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# Veterans-Related Education Legislation Enacted in the 117<sup>th</sup> Congress

Updated March 16, 2023

**Congressional Research Service**

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R47301



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March 16, 2023

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## Veterans-Related Education Legislation Enacted in the 117<sup>th</sup> Congress

Veterans' educational assistance programs provide financial assistance to individuals, whose eligibility is based on their or a family member's experience in the uniformed services, while they are enrolled in approved programs of education. The GI Bills—particularly the Post-9/11 GI Bill—are the most popular veterans' educational assistance programs. In FY2022, the U.S. Department of Veterans Affairs (VA) estimated that over 800,000 participants received \$10.2 billion in benefits. Congress and the Biden Administration have considered expanding the benefits, facilitating benefit use, and reinforcing program integrity. This report describes statutory provisions enacted in the 117<sup>th</sup> Congress affecting veterans' educational assistance programs.

The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2)

- establishes a new program, the COVID-19 Veteran Rapid Retraining Assistance Program (VRRAP), for which it appropriated \$386 million, and
- requires that private, for-profit institutions of higher education derive at least 10% of revenues from nonfederal sources in order to participate in student aid programs administered by the Department of Education (ED), closing the so called *90/10 loophole*.

The Training in High-demand Roles to Improve Veteran Employment Act (THRIVE Act; P.L. 117-16)

- requires that state approving agencies (SAAs) conduct annual risk-based surveys of educational institutions that convert from for-profit to public status for three years following the conversion, and
- amends the actions required of SAAs when educational institutions engage in deceptive recruiting or enrollment inducements.

The Colonel John M. McHugh Tuition Fairness for Survivors Act of 2021 (P.L. 117-68)

- requires that approved programs of education at public institutions of higher learning not charge eligible Survivors' and Dependents' Educational Assistance Program (DEA) participants in excess of the in-state tuition and fees rate, and
- requires that a program of education be disapproved for GI Bill purposes if participants are penalized for delayed or late DEA payments.

The Responsible Education Mitigating Options and Technical Extensions Act (REMOTE Act; P.L. 117-76)

- requires that the VA implement prohibitions on educational and training institutions (ETIs) providing commissions or incentive compensation for enrolling students or the financial aid received by enrolled students, in accordance with practices delineated in ED regulations and guidance,
- excludes the application of some program of education approval criteria to foreign students who are not receiving GI Bill benefits and to foreign institutions, and
- extended special authorities enacted to reduce educational and benefit disruptions related to the COVID-19 emergency to June 1, 2022.

The Consolidated Appropriations Act of 2022 (P.L. 117-103) increases funding for the Veteran Employment Through Technology Education Courses Pilot (VET TEC) from \$45 million to \$125 million in FY2022.

The Ensuring the Best Schools for Veterans Act of 2022 (P.L. 117-174) modifies the 85/15 rule, which generally requires that no more than 85% of students in a program of education receive assistance from the VA or institution.

The Veterans Eligible to Transfer School (VETS) Credit Act (P.L. 117-297) eliminates the requirement that individuals who are eligible to transfer Post-9/11 GI Bill entitlement designate an end date for the transferees to use the entitlement.

The Consolidated Appropriations Act, 2023 (P.L. 117-328)

- eliminates the DEA delimiting date for individuals who become eligible on or after August 1, 2023; and
- requires the VA, upon the death of a Post-9/11 GI Bill qualifying individual, to distribute the individual's remaining entitlement among all the designated transferees.

The Veterans Auto and Education Improvement Act of 2022 (P.L. 117-333)

- requires the VA to develop a uniform application for the approval of new courses,
- requires that SAAs and the VA not provide more than a specified number of days' notice to ETIs before conducting compliance or risk-based surveys,
- establishes that some individuals who are discharged or released from active duty with a sole survivorship discharge receive the 100% benefit level of Post-9/11 GI Bill benefits, and
- establishes permanent statutory authorities similar to those enacted in response to the COVID-19 emergency to reduce the disruptive effects of any national emergency.

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## Introduction

The U.S. Department of Veterans Affairs (VA) administers several veterans' educational assistance programs for servicemembers and veterans and their family members.<sup>1</sup> The GI Bills<sup>2</sup> are the most well-known and popular veterans' educational assistance programs. The VA estimated that it provided \$10.2 billion in benefits to over 800,000 participants in FY2022.<sup>3</sup> The largest program, the Post-9/11 GI Bill, is estimated to account for approximately 82% of benefits and 69% of participants.<sup>4</sup>

In recent years, Congress has held several oversight and legislative hearings on a variety of subjects relating to the veterans' education programs, including (but not limited to), improving access and eligibility to benefits, automating claims processing to reduce payment delays, educating eligible individuals about their benefits and choices, and trying to ensure benefits are not wasted on poor quality programs of education.<sup>5</sup>

This report discusses measures enacted in the 117<sup>th</sup> Congress that made changes to the veterans' educational assistance programs (see **Table 1** below for the full list). Some of the laws that enacted veterans' educational assistance measures address only veterans' education, while others address a broader set of policies. The report presents a thematic discussion of the primary changes adopted by offering contextual information on prior provisions and issues being addressed by amendments and by describing the amendments.

**Table 1. Enacted Laws with Provisions Affecting Veterans' Educational Assistance Programs: 117<sup>th</sup> Congress**

| Public Law   | Title and Acronym  | Enactment Date    |
|--------------|--|-------------------|
| P.L. 117-2   | American Rescue Plan Act of 2021 (ARPA) <sup>a</sup>                               | March 11, 2021    |
| P.L. 117-16  | Training in High-demand Roles to Improve Veteran Employment Act (THRIVE Act)       | June 8, 2021      |
| P.L. 117-68  | Colonel John M. McHugh Tuition Fairness for Survivors Act of 2021                  | November 30, 2021 |
| P.L. 117-76  | Responsible Education Mitigating Options and Technical Extensions Act (REMOTE Act) | December 21, 2021 |
| P.L. 117-81  | National Defense Authorization Act for Fiscal Year 2022                            | December 27, 2021 |
| P.L. 117-103 | Consolidated Appropriations Act, 2022  | March 15, 2022    |

<sup>1</sup> For a description of the veterans' educational assistance programs, see CRS Report R42785, *Veterans' Educational Assistance Programs and Benefits: A Primer*.

<sup>2</sup> GI Bill is a registered trademark of the U.S. Department of Veterans Affairs (VA).

<sup>3</sup> U.S. Department of Veterans Affairs, *FY2023 Budget Submission*, pp. VBA-191 to VBA-192. The number of participants is not an unduplicated count.

<sup>4</sup> *Ibid.* The number of participants is not an unduplicated count.

<sup>5</sup> See, for example, U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, *Hearing: Modernizing Veteran Education in the Shadow of COVID-19*, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 20, 2022; and U.S. Congress, Senate Committee on Veterans' Affairs, *Hearing to Consider Pending Legislation*, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 13, 2022.

| Public Law   | Title and Acronym   | Enactment Date    |
|--------------|---|-------------------|
| P.L. 117-138 | Veterans Rapid Retraining Assistance Program Restoration and Recovery Act of 2022 | June 7, 2022      |
| P.L. 117-174 | Ensuring the Best Schools for Veterans Act of 2022                                | August 26, 2022   |
| P.L. 117-297 | Veterans Eligible to Transfer School (VETS) Credit Act                            | December 27, 2022 |
| P.L. 117-328 | Consolidated Appropriations Act, 2023   | December 29, 2022 |
| P.L. 117-333 | Veterans Auto and Education Improvement Act of 2022                               | January 5, 2023   |

**Source:** CRS review of legislation enacted in the 117<sup>th</sup> Congress.

a. ARPA was intended to provide COVID-19-related relief and economic stimulus.

The amendments build on or fix measures enacted in the 117<sup>th</sup> and earlier Congresses and address policy issues that have not been previously addressed. The key laws enacted prior to the 117<sup>th</sup> Congress and referenced in this report are the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (P.L. 116-315)<sup>6</sup> and the Harry W. Colmery Veterans Educational Assistance Act of 2017 (Forever GI Bill; P.L. 115-48).<sup>7</sup> In the 117<sup>th</sup> Congress,

- additional funding is provided for a previously established pilot program that provides educational assistance to veterans pursuing high-technology, computer-related programs of education;
- amendments establish a new temporary benefit program in response to the COVID-19 emergency;
- several provisions modify the criteria and processes used to approve programs of education for GI Bill purposes in an effort to ensure the quality of such programs;
- amendments expand benefits to participants of the Survivors' and Dependents' Educational Assistance (DEA) and Montgomery GI Bill-Selected Reserve (MGIB-SR) programs that duplicate benefits provided to Post-9/11 GI Bill participants;
- amendments intend to improve the information available regarding approved programs of education to prospective and current GI Bill participants;
- several amendments exempt foreign institutions and/or foreign students from specified statutory requirements when they are not considered to affect the integrity of the GI Bill programs;
- additional provisions make changes to specific aspects of the process by which GI Bill participants receive benefit payments;
- an amendment eliminates the DEA delimiting date for eligible individuals;
- amendments generally expand the eligibility to Post-9/11 GI Bill benefits for transferees and eligible individuals who received a sole survivorship discharge;

<sup>6</sup> For a brief summary of P.L. 116-315, see CRS In Focus IF11970, *GI Bill Amendments Enacted in the 116th Congress: Non-COVID-19-Related*.

<sup>7</sup> For a detailed summary of P.L. 115-48, see CRS Report R45205, *Harry W. Colmery Veterans Educational Assistance Act of 2017 (P.L. 115-48)*.

- amendments provide additional relief to GI Bill participants for circumstances out of their control (i.e., closed schools, disapproved courses, and calls to active duty);
- an amendment extends special authorities enacted in response to the COVID-19 emergency;
- new permanent authorities were established to reduce the educational disruption caused by future national emergencies; and
- a provision incorporates the veterans' educational assistance programs into the accountability system for the U.S. Department of Education's (ED's) federal student aid programs.

## New and Additional Funding for Temporary Programs

Annual appropriations acts generally provide advanced mandatory funding for the veterans' educational assistance programs based on expected eligibility and participation. During the 117<sup>th</sup> Congress, a new program, the COVID-19 Veteran Rapid Retraining Assistance Program (VRRAP), was established with dedicated funding; additional funding was provided for a previously funded program, the Veteran Employment Through Technology Education Courses Pilot (VET TEC); and a pilot program, the Native VetSuccess at Tribal Colleges and Universities Pilot Program, was authorized without dedicated funding.

