracts to be 100 percent compliant with applicable statutes and regulations. In the FY 2018 SAA contract, VA included specific language relevant to accurate program approval. In addition, VBA performs quality checks on the compliance work of VBA Education Compliance Survey Specialists and SAAs. OIG states on page 27 of the draft report:

"Under the terms of the SAA contracts, the SAAs are required to submit accurate approval packages to the ELRs, which include a:

- Completed application,
- Catalog,
- Decision letter,
- Inspection report for nonaccredited courses, and

- Administrative forms.

The ELRs use checklists developed by VBA's SAA contract management team, the chief education liaison officers, and ELRs to perform administrative quality reviews of the approval packages. The ELRs use the applicable checklists based on the type of program to ensure that all required VA forms have been submitted and are complete. They also verify that all applicable policies are in the school catalog, such as attendance standards, student conduct, and standards of progress."

VA currently has extensive policy regarding the review of the performance of the SAAs and has the authority under Title 38 U.S.C. § 3674A to evaluate performance and determine whether contracts should be offered based on this performance. VA has successfully utilized this statute and has determined not to contract with an SAA rated as unsatisfactory when acceptable, mitigating circumstances were not present.

VBA requests closure of this recommendation.

Recommendation 6: The Under Secretary for Benefits assesses whether SAA funding is sufficient to ensure the adequate review, approval, and monitoring of programs, in conjunction, with the establishment of a contract to update the SAA funding allocation model.

VBA Response: Concur in principle. This recommendation duplicates work already in progress. The Harry W. Colmery Veterans Educational Assistance Act of 2017, also known as the "Forever G.I. Bill," increased funding for FY 2018 to \$21 million, and it will further increase to \$23 million for FY 2019 while also adding an annual cost of living allowance. In addition, the act allows VA to add up to \$3 million annually from discretionary funds beginning in FY 2019. Furthermore, section 311 requires the Government Accountability Office (GAO) to carry out a study that includes an analysis of SAA funding. This study is in progress and VA will review GAO's final report to determine if changes are needed in the amount and/or distribution of SAA funding.

VBA requests closure of this recommendation.

*Note: Additional documentation to support information in the response was provided to the OIG; however, due to the length of these documents, the OIG did not include these documents in this report.*

*For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.*

## OIG Contact and Staff Acknowledgments

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