

Congress of the United States
House of Representatives
Washington, D.C. 20515

September 23, 2013

The Honorable Harold Rogers
Chairman
Committee on Appropriations
H-307, The Capitol
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
Committee on Appropriations
1016 Longworth House Office Building
Washington, DC 20515

The Honorable C.W. Bill Young
Chairman
Subcommittee on Defense
H-405, The Capitol
Washington, DC 20515

The Honorable Pete Visclosky
Ranking Member
Subcommittee on Defense
1016 Longworth House Office Building
Washington, DC 20515

Dear Chairmen Rogers and Young and Ranking Members Lowey and Visclosky:

As the *Fiscal Year 2014 Department of Defense Appropriations Act* moves through the legislative process, we write to oppose sections 8103 and 8104 of the Senate bill. While intended to punish bad actors from accessing higher education, both provisions harm low-income and veteran students and their colleges and fail to increase financial or institutional accountability.

Section 8103 restricts institutions from using federal military higher education funds for marketing and recruiting practices. Such a provision baldly implies that federal dollars somehow cause institutions to prey on unsuspecting students and as a practical matter, since revenue streams are fungible, it is highly questionable whether it is possible to isolate federal funds from general operations.

Additionally, this provision will have an adverse effect on all students and disproportionately harm adult learners, who access higher education information through traditional marketing and advertising channels. By limiting an institution's ability to advertise and market the benefits of higher education, students may miss the opportunity to enhance their education or career. In fact, this provision could prevent institutions engaging in best practices from providing outreach to students while doing nothing to protect students from unscrupulous actors.

Finally, the language in section 8103 is overly broad. For example, the language does not clearly define what constitutes "advertising, marketing or student recruitment activities," leaving an overly aggressive administration room to expand, through regulation or guidance, the reach of the federal government into college admission decisions and sporting activities. This action would be a major shift in the federal-state-institutional role that has governed postsecondary education since passage of the *Higher Education Act of 1965*.

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Section 8104 includes military education benefits in the 90/10 rule included in the *Higher Education Act*. The 90/10 rule singles out the proprietary school sector to derive 10 percent of its revenue from non-student aid sources. Contrary to the sponsors' desire to increase institutional quality, the rule has the perverse effect of causing institutions who are serving low-income students to increase tuition and fees. Adding military benefits to this already flawed formula will simply exacerbate this unintended consequence. A recent report published by Mark Kantrowitz, Senior Vice President and Publisher of *Edvisors Network*, highlights this fact and recommends the repeal of the 90/10 rule altogether.^[1] The report also points out that the overwhelming majority of public colleges, including 80 percent of community colleges, would fail the 90/10 rule if it applied to them and dispels the myth that proprietary schools derive all of their tuition revenue from federal sources. According to the report, 42 percent of tuition revenue at private non-profit colleges, 70 percent at private for-profit colleges, 77 percent at public four-year colleges, and an overwhelming 98 percent at community colleges comes from taxpayer-sourced student aid.

Military benefits are fundamentally different forms of student assistance than federal financial aid, which makes up the bulk of the 90/10 rule calculation. Military education benefits are earned benefits provided to a servicemember or veteran as a result of their service in the military, whereas federal financial aid is provided to low-income students to assist them in accessing postsecondary education. To include military education benefits in the 90/10 rule penalizes institutions that choose to educate servicemembers and veterans and unfairly restricts student choice for these individuals who have earned their educational benefit. Servicemembers and veterans deserve the opportunity to spend their earned benefits on the educational program of their choosing.

Rather than moving in this direction, the better solution to any use of fraudulent, unethical or even questionable practices lies in the many federal, state and local agencies statutorily responsible for monitoring the education industry. Where such practices exist, it is the failure of these agencies to enforce current laws and regulations. The solution is aggressive action by the Federal Trade Commission, the U.S. Department of Justice, the Consumer Financial Protection Bureau, the U.S. Department of Education and their regional and national accrediting organizations, the Department of Veterans Affairs, the States Attorneys General, state departments of education, State Approving Agencies, state licensing agencies, and state and local consumer affairs agencies, among others. In short, there is no lack of oversight of the higher education industry.

The solution also lies with students' access to information about institutions of higher education. The Department of Education provides a significant amount of data on every school approved for federal student aid programs. In fact, their College Navigator website offers more

^[1] Kantrowitz, Mark. "Consequences of the 90/10 Rule." *Edvisors.com*. 19 Aug. 2013. For more information, see: <http://www.edvisors.com/student-aid-policy/90-10-rule.php>.

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than 270 separate data fields ranging from applications and enrollments to campus crime rates. Many of those fields are further divided into demographic categories. Any student desiring to compare schools is only a few clicks away from a mountain of data designed to help make a choice. Recent legislation such as P.L. 112-249 have provisions to improve students' ability to choose a school based on increased transparency and relevant institutional data.

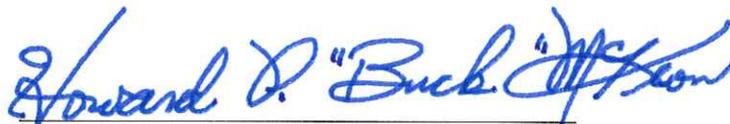
If it's decided that neither of these solutions are working appropriately, then, both issues - restricting marketing and recruiting practices and expanding the 90/10 rule - should be discussed within the larger context of the reauthorization of the *Higher Education Act*. The Committee on Education and the Workforce is currently holding hearings on the Act and intends to move a package through the legislative process next year. We urge you to defer to the committee and its effort to enact commonsense approaches to improving postsecondary access and affordability.

In conclusion, we strongly oppose sections 8103 and 8104 and urge they be stricken from any final agreement funding the Department of Defense. We appreciate your hard work on behalf of the nation's servicemembers and veterans and increasing opportunity to postsecondary education. We look forward to working with you on these issues in the future. If you have any questions, please contact Amy Jones (amy.jones@mail.house.gov) with the Committee on Education and the Workforce, Mike Brinck (mbrinck@mail.house.gov) with the Committee on Veterans' Affairs, or Craig Greene (craig.greene@mail.house.gov) with the Committee on Armed Services.

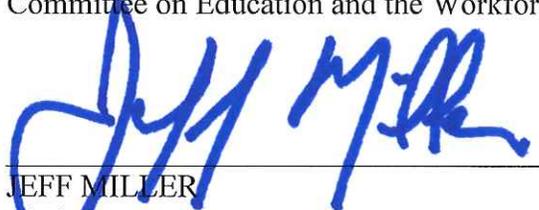
Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



HOWARD P. "BUCK" McKEON
Chairman
Committee on Armed Services



JEFF MILLER
Chairman
Committee on Veterans' Affairs



BILL FLORES
Chairman
Subcommittee on Economic Opportunity
Committee on Veterans' Affairs