### COVID-19 Veteran Rapid Retraining Assistance Program

To support the training of veterans unemployed as a consequence of the COVID-19 emergency, P.L. 117-2, as amended by P.L. 117-16 and P.L. 117-138, established VRRAP and appropriated \$386 million for it.<sup>8</sup> VRRAP was limited to training no more than 17,250 eligible veterans who began the training before December 11, 2022. Among the eligibility criteria, a veteran must be unemployed due to the COVID-19 emergency, must be ineligible for a GI Bill,<sup>9</sup> and must not be receiving other unemployment or job assistance. VRRAP provided tuition and fees and a housing stipend for up to 12 months for the pursuit of either a program of education that was below the baccalaureate degree level and leads to a high-demand occupation, or a qualified nondegree program in computer or information sciences. To help VRRAP participants find employment, the VA was required to enter into a memorandum of understanding with a nonprofit organization(s) that provided job placement services. The VA and the Government Accountability Office (GAO) must report on the outcomes and effectiveness of the program to the committees on veterans' affairs.

Interest in VRRAP among eligible individuals, program completions, and employment outcomes was lower than expected.<sup>10</sup> Training provider participation was also lower than expected, possibly

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<sup>8</sup> For more information, see the "COVID-19 Veteran Rapid Retraining Assistance Program (VRRAP)" section in CRS Report R42785, *Veterans' Educational Assistance Programs and Benefits: A Primer*.

<sup>9</sup> A veteran who has transferred all of their remaining Post-9/11 GI Bill entitlement is considered ineligible for the Post-9/11 GI Bill.

<sup>10</sup> As of June 27, 2022, the VA had received 21,832 applications, approved 14,776 veterans for VRRAP, and allocated \$182.9 million to 6,425 participants. As of July 20, 2022, 1,607 veterans had completed their programs while using VRRAP benefits and 333 had been employed. See U.S. Congress, House Committee on Veterans' Affairs,



because the VA was required to withhold 25% of tuition and fees payments from such providers until participants completed the program and another 25% until participants secured related employment. It was likely that veteran participation was below the threshold limit because of lower than expected training provider participation, which reduces choices for locations and programs, and potentially because veteran unemployment declined from 5.0% in March 2021 to 2.4% in August 2022.<sup>11</sup> VRRAP was closed to new participants on December 10, 2022.<sup>12</sup>

## Veteran Employment Through Technology Education Courses Pilot

Although the GI Bills may be used for a wide variety of programs of education, some programs that lead to high-technology, computer-related jobs do not meet the GI Bill approval criteria for programs of education. In response to this potential discrepancy, P.L. 115-48, as amended, required the VA to implement a five-year pilot program providing eligible veterans and servicemembers the opportunity to enroll in such high-technology programs of education. The pilot program, VET TEC, received an appropriation of \$15 million for each fiscal year during which the VA implements the pilot program.<sup>13</sup>

VET TEC was launched in 2019. Because of high participation, FY2020 funding was fully allocated to participants by May 2020, and FY2021 funding, available on October 1, 2020, was fully allocated within 30 days.<sup>14</sup> P.L. 116-315 increased VET TEC's annual funding to \$45 million starting in FY2021 and expanded eligibility. FY2021 funding was fully allocated to participants by August 2021.<sup>15</sup> P.L. 117-103 increased funding to \$125 million in FY2022 but maintained the FY2023 and FY2024 funding levels at \$45 million each.

As of June 1, 2022, the VA had received over 65,000 applications for VET TEC, approved 43,968, and funded 7,550 participants.<sup>16</sup> The average benefit per participant was \$14,300 in FY2021.<sup>17</sup> Of the 6,159 students who completed their VET TEC participation, 5,020 completed training and 2,325 secured meaningful employment within 180 days of training completion. *Meaningful employment* is employment or promotion in a career intended by the program of study, or self-employment for students who own/operate a business utilizing skills from their

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Subcommittee on Economic Opportunity, *Modernizing Veteran Education in the Shadow of COVID-19*, Testimony of Mr. Ronald S. Burke, Deputy Under Secretary, Office of Policy and Oversight, Veterans Benefits Administration, U.S. Department of Veterans Affairs, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 20, 2022.

<sup>11</sup> U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, *Modernizing Veteran Education in the Shadow of COVID-19*, Testimony of Mr. Ronald S. Burke, Deputy Under Secretary, Office of Policy and Oversight, Veterans Benefits Administration, U.S. Department of Veterans Affairs, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 20, 2022; and U.S. Bureau of Labor Statistics, "Unemployment rates for people 18 years and older by veteran status, period of service, and sex, not seasonally adjusted," press release, accessed on September 8, 2022, <https://www.bls.gov/charts/employment-situation/unemployment-rates-for-persons-18-years-and-older-by-veteran-status.htm>.

<sup>12</sup> U.S. Department of Veterans Affairs, *December Office Hours*, December 2022.

<sup>13</sup> For more information, see the "High Technology Pilot Program" section in CRS Report R42785, *Veterans' Educational Assistance Programs and Benefits: A Primer*.

<sup>14</sup> U.S. Department of Veterans Affairs, "VET TEC's funding is exhausted," press release, May 12, 2020, <https://benefits.va.gov/gibill/>; and U.S. Department of Veterans Affairs, *Harry W. Colmery Veterans Educational Assistance Act of 2017, Section 116 Update*, August 10, 2021.

<sup>15</sup> U.S. Department of Veterans Affairs, *Harry W. Colmery Veterans Educational Assistance Act of 2017, Section 116 Update*, August 2022.

<sup>16</sup> *Ibid.*

<sup>17</sup> U.S. Department of Veterans Affairs, *FY2023 Budget Submission*, p. VBA-192.

program of study.<sup>18</sup> The average salary of completers with meaningful employment was nearly \$61,000.<sup>19</sup>

## Native VetSuccess at Tribal Colleges and Universities Pilot Program

To facilitate the transition from military service to civilian education, the VetSuccess on Campus (VSOC) program provides outreach and transition services to servicemembers, veterans, and their family members pursuing education on participating college campuses.<sup>20</sup> Participating campuses are assigned a dedicated VA Vocational Rehabilitation Counselor (VRC) and a VA Vet Center Outreach Coordinator, and enter into an agreement with the VA Veteran Readiness and Employment Program (VR&E) to work directly with the on-campus VA representatives to coordinate service delivery. The VA representatives ensure veterans are aware of available VA benefits and services and provide services to support retention and completion. In 2021, VSOC supported over 23,000 individuals on 104 campuses that have high veteran populations.<sup>21</sup> New participating campuses must enroll at least 800 student veterans.<sup>22</sup> The program is primarily funded through VR&E salary and expenses.

Some Members of Congress expressed concern that veterans who are tribal members have insufficient access to VSOC and VA benefits and services.<sup>23</sup> In general, tribal colleges and universities (TCUs) were established to provide higher education opportunities to tribal members. The majority are located in distant and remote rural areas.<sup>24</sup> The largest TCU enrolled fewer than 2,000 students in AY2020-2021.<sup>25</sup> As of January 2023, no TCUs were participating in VSOC.

The Native VetSuccess at Tribal Colleges and Universities Pilot Program Act (Title II, Subtitle B, Section 211 of P.L. 117-328) requires the VA to begin, before July 1, 2024, a five-year VSOC pilot program known as the Native VetSuccess at Tribal Colleges and Universities Pilot Program. The VA must encourage TCUs to coordinate with each other to create at least three regional Native VetSuccess service areas, consisting of at least two participating TCUs, and participate in the pilot program. The pilot must assign a VSOC counselor and a full-time Vet Center outreach coordinator to each of three regional Native VetSuccess service areas. The VA representatives must be located at one or more of the participating TCUs. Before implementing the pilot, VR&E, in coordination with the VA Office of Tribal Government Relations, must consult with Indian tribes, tribal organizations, the VA Advisory Committee on Tribal and Indian Affairs, and veterans service organizations to design the pilot. Before January 2024, the VA must brief the veterans' and Indian affairs congressional committees on the pilot's design. Within four years of beginning

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<sup>18</sup> U.S. Department of Veterans Affairs, *Veteran Employment Through Technology Education Courses (VET TEC) Pilot Program Training Provider Application*, VA FORM 22-0997, July 2018.

<sup>19</sup> U.S. Department of Veterans Affairs, *Harry W. Colmery Veterans Educational Assistance Act of 2017, Section 116 Update*, August 2022.

<sup>20</sup> For more information, see <https://benefits.va.gov/vocrehab/vsoc.asp>.

<sup>21</sup> U.S. Department of Veterans Affairs, *FY2023 Budget Submission*, p. VBA-128.

<sup>22</sup> *Ibid.*

<sup>23</sup> Rep. Dusty Johnson, "House Veterans Affairs Committee Passes Reps. Gallego, Johnson, O'Halleran, Cole Bill to Support Native Veterans Attending Tribal Colleges and Universities," press release, May 6, 2021, <https://dustyjohnson.house.gov/media/press-releases/house-veterans-affairs-committee-passes-reps-gallego-johnson-ohalleran-cole>.

<sup>24</sup> U.S. Department of Education, *Integrated Postsecondary Education Data System*.

<sup>25</sup> *Ibid.*

the pilot, the VA must brief the same committees on the pilot's administration, outcomes, and feasibility for expansion and extension.

## Processes for Approving Programs of Education for GI Bill Purposes

In the last several years, thousands of GI Bill participants have used their education entitlement for programs of education that did not prepare them for the intended objective or did not provide credits that could be transferred to other educational institutions for further education.<sup>26</sup> As a consequence, Congress and the Biden Administration have enacted additional and more clearly defined standards for approving programs of education for GI Bill purposes to try to ensure benefits are used for quality training and education and to avoid waste, fraud, and abuse.<sup>27</sup>

### Location of State Approving Agencies

Individuals may only receive GI Bill benefits while pursuing GI Bill-approved programs of education. The VA contracts with state approving agencies (SAAs) to approve and review prior approvals of many programs of education to ensure they meet statutory and regulatory requirements for approval.

P.L. 116-315, as amended by P.L. 117-16, prohibits SAAs from being administered at, or co-located with, a university or university system that offers programs of education that are subject to GI Bill approval. The prohibition went into effect June 8, 2022.

### Uniform Application for Approval

Prior to P.L. 117-333, SAAs established their own forms and processes to approve programs of education in accordance with 38 U.S.C., Chapters 34 and 36. SAAs reviewed and approved programs, and VA ensured SAAs complied with specific statutory review requirements.<sup>28</sup>

P.L. 117-333 requires the VA, in partnership with SAAs and educational and training institutions (ETIs), to develop a uniform application for the approval of a new course at institutions of higher learning (IHLs) and separate one for the approval of a new course at ETIs that are not IHLs.<sup>29</sup> SAAs and the VA must use the uniform applications, and SAAs may collect additional information with respect to additional state-level approval criteria. The uniform applications must include the following:

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<sup>26</sup> From 2017 to 2020, GI Bill entitlement was restored for approximately 2,000 veterans because they were unable to complete their program of education due to the educational institution closing and them not receiving credit for lost training time toward completion of the program of education; see Benjamin Krause, "Is VA Playing Fair Denying Forever GI Bill Restoration Requests?," *DisabledVeterans.org*, January 14, 2020. For an example of an approved program of education that did not prepare participants for the intended objective, see The United States Attorney's Office, Northern District of Texas, "For-Profit Trade School Sentenced to Nearly 20 Years for Defrauding VA, Student Veterans," press release, September 22, 2021.

<sup>27</sup> P.L. 117-333 requires the VA to report on possible definitions for *student services*, *marketing*, and *classroom instruction* to the congressional veterans committees by July 4, 2023.

<sup>28</sup> U.S. Department of Veterans Affairs, Office of Inspector General, *VA's Oversight of State Approving Agency Program Monitoring for Post-9/11 GI Bill Students*, VA OIG 16-00862-179, December 3, 2018, p. 4.

<sup>29</sup> ETIs include, but are not limited to, IHLs, vocational schools, training establishments, correspondence schools, and high schools.

- an attestation by a senior official at the ETI that the ETI is in compliance with all applicable laws and regulations;
- an attestation by a senior official at the ETI that in the preceding five years the ETI has not been subject to or party to any fine or penalty related to its instruction or training that was equal to or greater than 5% of the funds received by the school in the prior fiscal year from programs authorized under Title IV of the Higher Education Act (HEA);<sup>30</sup>
- an attestation by a senior official at the ETI that in the preceding five years the ETI has not employed an individual, or been party to a contract with an individual or entity, that has been convicted of a federal fraud charge related to its instruction or training;
- for an ETI that is not participating in the HEA Title IV aid programs, a copy of the ETI's financial position prepared by a third party and either the ETI's articles of incorporation or proof of licensing to operate as an ETI in the state (or comparable documentation);
- for a new course offered by an ETI that has never offered a GI Bill-approved course, the number of students enrolled and graduates from the course in the preceding two years and, if available, the HEA Title IV cohort default rate;<sup>31</sup>
- for an ETI that is not an IHL, a list of the course instructors and an attestation that such course instructors are fully qualified as evidenced by their training, industry experience, and teaching skills; and
- for an ETI that is not an IHL, a list of career services employees for the course and an attestation that such employees are skilled at identifying likely professions and employers for graduates.

Because much of the information specified in the uniform application is not used to evaluate GI Bill-approval criteria under statutory and regulatory provisions, SAAs and the VA may not use the information to approve or disapprove programs.<sup>32</sup> The uniform application must be available and in use by October 1, 2023. SAAs and the VA must also contact the Secretary of Education to determine if the applying program of education has been withdrawn, denied, or suspended from receiving HEA Title IV funds.

## Educational Institutions That Convert from For-Profit Status

Since the 1950s, federal laws have been enacted that are specifically intended to ensure students do not receive federal educational assistance for the pursuit of poor quality education at for-profit ETIs.<sup>33</sup> In recent years, several for-profit colleges have converted to nonprofit status. The Internal

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<sup>30</sup> HEA Title IV programs include Pell Grants and Direct Loans. For more information, see CRS Report R43351, *The Higher Education Act (HEA): A Primer*.

<sup>31</sup> The *cohort default rate (CDR)* is defined in HEA Title IV as the percentage of an institution of higher education's qualifying HEA Title IV loan borrowers who enter repayment in a given fiscal year and default within three years after entering repayment. Under HEA Title IV, the U.S. Department of Education may sanction institutions, including with a loss of eligibility to participate in some Title IV programs, for high CDRs depending on the circumstances.

<sup>32</sup> Statement by Brianne Ogilvie, Assistant Deputy Under Secretary for Policy and Oversight, Veterans Benefits Administration, U.S. Department of Veterans Affairs, in U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, legislative hearing, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 16, 2022.

<sup>33</sup> See, for example, Sections 2 and 5 of the Veterans' Education and Training Amendments of 1950 (P.L. 81-610). ETIs are educational institutions (e.g., secondary schools and colleges) and training establishments (e.g., providers of

Revenue Service (IRS) has a process and criteria for recognizing these conversions and providing such colleges with tax-exempt status. Likewise, ED has a process and requirements for recognizing such conversions for purposes of IHE participation in HEA Title IV aid programs. GAO has determined that these conversions may pose a risk for taxpayers because

- some former owners or their family members, executives, or board members may continue to play a role after the conversion and use their influence to improperly benefit themselves financially at the expense of the college’s nonprofit mission; and
- the conversion exempts the college from additional federal oversight and accountability such as under ED’s 90/10 rule.<sup>34</sup>

In addition, GAO found that both the IRS and ED need to bolster their processes to ensure conversions initially meet and continue to meet their criteria and requirements to ensure the integrity of their respective systems.

P.L. 116-315 required that SAAs, or the VA when acting as an SAA, conduct annual risk-based surveys of educational institutions that convert from for-profit to nonprofit status for three years following the conversion. Risk-based surveys assess various legislative and VA-determined risk factors to try to ensure that ETIs meet GI Bill statutory and regulatory provisions.

P.L. 117-16 expanded the requirement to for-profit institutions converting to public status. Both provisions went into effect January 5, 2021.

## Exemptions for Foreign Institutions and/or Foreign Students

Some of the standards required of ETIs and test providers to offer GI Bill-approved programs of education were considered to unnecessarily limit foreign schools and affect treatment of foreign students in domestic schools without increasing GI Bill oversight and integrity.<sup>35</sup> In addition, it was recognized that some of the GI Bill standards could leverage existing institutional eligibility requirements for HEA Title IV-participating institutions where applicable.

## Misleading Advertising and Enrollment Practices

Beginning in 1952 and until P.L. 116-315 became effective in August 2021, programs of education were disapproved for GI Bill purposes if they were offered by an educational institution that utilized advertising, sales, or enrollment practices of any type that were determined to be erroneous, deceptive, or misleading by the findings and results of a Federal Trade Commission (FTC) investigation.<sup>36</sup> The VA and SAAs were required to wait until an institution was formally charged before moving forward with disapproval.<sup>37</sup>

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on-the-job training).

<sup>34</sup> For information regarding the 90/10 rule, see “Modification of the Department of Education’s 90/10 Rule for Federal Student Aid” in U.S. Government Accountability Office (GAO), *Higher Education: IRS and Education Could Better Address Risks Associated with For-Profit College Conversions*, GAO-21-500T, April 20, 2021.

<sup>35</sup> JD Supra, “New veterans education law reinstates foreign student recruitment carve-out to incentive payment ban,” press release, December 24, 2021.

<sup>36</sup> P.L. 82-550 only applied the requirement to nonaccredited courses. P.L. 93-508 extended the requirement to all courses.

<sup>37</sup> Rep. Takano, “Protect the GI Bill Act,” Considered under suspension of the rules, *Congressional Record*, vol. 165, part 180 (November 12, 2019), p. H8751.

Since 1992, an HEA statutory provision bans incentive compensation by prohibiting a Title IV-participating IHE from providing any commission or incentive compensation to persons or entities based directly or indirectly on their success in enrolling students or the enrolled students' obtaining financial aid.<sup>38</sup> The HEA permits IHEs to provide incentive compensation to individuals for the recruitment of foreign students who are ineligible to receive federal student assistance. ED regulations and guidance further distinguish activities that are and are not banned as they relate to enrollment commissions and incentive compensation.<sup>39</sup>

## VA Action

P.L. 116-315 clarified the prohibited advertising, sales, and enrollment practices for GI Bill purposes and established an adjudicatory process for the VA to investigate suspected practices and take action.<sup>40</sup> The clarification included the same statutory text as an HEA provision regarding enrollment commissions and incentive compensation for educational institutions with GI Bill-approved programs of education, except that it did not provide the exemption for recruiting foreign students.<sup>41</sup> The P.L. 116-315 amendments took effect on August 1, 2021. Some observers were concerned that domestic educational institutions would be unable to recruit foreign students and promote enrollment diversity.<sup>42</sup>

P.L. 117-76 established the exemption for recruiting foreign students. P.L. 117-76 further requires that the VA implement the ban on incentive compensation in accordance with ED's regulations and guidance. The P.L. 117-76 amendments went into effect on December 21, 2021.

## SAA Action

Also under amendments adopted through P.L. 116-315, SAAs, or the VA when acting as an SAA, were required to take action against educational institutions that carry out deceptive or persistent recruiting techniques or pay inducements to any individual, entity, or agent for securing enrollments of GI Bill participants or obtaining access to GI Bill benefits.<sup>43</sup> The action may result in either providing warning to GI Bill participants or disapproval of the programs offered by these institutions. The Secretary may waive the requirement for an SAA to take action toward an educational institution for one academic year but no more than two consecutive academic years. The requirement was intended to be applicable beginning on August 1, 2021.

In June 2021, P.L. 117-16 amended the P.L. 116-315 requirement for SAAs to take action with respect to deceptive recruiting and enrollment inducements. Under these amendments,

- an entity under an agreement with the educational institution cannot engage in such prohibited practices in the same way that the law previously prohibited the institution from engaging in such prohibited practices;

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<sup>38</sup> HEA §487(a)(20).

<sup>39</sup> 34 C.F.R. §668.14(22). For a detailed list of activities covered by the incentive compensation prohibition, see U.S. Department of Education, *2017-2018 Federal Student Aid Handbook*, vol. 2, pp. 59-62, Tables 1-3; and U.S. Department of Education, "Higher Education: Program Integrity Questions and Answers—Incentive Compensation," <http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html>.

<sup>40</sup> 38 U.S.C. §3696.

<sup>41</sup> 38 U.S.C. §3696(c).

<sup>42</sup> Rep. Trone, "Responsible Education Mitigating Options and Technical Extensions (REMOTE) Act," press release, December 8, 2021, <http://trone.house.gov/wp-content/uploads/2021/10/REMOTE-Act-One-Page.pdf>.

<sup>43</sup> 38 U.S.C. §3679(f)(2).

- prohibited commissions, bonuses, and other incentive payments used by educational institutions to secure enrollments or financial aid are redefined; and
- three SAA actions become available: providing a warning to GI Bill participants, suspending new program enrollments, or disapproving all program enrollments.

P.L. 117-76 further amended provisions enacted through P.L. 116-315, as amended by P.L. 117-16. The amendments enacted through P.L. 117-76 exempt certain practices and institutions from adverse SAA actions. Specifically,

- educational institutions may provide commissions, bonuses, or other incentive payments to recruit foreign students without threat of adverse action;
- educational institutions located in a foreign country are exempt from SAA action for using deceptive or persistent recruiting techniques or enrollment incentives; and
- educational institutions that use a template developed by ED to provide GI Bill participants with consumer information regarding program costs and available financial aid are exempt from SAA action for using deceptive or persistent recruiting techniques or enrollment incentives.

In addition, provisions adopted through P.L. 117-76 require that the SAA implement the ban on incentive compensation in accordance with ED's regulations and guidance. P.L. 117-76 also delayed implementation of the P.L. 116-315 requirements regarding deceptive recruiting and enrollment inducements until August 1, 2022. The VA implemented the exemption for foreign institutions upon enactment.<sup>44</sup>

## **Approval Requirements for Licensing and Certification Testing**

Prior to P.L. 117-76, statutory provisions established requirements for the approval of licensing and certification tests. One requirement was that the entity offering the test agree to give the VA, upon request, the test fee amount, results, and personal identifying information of any candidate who applies for reimbursement from VA for a test fee.<sup>45</sup> In addition, the Application for Reimbursement of Licensing or Certification Test Fees (VA Form 22-0803) requires that applicants authorize the release of their test information to the VA and include a copy of their test results.

P.L. 117-76 made the above requirement inapplicable to an educational institution located in a foreign country. The amendment went into effect upon enactment.

## **Compliance and Risk-Based Surveys**

The VA and SAAs conduct compliance surveys and risk-based surveys to try to prevent deficiencies and violations of GI Bill statutory provisions, as well as to identify them and make corrections when they are found. Compliance surveys verify the propriety of veterans educational assistance payments. Risk-based surveys assess various legislative and VA-determined risk factors (e.g., indicators of financial instability or a rapid increase in tuition and fee charges).

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<sup>44</sup> Letter from Foreign Program Approvals Team, U.S. Department of Veterans Affairs to School Certifying Official, Subject: United States Department of Veterans Affairs (VA) – P.L. 117-76, Responsible Education Mitigating Options and Technical Extensions (REMOTE) Act of 2021, January 18, 2021.

<sup>45</sup> 38 C.F.R. §21.4268(c)(5).

Prior to P.L. 117-76, ETIs were required to make records of progress and training, tuition and charges, and other records available upon request by an SAA or the VA in order to monitor the school's compliance.<sup>46</sup> P.L. 117-76 eliminated the requirement for educational institutions located in foreign countries to provide records that pertain to a non-GI Bill participant.<sup>47</sup> This change went into effect upon enactment.

P.L. 117-333 limits, to the maximum amount feasible, the SAAs and VA to providing not more than one business day of notice before conducting a targeted risk-based survey and not more than 10 business days' notice before conducting a compliance survey.

## DEA Advantages that Duplicate Post-9/11 GI Bill Advantages

Educational institutions are required to provide certain advantages to eligible Post-9/11 GI Bill participants. P.L. 117-68 extended two of these advantages to participants in the DEA. DEA is a GI Bill program that provides educational assistance to the eligible children and spouses of veterans and servicemembers who die in the line of duty; are missing, captured, or detained while in the line of duty; are receiving treatment for a service-connected permanent and total disability that will likely result in discharge; are permanently and totally disabled due to a service-connected disability; or died while on active duty or as a result of a service-connected disability.<sup>48</sup>

## Required In-State Tuition Charges

For academic terms beginning after July 1, 2015, programs of education at public institutions of higher learning (IHLs) that charge eligible Post-9/11 GI Bill and the Montgomery GI Bill-Active Duty (MGIB-AD) participants in excess of the in-state tuition and fees rate are disapproved for Post-9/11 GI Bill and MGIB-AD purposes.<sup>49</sup> The requirement was expanded to incorporate eligible Veteran Readiness and Employment (VR&E) program participants for academic terms beginning after March 1, 2019.<sup>50</sup> VR&E is a VA entitlement program that provides job training and other employment-related services to veterans with service-connected disabilities.<sup>51</sup> The public IHL may require the participant to demonstrate intent to establish residency, by a means other than physical presence, in order to qualify.

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<sup>46</sup> 38 U.S.C. §3690(c). The Buckley amendment (P.L. 93-380) requires that institutions receiving federal funds administered by the U.S. Department of Education must obtain the student's consent to release information from school records. One exception to the law, however, is that information sought in connection with a student's application for receipt of financial aid is exempt. It has been determined that school records relating to VA benefits fall into the "financial aid" category and are therefore exempt from the provisions of the Buckley amendment.

<sup>47</sup> Letter from Foreign Program Approvals Team, U.S. Department of Veterans Affairs to School Certifying Official, Subject: United States Department of Veterans Affairs (VA) – P.L. 117-76, Responsible Education Mitigating Options and Technical Extensions (REMOTE) Act of 2021, January 18, 2021.

<sup>48</sup> For more information, see the "Survivors' and Dependents' Educational Assistance Program (DEA)" section in CRS Report R42785, *Veterans' Educational Assistance Programs and Benefits: A Primer*.

<sup>49</sup> This requirement was initially established by the Veterans Access, Choice and Accountability Act of 2014 (Choice Act; P.L. 113-146). For details on current Post-9/11 GI Bill and MGIB-AD participant eligibility, see the respective Benefit Payments sections in CRS Report R42785, *Veterans' Educational Assistance Programs and Benefits: A Primer*.

<sup>50</sup> The Department of Veterans Affairs Expiring Authorities Act of 2018 (P.L. 115-251).

<sup>51</sup> For more information, see CRS Report RL34627, *Veterans' Benefits: The Veteran Readiness and Employment Program*.



P.L. 117-68 expanded the in-state tuition requirement to incorporate all DEA participants for academic terms beginning after August 1, 2022.

### Delayed or Late GI Bill Payments

The VA has at times been delayed in making GI Bill benefit payments because of inclement weather, information technology systems issues, high caseload volumes, missing certification information, and other factors.<sup>52</sup> Since August 1, 2019, a program of education is disapproved for GI Bill purposes if it has a policy penalizing participants—including through related fees or prohibiting attendance or facilities access—because of delayed or late Post-9/11 GI Bill or VR&E benefit payments to the institution.<sup>53</sup> Programs of education are not subject to disapproval if participants are penalized when benefit payments are delayed more than 90 days after the date on which the educational institution certifies tuition and fees following receipt of the student’s certificate of eligibility.

P.L. 117-68 expanded the penalty prohibitions to incorporate DEA benefit payments for academic terms beginning after August 1, 2022. Because DEA pays benefits directly to participants and not the institution, schools do not need to develop a related policy for DEA participants according to the VA.<sup>54</sup>

### 85/15 Rule

During implementation of the original GI Bill in the 1940s, some ETIs were created solely to enroll veterans and profit from the GI Bill without providing quality training.<sup>55</sup> In response, the Korean Conflict GI Bill, enacted by the Veterans’ Readjustment Assistance Act of 1952 (P.L. 82-550), disapproved GI bill payments for new enrollments of veterans in nonaccredited courses below the college level offered by a private educational institution if more than 85% of the enrolled students had all or part of their educational charges paid to or for them by the educational institution, VR&E, or the GI Bill. The provision is referred to as the *85/15 rule*.

Prior to P.L. 117-174, the VA was generally prohibited, unless waivers or exemptions were made, from paying GI Bill benefits (except DEA) to new enrollments in a program of education in which over 85% of the full-time equivalent enrollment had all or part of their tuition, fees, and other charges paid to or for them by the VA or the institution (i.e., supported students). Supported students included, for example, GI Bill participants and students receiving institutional loans. Participants enrolled before a program failed the 85/15 rule could remain continuously enrolled and receive benefits. The following programs were exempt from the 85/15 requirement: farm cooperative training; flying clubs operating under regulations of the Armed Forces as “non-appropriated sundry fund activities”; high school (or equivalent) programs; refresher, remedial, or deficiency courses; eligible programs offered under contract with the Department of Defense

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<sup>52</sup> See, for example, Jim Absher, “VA Implements Mandatory Overtime to Reduce Huge GI Bill Delay,” *Military.com*, October 2, 2018; or Letter from Keith Wilson, Director, Education Service, U.S. Department of Veterans Affairs, to Sir or Madam, February 8, 2011.

<sup>53</sup> See the Veterans Benefits and Transition Act of 2018 (P.L. 115-407). The Secretary may waive the requirement as appropriate.

<sup>54</sup> Letter from U.S. Department of Veterans Affairs, Veterans Benefits Administration to Certifying Officials, September Office Hours Takeaways – Resources Recap, October 20, 2022.

<sup>55</sup> U.S. Congress, Senate Committee on Labor and Public Welfare, Special Subcommittee on Veterans’ Education and Rehabilitation Benefits, *Veterans Readjustment Assistance Act of 1952*, Hearing on H.R. 7656, 82<sup>nd</sup> Cong., 2<sup>nd</sup> sess., June 10-13, and 17, 1952 (Washington, DC: GPO, 1952).

(DOD) or the Department of Homeland Security (DHS); and programs at facilities that do not assess tuition, fees, or other charges (e.g., on-the-job training). An ETI in which 35% or less of its total enrollment are GI Bill participants was eligible to apply for a 35% exemption, whereby the ETI did not need to regularly report its 85/15 calculations to the VA but did need to follow the 85/15 rule.<sup>56</sup>

Beginning around 2014, the VA increased compliance surveys, particularly of flight training programs for which veterans were receiving relatively large Post-9/11 GI Bill benefit payments.<sup>57</sup> Some of the programs were in violation of the 85/15 rule. As part of the compliance efforts, the VA began clarifying or modifying its 85/15 rule guidance, especially that related to making determinations of supported and unsupported students and defining applicable programs of education. For example, the VA indicated that supported students included those on an institutional payment plan that, among other criteria, did not explicitly require the students to pay the balance of outstanding tuition, fees, or other charges by the end of the academic term or quarter.<sup>58</sup> In 2020, the VA intended to require that ETIs reapply biennially for their 35% exemption by providing, among other information, 85/15 calculations for all programs of education. The VA delayed implementation of some of the new guidance and the 35% exemption reapplication following feedback from Congress and ETIs.<sup>59</sup> Some ETIs indicated that the new guidance and requirements were confusing and onerous and would result in veterans being unable to enroll.<sup>60</sup>

P.L. 117-174 was intended to ensure proper oversight of programs of education, not burden quality ETIs with excessive reporting requirements, and ensure GI Bill participants' choices of programs of education are not diminished.<sup>61</sup> P.L. 117-174 amends the 85/15 rule such that

- a non-supported student includes one on an institutional payment plan at an educational institution that the Secretary determines has a history of offering payment plans that are completed not later than 180 days after the end of the applicable academic term or quarter;
- the VA must establish an adjudicatory process by which an educational institution may appeal a GI Bill payment suspension to the VA Secretary and Undersecretary within 30 days of the start of the applicable academic term or quarter when failing an 85/15 determination;

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<sup>56</sup> U.S. Department of Veterans Affairs, *Full-time Equivalency (FTE)*, accessed on April 13, 2022, [https://benefits.va.gov/GIBILL/85\\_15/FTE.asp](https://benefits.va.gov/GIBILL/85_15/FTE.asp).

<sup>57</sup> Alan Zarembo, "U.S. taxpayers stuck with the tab as helicopter flight schools exploit GI Bill loophole," *Los Angeles Times*, March 15, 2015; and U.S. Department of Veterans Affairs, *VBA Quarterly Education Service Webinar*, December 3, 2014.

<sup>58</sup> U.S. Department of Veterans Affairs, *Supported and Non-Supported Students*, accessed on April 13, 2022, [https://benefits.va.gov/GIBILL/85\\_15/FTE.asp](https://benefits.va.gov/GIBILL/85_15/FTE.asp).

<sup>59</sup> U.S. Department of Veterans Affairs, "Important Update: 85/15 Information in the School Certifying Official Handbook," press release, December 16, 2020; U.S. Department of Veterans Affairs, "85/15 Rule Reporting Reset Postponed to October 1," press release, June 21, 2021; and Letter from Jon Tester, Chairman, Senate Committee on Veterans' Affairs, Jerry Moran, Ranking Member, Senate Committee on Veterans' Affairs, and Mark Takano, Chairman, House Committee on Veterans' Affairs, to The Honorable Denis R. McDonough, Secretary of Veterans Affairs, November 12, 2021.

<sup>60</sup> Letter from Ted Mitchell, President, American Council on Education to Chair Takano, Ranking Member Bost, Chair Levin, and Ranking Member Moore, March 15, 2022.

<sup>61</sup> House Committee on Veterans' Affairs Republicans, "House and Senate VA Committee Leaders Introduce Bill to Simplify G.I. Bill Reporting Requirements," press release, June 29, 2022, <https://republicans-veterans.house.gov/news/documentsingle.aspx?DocumentID=6027>.

- the list of exempt programs of education is expanded to include those that enroll fewer than 10 supported students;
- the prior 35% exemption requiring VA approval is eliminated;
- the rule does not apply to any course offered by an ETI at which 35% or less of the ETI’s total enrollment are GI Bill participants and that offers a majority of courses approved under 38 U.S.C. Sections 3672 or 3675 (see **Table 2**);<sup>62</sup> and
- the rule does not apply to any course offered by an ETI at which 35% or less of the ETI’s total enrollment are GI Bill participants and that does not offer a majority of courses approved under 38 U.S.C. Sections 3672 or 3675 (see **Table 2**), unless the VA, on a case by case basis, has reason to believe that the enrollment of VA-supported students may be in excess of 85% of the total student enrollment in a course.<sup>63</sup>

P.L. 117-174 went into effect for academic terms beginning on or after August 26, 2022.

In response to P.L. 117-74, the VA has proposed new regulations and provided guidance.<sup>64</sup> Under the guidance, a student on an institutional payment plan is an unsupported student if the payment plan is publicly available to all students, requires repayment within 180 days of the end of the academic term or quarter, and is repaid prior to the student enrolling in a subsequent term. The guidance further states that ETIs are excluded from regularly reporting their 85/15 calculations if their GI Bill student enrollment equals 35% or less of the ETI’s total enrollment and the courses are not listed in 38 U.S.C. Sections 3672 or 3675.

**Table 2. Courses Approved Under 38 U.S.C. Sections 3672 and 3675**

| Course Descriptions   |
|---|
| “A program leading to a secondary school diploma offered by a secondary school approved in the state in which it is operating.” (38 U.S.C. §3672(b)(2)(A)(iv))  |
| “Accredited programs (including non-degree accredited programs) ... when ... such courses have been accredited and approved by a nationally recognized accrediting agency or association ... which that Secretary [of Education] determines to be reliable authority as to the quality of training offered by an educational institution.” (38 U.S.C. §3675(a))                       |
| “Accredited programs (including non-degree accredited programs) ... when such courses are approved by the state as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i–3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).” (38 U.S.C. §3675(a)(1)(D)) |
| “An apprenticeship program registered with the Office of Apprenticeship (OA) of the Employment Training Administration of the Department of Labor or a state apprenticeship agency recognized by the Office of Apprenticeship pursuant to the Act of August 16, 1937 (popularly known as the “National Apprenticeship Act”; 29 U.S.C. 50 et seq.)” (38 U.S.C. §3672(b)(2)(A)(iii))    |
| “A licensure test offered by a federal, state, or local government.” (38 U.S.C. §3672(b)(2)(B))   |
| “A program of education exclusively by correspondence, and the correspondence portion of a combination correspondence-residence course leading to a vocational objective, that is offered by an educational institution ... if (1) the educational institution is accredited by an entity recognized by the Secretary of Education, and (2) at least                                  |

<sup>62</sup> The ETI must certify to the VA on a biennial basis that it remains exempt. The VA cannot require that the exempt ETI submit 85/15 calculations during the biennial period.

<sup>63</sup> The ETI must certify to the VA on a biennial basis that it remains exempt. The VA cannot require that the exempt ETI submit 85/15 calculations during the biennial period.

<sup>64</sup> U.S. Department of Veterans Affairs, “85/15 Rule Calculations, Waiver Criteria, and Reports,” 87 *Federal Register* 61544-61548, October 12, 2022.

50 percent of those pursuing such a program or course require six months or more to complete the program or course.” (38 U.S.C. §3672(e))

“A flight training course approved by the Federal Aviation Administration that is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate.” (38 U.S.C. §3672(b)(2)(A)(ii))

“The entrepreneurship courses offered by a qualified provider of entrepreneurship courses.” (38 U.S.C. §3675(c)(1))

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**Source:** 38 U.S.C. Sections 3672 and 3675.

**Note:** Additional statutory and regulatory requirements apply.

## Approved Programs of Education

A wide variety of education and training is approved for GI Bill purposes. The programs of education include, but are not limited to, noncollege degree programs, degree programs, licensing or certification tests, and apprenticeships or other on-the-job training programs.

### Secondary Schools

Beginning in 1973, DEA spouse-participants were able to pursue secondary level education without being charged entitlement. All of the GI Bills provide eligible persons an entitlement to educational assistance (usually 36 months). Receipt of most educational assistance payments uses entitlement. Beginning in 1989, all DEA participants without a high school diploma (or the equivalent) were able to pursue secondary level education without being charged entitlement for the first five months of full-time pursuit. DEA generally provides educational assistance benefits to the children and spouse of individuals who die of a service-connected disability; have a total permanent disability resulting from a service-connected disability; or are missing in action, captured, forcibly detained, or interned in the line of duty.<sup>65</sup>

P.L. 117-328 prohibits DEA participants from pursuing approved programs of education at secondary schools and other institutions furnishing education at the secondary school level. Few DEA participants (67 individuals in FY2020) used the benefits for secondary school.<sup>66</sup>

The VA-administered Dependency and Indemnity Compensation (DIC) program for survivors of certain servicemembers and veterans provides a monthly tax-free cash payment to survivors and dependents of servicemembers killed while on active military duty and survivors and dependents of certain veterans.<sup>67</sup> DIC may provide cash payments to an unmarried child pursuing high school but will not cover a married child or a spouse pursuing high school.<sup>68</sup>

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<sup>65</sup> Some stakeholders suggested reserving GI Bill benefits, including DEA, for postsecondary education and allowing participants to use Dependency and Indemnity Compensation (DIC) for the pursuit of secondary education. Statement by Ron Burke, Deputy Under Secretary for Policy and Oversight, Veterans Benefits Administration, and Statement by Ashlynn Haycock, Deputy Director, Policy and Legislation, Tragedy Assistance Program For Survivors, in U.S. Congress, House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity, *Pending Legislation*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., September 21, 2021.

<sup>66</sup> Statement by Ron Burke, Deputy Under Secretary for Policy and Oversight, Veterans Benefits Administration, in U.S. Congress, House Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity, *Pending Legislation*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., September 21, 2021.

<sup>67</sup> For more information about DIC, see CRS Report WPD00018, What is the “Widow’s Tax”? Understanding the Military Survivor Benefit Plan and Veterans’ Dependency and Indemnity Compensation. (Available to congressional clients upon request.)

<sup>68</sup> Students receiving DIC are not able to concurrently receive education benefits under DEA.

## Study Abroad Programs

Following implementation of the Post-9/11 GI Bill, the VA indicated that the bill's benefits were available to individuals enrolled in study abroad courses. The study abroad courses had to be creditable to the individuals' program of education.<sup>69</sup> The program at the *host* school in the foreign country had to be approved for GI Bill purposes. While the VA paid tuition and fees, housing, and books and supplies, the VA did not pay any fees specific to studying abroad unless the student was required to study abroad as part of the student's program. The VA also did not pay airfare.<sup>70</sup>

In August 2020, the VA revised its interpretation requiring the program and courses at the host school to be GI Bill approved.<sup>71</sup> Despite VA policy, school certifying officials were certifying enrollment in study abroad courses that were not GI Bill approved.<sup>72</sup> Some veterans service organizations (VSOs) expressed concern that the policy would limit access to study abroad programs.<sup>73</sup>

P.L. 117-333 authorized the VA to approve a study abroad course for a period of no more than five years if the home school, with a GI Bill-approved program of education, enters into a contract or other written agreement with a host school to offer study abroad courses as part of its program of education. Under the contract or agreement, the home school agrees to assume responsibility for the quality and content of the study abroad courses and serves as the certifying official, and the host school agrees to seek GI Bill approval of the courses by no later than five years after the date of the agreement.

## Outreach and Information Dissemination

In addition to federal actions intended to prevent misleading and deceptive advertising and enrollment practices, Congress and the Biden Administration have established policies and requirements with the intention of better informing GI Bill-eligible individuals of their benefits and their choices for education and training.

### Information Dissemination by Educational Institutions

Executive Order 13607 of April 27, 2012, established voluntary Principles of Excellence that educational institutions could implement to ensure servicemembers and veterans and their family members were well informed regarding their choices for education and training and financial aid.<sup>74</sup> For example, the Principles of Excellence encouraged schools to provide prospective

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<sup>69</sup> 38 U.S.C. §3680A(f)(2).

<sup>70</sup> U.S. Department of Veterans Affairs, "Tuition and Fees, Housing, Books and Supplies under Post-9/11 GI Bill Study Abroad Programs," downloaded on June 24, 2010, from <https://www.gibill.va.gov>.

<sup>71</sup> Statement for the Record, Student Veterans of America, in U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, legislative hearing, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 18, 2022; and Letter from Thomas J. Murphy, Acting Under Secretary for Benefits, U.S. Department of Veterans Affairs, to Dr. Esther D. Brimmer, Executive Director & CEO, NAFSA: Association of International Educators, June 15, 2021.

<sup>72</sup> Letter from Thomas J. Murphy, Acting Under Secretary for Benefits, U.S. Department of Veterans Affairs, to Dr. Esther D. Brimmer, Executive Director & CEO, NAFSA: Association of International Educators, June 15, 2021.

<sup>73</sup> Statement for the Record, Student Veterans of America, in U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, legislative hearing, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 18, 2022.

<sup>74</sup> Executive Order 13607, "Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members," 77 *Federal Register* 25861-25864, May 2, 2012.

students with personalized information about program costs, available financial aid, potential debt, and educational plans. The principles also encouraged accommodations for servicemembers and reservists absent due to service requirements, a designated point of contact for academic and financial advising, accrediting entity approval of all new programs prior to enrolling students, and the use of HEA Title IV-compliant institutional refund policies.

P.L. 116-315 generally required that educational institutions implement the Principles of Excellence disclosures for GI Bill participants or risk programs of education being disapproved for GI Bill purposes.<sup>75</sup> It essentially made actions that were previously optional mandatory. Specifically, SAAs, or the VA when acting as an SAA, must take action against educational institutions that fail to

- provide specified consumer information (e.g., course costs and job placement rates) to GI Bill participants prior to enrollment and at additional intervals;
- maintain policies to inform GI Bill participants of the availability of and their eligibility for various forms of financial aid;
- maintain policies to prohibit automatic re-enrollment of GI Bill participants;
- maintain a policy to accommodate and ensure the readmission of servicemembers when their service in the Armed Forces interrupts their attendance or enrollment;
- secure accrediting entity approval of new programs before enrolling GI Bill participants if required by the accrediting entity; and
- designate a point of contact from which GI Bill participants can receive counseling or referrals to counseling for academics, disabilities, or finances.

Taking action may result in providing warning to GI Bill participants or disapproving the programs. The Secretary may waive the requirement for one academic year but no more than two consecutive academic years. The requirement was intended to go into effect on June 15, 2021, and be applicable beginning on August 1, 2021.

P.L. 117-76 exempts some institutions from such SAA action and modifies the allowable SAA actions. Educational institutions located in a foreign country and educational institutions that provide to GI Bill participants consumer information regarding program costs and available financial aid using a template developed by ED are exempt. Under P.L. 117-16, the allowable SAA actions are providing warning to GI Bill participants, suspending new enrollments, or disapproving all enrollments in the programs. P.L. 117-76 delayed implementation of the disclosure requirement to going into effect on June 15, 2022, and being applicable beginning on August 1, 2022. The VA, however, implemented the changes for foreign institutions immediately (i.e., as of January 2022).<sup>76</sup>

## GI Bill Comparison Tool Enhancements

Since 2014, the VA has provided information on GI Bill-approved ETIs and available Post-9/11 GI Bill benefits through its online GI Bill Comparison Tool to help individuals make informed decisions about their education and training.<sup>77</sup> The tool was initially launched in response to

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<sup>75</sup> 38 U.S.C. §3679(f)(1).

<sup>76</sup> Letter from U.S. Department of Veterans Affairs, Foreign Program Approvals Team to School Certifying Official, *United States Department of Veterans Affairs (VA) – P.L. 117-76, Responsible Education Mitigating Options and Technical Extensions (REMOTE) Act of 2021*, January 18, 2022.

<sup>77</sup> See the tool at <https://www.va.gov/education/gi-bill-comparison-tool/>.

Executive Order 13607, and the requirements for the tool have been codified in 38 U.S.C. Section 3698(c).

P.L. 117-16 requires the VA to make additional information available by identifying which ETIs are

- religiously affiliated IHEs,
- minority-serving institutions, as defined in HEA Title III and Title V, or
- gender-specific ETIs.

The requirements for the additional information go into effect June 8, 2023.

## GI Bill Claims Processing

Veterans' education claims processing involves the procedures and policies by which eligible individuals, ETIs, and the VA make and process claims for educational assistance. The VA issues certificates of eligibility to eligible individuals who apply for benefits. The VA issues benefit payments based on enrollment certifications and other documentation submitted by eligible individuals and ETIs.

### Dual Certification

For the VA to process Post-9/11 GI Bill payments, educational institutions must certify a participant's enrollment, rate of pursuit, coursework, and tuition and fees charges. The VA pays to participants their housing stipend based on rate of pursuit and other criteria and pays to the educational institution the participant's tuition and fees benefit based on tuition and fees charges and other criteria. Beginning in 2010, the VA encouraged educational institutions to certify rate of pursuit as early as possible, including before the academic term begins, and then tuition and fees charges later when available.<sup>78</sup> This dual certification is designed to ensure that housing stipends are received in a timely manner. In 2017, the VA began encouraging educational institutions to certify tuition and fees charges after the drop/add period in order to reduce tuition and fee overpayments that occur when participants reduce their rate of pursuit.<sup>79</sup>

P.L. 116-315, as amended by P.L. 117-16, codified the VA policy, requiring dual certification by educational institutions for the Post-9/11 GI Bill. The requirement went into effect on August 1, 2021. P.L. 117-76 allowed the VA to waive the dual certification requirement for educational institutions on a flat rate tuition and fee structure because a delayed tuition and fees certification would be unnecessary. The amendment went into effect on December 21, 2021.

P.L. 117-333 repealed the P.L. 117-76 authorized waiver to the dual certification requirement and established a new exception. Educational institutions are not required to submit a dual certification if the institution charges the same amount of tuition and fees for full-time enrollment and greater than full-time enrollment, the student is enrolled full-time before the date on which the individual is able to withdraw from the course or program of education without penalty, and the student remains enrolled in the course or program of education after the date on which the individual is able to withdraw from the course or program of education without penalty.

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<sup>78</sup> Letter from Keith M. Wilson, Director, Education Service, U.S. Department of Veterans Affairs, to School Certifying Official, December 7, 2010.

<sup>79</sup> U.S. Department of Veterans Affairs, *VBA Education Service Quarterly Webinar*, September 27, 2017.

## Rounding Out

Statutory provisions limit GI Bill participants to benefits for courses that satisfy the requirements outlined by the curriculum guide or graduation evaluation form for their program of education.<sup>80</sup> For example, excessive free electives, successfully completed courses that are repeated, and audited courses cannot be used to determine GI Bill benefit amounts. Since at least 2011, the VA has had a policy allowing GI Bill participants to *round out* an enrollment schedule with nonrequired courses to achieve a full-time course load in a participant's last term of a program of education.<sup>81</sup>

Early in 2021, the VA announced a plan to eliminate rounding out by August 2021 to avoid potential abuse and help participants retain entitlement for future use.<sup>82</sup> Some Members of Congress expressed concern that eliminating rounding out would reduce benefits in GI Bill participants' final terms and potentially make program completion more difficult.<sup>83</sup> In June 2021, the VA announced plans to retain rounding out but limit it to courses that are part of the approved program of education (excluding repeated courses).<sup>84</sup>

P.L. 117-76 codified rounding out. Eligibility for it is limited to GI Bill participants who are in the last term of the program of education and would be limited to half-time or less-than-half-time enrollment based on the amount of courses required to complete the program. The VA may allow, pursuant to regulations, a GI Bill participant to round out with courses that are part of the approved program of education (excluding repeated courses). If the participant has completed all of the courses that are part of the approved program of education, they may round out with nonrequired courses. Rounding out, as enacted, went into effect for academic terms beginning on or after January 1, 2022.

## Concurrent Receipt of MGIB-SR and Tuition Assistance

MGIB-SR is the GI Bill intended as a federal incentive promoting membership and retention in the Selected Reserves. The Selected Reserves can be involuntarily ordered to active duty and have priority within the reserve components.<sup>85</sup> MGIB-SR is a DOD program administered by the VA. Since at least 1999, despite a general restriction on duplication of educational assistance, DOD instructions established that receipt of MGIB-SR and Tuition Assistance (TA) did not constitute a duplication of benefits when participants were enrolled at least half-time.<sup>86</sup> The 1999 DOD instructions also prohibited MGIB-SR payments for less than half-time pursuit if TA were available. In addition, prior to P.L. 117-81 MGIB-SR participants were not authorized for TA Top-

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<sup>80</sup> 38 U.S.C. §3680(a).

<sup>81</sup> U.S. Department of Veterans Affairs, *School Certifying Official Handbook*, 1<sup>st</sup> Edition, May 15, 2011, pp. 39-41.

<sup>82</sup> Steve Beynon, "This GI Bill Rule Change Could Cost Veterans Thousands of Dollars a Semester," *Military.com*, March 2021; and Letter from Education Service, U.S. Department of Veterans Affairs to GI Bill® Student, Subject: Rounding Out Changes Starting August 1, 2021.

<sup>83</sup> Steve Beynon, "This GI Bill Rule Change Could Cost Veterans Thousands of Dollars a Semester," *Military.com*, March 2021; and Leo Shane III, "VA dumps plans to stop students from adding nondegree classes to keep GI Bill benefits," *Military Times*, April 15, 2021.

<sup>84</sup> Letter from Education Service, U.S. Department of Veterans Affairs to GI Bill® Student, Subject: Rounding Out Changes Starting August 1, 2021.

<sup>85</sup> For more information on the Selected Reserves, see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*.

<sup>86</sup> U.S. Department of Defense, *Montgomery GI Bill-Selected Reserve (MGIB-SR)*, DODI 1322.17, November 29, 1999.



Up, which permits servicemembers to elect to receive GI Bill benefits to pay for tuition or related charges above the amount paid through TA by their military service branch. Post-9/11 GI Bill and MGIB-AD participants are authorized for TA Top-Up.

Effective May 4, 2021, DOD changed its policy allowing a reservist concurrent receipt of both MGIB-SR and TA benefits for the same course if enrolled half-time or more.<sup>87</sup> For any training that started prior to May 4, 2021, the prohibition on concurrent receipt of MGIB-SR and TA is still applicable.<sup>88</sup>

Section 559 of P.L. 117-81 permits individuals who are enrolled at least half-time to elect to receive MGIB-SR benefits as if the individual were not also eligible to receive or already receiving TA for such enrollment. It establishes that concurrent receipt of MGIB-SR and TA is not a duplication of benefits if the individual is enrolled at least half-time. It also authorizes MGIB-SR participants for TA Top-Up.

## GI Bill Delimiting Dates

The Harry W. Colmery Veterans Educational Assistance Act of 2017 (Colmery Act; P.L. 115-48), also known as the Forever GI Bill, eliminated the Post-9/11 GI Bill delimiting dates for some individuals.<sup>89</sup>

The GI Bill National Emergency Extended Deadline Act of 2022 (Title II, Subtitle C of P.L. 117-328) eliminated the delimiting dates under the Survivors' and Dependents' Educational Assistance Program (DEA) for some individuals. Specifically, the following individuals are not subject to a delimiting date: individuals who first become eligible for DEA on or after August 1, 2023, and DEA-eligible individuals who become 18 years of age, or completes secondary schooling, on or after August 1, 2023.

## GI Bill Eligibility and Entitlement

All of the GI Bills provide eligible persons an entitlement to educational assistance. Eligibility for servicemembers and veterans is generally based on their military service, discharge status, and other factors. Family members gain eligibility when an eligible servicemember transfers eligibility or when a servicemember dies under specified circumstances. The initial entitlement is usually 36 months of full-time educational assistance (or its equivalent in part-time educational assistance). Receipt of educational assistance payments uses entitlement. In general, and unless excepted, eligible persons are no longer eligible for assistance under that GI Bill once the entitlement is exhausted.

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<sup>87</sup> U.S. Department of Veterans Affairs, VBA Education Service, "Important GI Bill Update: MGIB-SR Students Can Use Tuition Assistance Concurrently," press release, May 19, 2021.

<sup>88</sup> U.S. Department of Veterans Affairs, Education Service, *August Office Hours: School Certifying Officials*, August 18, 2021.

<sup>89</sup> Several stakeholders believe GI Bill delimiting dates are outdated and that the benefits should be available to eligible individuals forever. U.S. Congress, House Committee on Veterans' Affairs, *Harry W. Colmery Veterans Educational Assistance Act of 2017*, to accompany H.R. 3218, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., July 24, 2017, H.Rept. 115-247; and Statement of Patrick Murray, Legislative Director, Veterans of Foreign Wars, in U.S. Congress, Senate Committee on Veterans' Affairs, *Hearing to Consider Pending Legislation*, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., November 17, 2021.

## Eligibility of Post-9/11 GI Bill Transferees

Subject to certain service requirements, servicemembers eligible for the Post-9/11 GI Bill (referred to as *qualifying individuals*) may transfer their benefits to certain family members. Statutory provisions establish framework requirements for transferability and require the U.S. Department of Defense (DOD) to regulate the transfer processes. The qualifying individual submits a transfer request to DOD and designates one or more dependents to receive one or more months of entitlement. A statutory provision required the qualifying individual to also specify a transfer end date—a date after which the family member is prohibited from using the transferred entitlement. If the request is approved and entitlement remains, the qualifying individual may modify the number of months transferred and effective transfer period for each designated dependent at any time but cannot modify the designated transferees. The ability to modify the transfer(s) was intended to provide the qualifying individual maximum control in the use of their Post-9/11 GI Bill entitlement. Prior to the Post-9/11 GI Bill amendments in the 117<sup>th</sup> Congress, if the qualifying individual died, the last choices and modifications were immutable.

DOD provided qualifying individuals the option of setting a transfer end date. P.L. 117-297 eliminated the statutory requirement that qualifying individuals establish a transfer end date.

Under P.L. 117-328, upon the death of the qualifying individual, VA evenly distributes the qualifying individual's remaining entitlement among all the designated transferees taking into consideration each transferee's delimiting date.<sup>90</sup> The delimiting date is the statutorily defined date after which no GI Bill benefits may be earned or paid. Once one such transferee reaches his or her delimiting date, VA can further distribute the unused entitlement among the other designated transferees, taking into consideration their delimiting dates. The redistribution applies to qualifying individuals who die on or after November 1, 2018.

## Eligibility for Individuals with Sole Survivorship Discharges

Post-9/11 GI Bill participants at the 100% benefit level are eligible for maximum payment amounts. The following Post-9/11 GI Bill participants are at the 100% benefit level:

- individuals who have served at least 36 aggregate months on qualifying active duty after September 10, 2001, and subsequently continue to serve or are discharged or released from service under specified conditions;
- individuals who have served at least 30 continuous days on qualifying active duty after September 10, 2001, and are subsequently discharged or released from active duty for a service-connected disability;
- individuals awarded the Purple Heart for service occurring after September 10, 2001;
- Marine Gunnery Sergeant John David Fry scholarship recipients; and
- dependents using benefits transferred from a qualifying individual at the 100% benefit level.

Generally speaking, and except as described above, individuals with fewer than 36 months of qualifying active duty service are eligible for reduced benefit payments.

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<sup>90</sup> Statement by Ron Burke, Deputy Under Secretary for Policy and Oversight, Veterans Benefits Administration, in U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, *Pending Legislation*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., September 21, 2021.

A servicemember who is the only surviving child may separate from the Armed Forces early and receive sole survivorship benefits through a sole survivorship discharge.<sup>91</sup> The child must be the only surviving child of a family in which the father, mother, or one or more siblings served in the Armed Forces and was killed; died as a result of wounds, accident, or disease; is in a captured or missing in action status; is permanently 100% disabled; or is hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization).<sup>92</sup> Based on his or her own military service, such surviving child might not be eligible for the Post-9/11 GI Bill or might be limited to lower Post-9/11 GI Bill benefit payments because of the early separation of the sole survivorship discharge.

The Sgt. Wolf Kyle Weninger Veterans Education Fairness Act of 2022 (P.L. 117-333) establishes the 100% benefit level for individuals who are discharged or released from active duty with a sole survivorship discharge following at least 30 continuous days

- on qualifying active duty after September 10, 2001; or
- on active duty as an officer in order to meet a service academy or Reserve Officer Training Corps (ROTC) obligation after September 10, 2001.

Such individuals would be eligible for the Yellow Ribbon program.<sup>93</sup>

## Relief for Closed Schools or Disapproved Programs of Education

Since 2015, GI Bill recipients have been eligible to have some used entitlement restored in the event of qualifying school closures or course disapprovals. Generally speaking, the amount of entitlement restored is commensurate with the portion of the period of enrollment not completed due to closure or disapproval. However, special limited time provisions have been established to restore entitlement commensurate with the entire period of enrollment.

Between January 1, 2015, and August 16, 2017, individuals who did not receive credit or lost training time as a result of an educational institution closing or a required course being disapproved because of a subsequently changed law, regulation, or guidance had their entitlement restored for their entire period of enrollment.

Under P.L. 116-315, the amount of entitlement restored for closures and disapprovals occurring after July 31, 2021, and before September 30, 2023, is based on the entire period of the individual's enrollment in the closed school or disapproved course if the individual transferred fewer than 12 credits and if the individual was so enrolled within 120 days of the closure.

P.L. 117-297 establishes three related requirements of the VA to facilitate administration of the P.L. 116-315 entitlement restoration. It requires the VA to accept as proof the GI Bill recipient's written self-certification that fewer than 12 credits have been transferred. The self-certification requires that GI Bill recipients acknowledge that transferring 12 or more credits makes them ineligible for entitlement restoration. The VA is also required to provide the GI Bill recipient an updated Certificate of Eligibility (COE) with the adjusted remaining entitlement period. The COE informs an ETI of an individual's GI Bill eligibility, remaining entitlement, time limit for using the entitlement, and benefit level so that the ETI may take appropriate actions regarding the

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<sup>91</sup> U.S. Department of Defense, *Separation Policies for Survivorship*, DoD Instruction 1315.15, May 19, 2017.

<sup>92</sup> 10 U.S.C. §1174(i).

<sup>93</sup> An IHL may voluntarily enter into a Yellow Ribbon Payment agreement with the VA. Under the agreement, the VA and IHL match an equal percentage of some portion of the tuition and fee charges remaining in cases in which the tuition and fees at an IHL are not fully covered by the Post-9/11 GI Bill tuition and fees benefit payment.

individual's benefits. Finally, the VA must inform GI Bill recipients of their potential eligibility to have entitlement restored under this temporary provision.

## **Calls to Active Service or Military Training**

Being ordered to active service or military training may disrupt a servicemember's pursuit of a program of education. Title 38 of the U.S. Code and the HEA provide some protections and relief for some such servicemembers. However, some Members of Congress continued to express concern that fulfilling military orders has saddled some servicemember-students with tuition debt, failing grades, and other penalties.<sup>94</sup>

Under Title 38 generally, the GI Bill entitlement period is not charged for individuals who must discontinue a course and fail to receive credit or training time as a result of certain service obligations. For reservists, a call to active duty under Sections 12301(a), 12301(d), 12301(g), 12302, or 12304 of Title 10 U.S.C. qualifies. For active duty servicemembers, assignment to a new duty location or an increased amount of work qualifies. The amount of entitlement not charged is commensurate with the portion of the period of enrollment not completed.

Under the HEA in general, an IHE must promptly readmit a servicemember, following a leave of absence, with the same academic status as they had when last attending the school or accepted for admission to the school. This requirement applies to a student who cannot attend school due to military service. Military service includes active duty, active duty for training, or full-time National Guard duty under federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

Under P.L. 117-328, a servicemember receiving VA educational assistance may withdraw or take a leave of absence from a public or private nonprofit IHE in response to being ordered to active duty, full-time training duty, full-time National Guard duty with entitlement to federal pay, inactive duty for training, or state active duty. The IHE may not take adverse action (e.g., assigning a failing grade or assessing a financial penalty) against the servicemember for withdrawing or taking a leave of absence. If the servicemember withdraws, the IHE must refund any institutional charges for the academic term. If the servicemember takes a leave of absence, the IHE must, to the extent practicable, permit the servicemember to complete the academic term. The provision does not apply to servicemembers enrolled at private for-profit (proprietary) IHEs. In contrast to the HEA provision, the P.L. 117-328 provision supports permanent withdrawals and supports more military service periods.

## **Special Authorities for National Emergencies**

The COVID-19 emergency disrupted programs of education, educational institutions, and employment, negatively impacting the short-term finances of participants and their continued pursuit of educational programs. Statutory provisions were enacted to reduce the disruptive effect of the COVID-19 emergency and provide similar permanent authorities to the VA to react to any national emergency.<sup>95</sup>

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<sup>94</sup> Rep. Mark Takano, "Protections for Student Veterans Act," *Congressional Record*, daily edition, vol. 167 (November 16, 2021), pp. H6283-H6286.

<sup>95</sup> U.S. Congress, House Committee on Veterans' Affairs, *GI Bill National Emergency Extended Deadline Act*, to accompany H.R. 2167, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., May 14, 2021.

## Special Authorities During the COVID-19 Emergency

In response to the COVID-19 emergency, special authorities were enacted to reduce the effect of disruptions on participants by extending benefits or not reducing benefit levels from March 1, 2020, through December 21, 2021. A description of the authorities is available in CRS In Focus IF11685, *Special Authorities for Veterans' Educational Assistance Programs During the COVID-19 Emergency*. P.L. 117-76 extended the special authorities for approximately five months to June 1, 2022. P.L. 117-333 repealed several of the special authorities.

## Payments for Modified or Unavailable Courses and Closed Schools

An educational institution or training establishment may modify or make unavailable a program of education by reason of an emergency situation. An emergency situation is an emergency declared by the President that the VA determines is an emergency for purposes of VA laws.

For programs of education that are converted from approved in-residence courses to distance learning by reason of an emergency or health-related situation, P.L. 117-333 allows the VA to continue to provide educational assistance without regard to the conversion. Without the authority, unaccredited programs and some certificate programs that are offered in part or exclusively through distance learning are not eligible for GI Bill approval. In addition, without the authority, Post-9/11 GI Bill beneficiaries enrolled exclusively via distance learning are eligible for no more than one-half the national average of in-residence housing stipends.

P.L. 117-333 also authorizes the VA to temporarily provide payments in the event that courses are modified or made unavailable. If an educational institution or training establishment modifies or makes unavailable a program of education by reason of an emergency situation such that a beneficiary's payment is reduced, the VA is authorized to provide up to four weeks of VA educational assistance payments at an unreduced level. Applicable payments are the Post-9/11 GI Bill housing stipend and the subsistence allowance under the other GI Bills. Total temporary assistance for an emergency situation may not exceed four weeks. In addition, GI Bill entitlement (excluding Post-9/11 GI Bill entitlement) is not charged for the up to four-week temporary period if the beneficiary did not make progress toward the completion of the program of education. If it is in the beneficiaries' best interest, the VA may continue paying GI Bill benefits to beneficiaries who remain enrolled in courses disapproved because the course was modified by reason of an emergency situation.

## Payments for Closed Schools

Prior to P.L. 117-333, the VA was authorized to continue paying GI Bill allowances for an interim period following a school closure. The VA was authorized to pay up to four weeks of GI Bill allowances during periods when the educational institution was temporarily closed under an established policy based on an executive order of the President or due to an emergency situation. In addition, the VA was authorized to pay the Post-9/11 GI Bill housing allowance through the end of the academic term but no longer than 120 days following a permanent school closure or the disapproval of a course that was a necessary part of the intended program as a result of a subsequently established or modified policy, regulation, or law.

Under P.L. 117-333, if an educational institution or training establishment closes or a program is suspended due to an emergency situation, the VA is authorized to provide up to four weeks of GI Bill allowances. GI Bill entitlement is not charged for the up to four-week period. An emergency situation is an emergency declared by the President that the VA determines is an emergency for

purposes of VA laws. The prior four-week payment authority and P.L. 117-333 four-week payment authority may be combined for a total of up to eight weeks.

## **Payments for a Reduced Rate of Pursuit**

P.L. 117-333 further permits the VA to pay the Post-9/11 GI Bill housing stipend at the full-time rate for those beneficiaries who were enrolled full-time on the first day of an emergency situation but reduced their enrollment rate because of the partial or full cancellation of a course by reason of the emergency situation. Without the authority, beneficiaries enrolled part-time would receive reduced payments.

## **No Debt for Student Withdrawal**

GI Bill payments for courses from which beneficiaries withdraw are overpayments if the student's course grade is nonpunitive and there are no mitigating circumstances (e.g., an illness or death in the student's immediate family). P.L. 117-333 defines a withdrawal (except withdrawal from a correspondence course) for a covered reason as a mitigating circumstance during an emergency situation. Covered reasons are any reasons related to an emergency situation, including, but not limited to, illness, childcare availability, financial hardship, and employment changes.

## **GI Bill Entitlement Charge for Participants Unable to Pursue a Program of Education**

In general, the GI Bills provide eligible persons a 36-month (or its part-time equivalent) entitlement to educational assistance. Most GI Bill payments reduce a beneficiary's available entitlement. However, entitlement is not charged for payments related to (1) an incomplete course or program for which the individual is unable to receive credit or lost training time as a result of an educational institution closing; (2) a necessary but disapproved course or program if disapproved by a subsequently established or modified policy, regulation, or law; and (3) the Post-9/11 GI Bill housing allowance paid following either a permanent closure or such course disapproval.

P.L. 117-333 enacted separate yet similar provisions requiring the VA not to charge entitlement for an incomplete course or program if a beneficiary is unable to receive credit or lost training time under various conditions that are the result of an emergency situation.

- One provision establishes three conditions: (1) the closure of an educational institution, (2) the full or partial cancellation of a course or program of education, or (3) the disapproval of a necessary course because the course was modified. Specifically, the period of entitlement not charged is the sum of the enrollment period from which the individual did not receive credit or lost training time, and the period for which the Post-9/11 GI Bill housing allowance was paid following the closure or disapproval.
- The other provision establishes two conditions: (1) the temporary closure of an educational institution or training establishment, or (2) the temporary closure or termination of a course or program of education. (The period of entitlement not charged is explained in the "Relief for Closed Schools or Disapproved Programs of Education" section.)

With respect to apprenticeship or on-the-job training under the MGIB-AD, Post-9/11 GI Bill, and MGIB-SR, P.L. 117-333 proportionally reduces the entitlement charged to beneficiaries who cannot complete 120 training hours in a month due to unemployment by reason of an emergency situation without reducing the training allowance. An emergency situation is an emergency declared by the President that the VA determines is an emergency for purposes of VA laws.

## Extension of GI Bill Delimiting Date for National Emergencies

Many GI Bill participants must use their GI Bill entitlement before a delimiting date—the date after which no benefits may be paid. The delimiting date generally occurs after a specified number of years following an individual’s last discharge or release from active duty, or when a dependent child reaches a specified age. Some Post-9/11 GI Bill participants are not subject to a delimiting date.

The GI Bill National Emergency Extended Deadline Act of 2022 (Title II, Subtitle C of P.L. 117-328) and P.L. 117-333 enacted similar provisions that extend the delimiting date for a period equal to the period the individual is prevented from pursuing a chosen program of education because of the temporary or permanent closure of the educational institution by reason of an emergency situation.

P.L. 117-328 did not define *emergency situation*. Under the act, besides an emergency situation, the VA may extend the delimiting date for another applicable reason that prevents the individual from pursuing a chosen program of education. The VA may extend the delimiting date by up to an additional 90 days beyond the duration of the emergency or applicable reason. The extension applies to the MGIB-AD, individuals eligible for the Post-9/11 GI Bill based on their service, dependents eligible for the Post-9/11 GI Bill based on a servicemember’s death in the line of duty while on active duty, and spouses eligible for Post-9/11 GI Bill transferred benefits.

P.L. 117-333 defined *emergency situation* as an emergency declared by the President that the VA determines is an emergency for purposes of VA laws. Under the act, besides an emergency situation, the VA may extend the delimiting date under an established policy based on an executive order of the President. The extension applies to the MGIB-AD, individuals eligible for the Post-9/11 GI Bill based on their service, dependents eligible for the Post-9/11 GI Bill based on a servicemember’s death in the line of duty while on active duty, spouses eligible for Post-9/11 GI Bill transferred benefits, the MGIB-SR, and children eligible for Post-9/11 GI Bill transferred benefits.

## VA Outreach Regarding Institutional Closures

P.L. 117-333 requires the VA to provide notice to GI Bill recipients within five days of learning that their educational institution will close or is closed by reason of an emergency situation. The notice must include the closure date and the effect on the recipient’s GI Bill entitlement.

## Continued Work Study Allowances

The Veterans Work Study Program allows GI Bill and VR&E beneficiaries to receive additional financial assistance in exchange for employment. P.L. 117-333 authorizes the VA to provide Work Study payments during an emergency situation in accordance with a Work Study agreement in effect on the date the emergency situation occurs, despite the participant’s inability to perform such work by reason of the emergency situation. The amount of the Work Study allowance must not exceed the amount payable for 25 hours per week. The authority further requires the VA to extend such Work Study agreement for a subsequent period if requested by the participant during

the emergency situation. An emergency situation is an emergency declared by the President that the VA determines is an emergency for purposes of VA laws.

## Modification of the Department of Education’s 90/10 Rule for Federal Student Aid

ED administers the largest federal postsecondary student aid programs, as authorized by Title IV of the HEA.<sup>96</sup> For students to receive HEA Title IV aid, their IHE must meet several criteria.<sup>97</sup> For example, proprietary (private for-profit) IHEs must derive at least 10% of their revenues from non-Title IV funds; this policy is known as the *90/10 rule*.<sup>98</sup> IHEs lose access to HEA Title IV funds if they fail the 90/10 rule for two consecutive years. There have been several reports of false or predatory marketing or advertising practices on the part of some proprietary IHEs attempting to enroll GI Bill and DOD TA participants, in part to pass the 90/10 rule.<sup>99</sup> Some stakeholders have called the intention of some proprietary IHEs to use GI Bill and TA funds to stay below the 90% threshold the *90/10 loophole*.

P.L. 117-2 closes the 90/10 loophole by requiring that proprietary IHEs derive at least 10% of revenues from nonfederal sources. Therefore, proprietary IHEs will be limited to receiving no more than 90% of revenue from federal sources that are disbursed or delivered to or on behalf of a student to be used to attend the institution, including (but not limited to), such funds from HEA Title IV aid, GI Bill assistance, and TA. ED has promulgated new regulations making the change effective for institutional fiscal years beginning on or after January 1, 2023, consistent with the effective date of the statutory changes to the 90/10 calculation.<sup>100</sup> The ED regulations exclude federal, non-HEA Title IV funds paid directly to a student for expenses other than tuition, fees, and other institutional charges from the 90/10 calculation. In other words, funds such as the Post-9/11 GI Bill housing stipend, which is paid to students for housing costs, will not generally be designated as IHE revenue.

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<sup>96</sup> For more information, see CRS Report R43351, *The Higher Education Act (HEA): A Primer*.

<sup>97</sup> For more information, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

<sup>98</sup> For more information, see CRS Report R46773, *The 90/10 Rule Under HEA Title IV: Background and Issues*.

<sup>99</sup> For example, see Michael Stratford, “For-Profit-College Marketer Settles Allegations of Predatory Practices,” *Chronicle of Higher Education*, June 26, 2012; and Andy Thomason, “Defense Dept. Lifts Suspension of U. of Phoenix from Tuition Assistance Program,” *The Chronicle of Higher Education*, January 15, 2016. Through TA programs, military service branches may pay a certain amount of tuition and expenses for the off-duty education and training of active duty and reserve personnel.

<sup>100</sup> U.S. Department of Education, Office of Postsecondary Education, “Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control,” *87 Federal Register* 65426, October 28, 2022.



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