

**Testimony of the New York Legal Assistance Group (NYLAG)  
Submitted to the New York State Joint Legislative Budget Hearing on  
Higher Education**

**January 28, 2019**

Good morning and thank you for the opportunity to testify at today's joint legislative budget hearing on Higher Education. My name is Joseph Berkman-Breen and I am a Legal Fellow in the Special Litigation Unit at the New York Legal Assistance Group (NYLAG). NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. The focus of my work at NYLAG is to represent low-income student veterans who have been defrauded by for-profit postsecondary schools. NYLAG provides a wide range of legal services to veterans through our Veterans Practice, Consumer Protection Unit, LegalHealth Division, and Special Litigation Unit, which houses our For-Profit Schools Project. Attorneys in each of these units have seen time and again how for-profit schools engage in fraud and predatory lending practices that target veterans.

Unfortunately current federal law incentivizes for-profit schools to target veterans for their education benefits through the "90-10 loophole," which I will discuss in detail later in my testimony. The For-Profit College Accountability Act (the Act) gives New York the opportunity to eliminate the incentive for for-profit schools to target veterans in our state. Specifically, New York can protect veterans from for-profit schools by including state and federal veteran education benefits as among the "limited revenue sources" for proprietary for-profit schools as defined by the Act. The Act must include veteran education benefits as a limited revenue source,

or else it will have the consequence of causing even more harm to student veterans by increasing the incentive for for-profit schools to target them for their benefits.

### **I. For-Profit Schools Harm Student Veterans**

At NYLAG we see too many student veterans attending high-cost, low-value for-profit schools. In general, for-profit schools charge significantly more than public schools, spend significantly more on profit and advertising than they do on instruction, and have, on average, the lowest graduation rates, lowest employment rates and highest loan default rates among all postsecondary schools.<sup>1</sup> In fact, students who attend for-profit schools for associate or bachelor's degrees experience, on average, *declines* in their earnings and rates of employment compared to before they enrolled in the for-profit school.<sup>2</sup> Since for-profit schools often provide little to nothing of value, students are left both indebted and in a worse position to pay off their loans. This leads to high rates of default. In New York, for-profit schools enroll 6 percent of undergraduates, but account for 41 percent of student loan defaults.<sup>3</sup> Veterans who attend high-cost for-profit schools often exhaust their limited education benefits, are forced to take out loans, and often default on those loans.

One of NYLAG's veteran clients, Carter, attended Sanford-Brown, a now-defunct for-profit school, in White Plains, New York. Attending Sanford-Brown was so costly that Carter needed to take out loans in addition to relying on his veteran education benefits. Sanford-Brown told Carter that, if he graduated, he was essentially guaranteed to find a job in his chosen field and that the school would provide him lifetime career services support. As a New York Attorney

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<sup>1</sup> U.S. SENATE HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE, FOR-PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS (2012), [https://www.help.senate.gov/imo/media/for\\_profit\\_report/ExecutiveSummary.pdf](https://www.help.senate.gov/imo/media/for_profit_report/ExecutiveSummary.pdf).

<sup>2</sup> Stephanie Riegg Cellini & Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data*, NATIONAL BUREAU OF ECONOMIC RESEARCH 3 (2016).

<sup>3</sup> CENTER FOR AN URBAN FUTURE, *DEEPER IN DEBT: FOR-PROFIT SCHOOLS DRIVING STUDENT LOAN DEFAULT IN NEW YORK STATE* (2018), <https://nycfuture.org/research/for-profit-schools-driving-student-loan-default-in-new-york>.

General investigation documented, those promises were false.<sup>4</sup> Carter graduated with the highest grades in his class and applied to dozens of jobs, but was unable to find work in his field. The school did not help him at all, and it closed less than two years after his graduation, leaving Carter with nothing but debt. Carter exhausted his hard-earned education benefits attending a for-profit school that provided him no value, and has been unable to pay back his loans as a result. He is now on the brink of default and has left New York for low-paying work in another state.

Another of our veteran clients, Anthony, was disabled as a result of his military service and received an honorable discharge. In search of greater career opportunities in civilian life, Anthony enrolled in an undergraduate degree program at DeVry University in New York City. Anthony explicitly told DeVry that he did not want to take out loans. DeVry told him that his veteran education benefits should cover the cost of attendance, but that he should also sign up for “grants” just in case. After graduation Anthony learned he had been signed up for thousands of dollars of loans that he is now unable to afford to pay back.

Carter and Anthony’s stories are examples of what our veteran clients experience at for-profit schools across New York, and illustrate how for-profit schools engage in false advertising, deceptive recruitment tactics and predatory lending practices to induce veterans to enroll.

## **II. For-Profit Schools are Incentivized to Target Veterans: the 90-10 Loophole**

Veterans attend for-profit schools at disproportionate rates: for-profit schools enroll fewer than 10 percent of all higher education students, but enroll about a third of student veterans.<sup>5</sup> In

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<sup>4</sup> A.G. Schneiderman Announces Groundbreaking \$10.25 Million Dollar Settlement With For-Profit Education Company That Inflated Job Placement Rates to Attract Students (2013), <https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>.

<sup>5</sup> For-profit schools have enrolled about a third of veterans using the Post-9/11 GI Bill. *Two Years After Harkin Report Revealed Questionable Business Practices in For-Profit College Industry, New Analysis Shows For-Profit Colleges Are Top Recipients of Post 9/11 G.I. Bill Dollars* (2014), <https://www.help.senate.gov/ranking/newsroom/press/two-years-after-harkin-report-revealed-questionable-businesspractices-in-for-profit-college-industry-new-analysis-shows-for-profit-colleges-are-top-recipients-of-post-9/11-gibill-dollars>.

New York, each year more than 3,500 veterans attend for-profit schools. Further, New York taxpayers are subsidizing veterans' attendance at for-profit schools through veteran-specific education grants. In 2016 and 2017 combined, \$680,000 in New York State Veterans Tuition Awards went to for-profit schools.<sup>6</sup>

The disproportionate impact of for-profit schools on veterans is not a coincidence. For-profit schools strategically target veterans to profit from their education benefits. In fact, the schools are incentivized to do so. Under federal education law, for-profit schools may receive only 90 percent of their revenue from federal financial aid.<sup>7</sup> This limit is designed to prevent federal aid from propping up schools that are unable to attract at least 10 percent of their revenue from private sources. This is often referred to as the "90-10 rule."

However, there is a loophole in the law because the 90 percent limit does not include tuition assistance programs for service members, veterans or their family members. This means that for-profit schools may receive 90 percent of their revenue from federal financial aid and then use veteran education benefits to receive the remaining 10 percent. The result is for-profit schools aggressively target veterans for enrollment to fill the 10 percent gap.<sup>8</sup>

In 2011, Holly Petraeus, then-Assistant Director for Service Member Affairs at the Consumer Financial Protection Bureau, wrote that the 90-10 loophole "gives for-profit colleges an incentive to see service members as nothing more than *dollar signs in uniform*, and to use aggressive marketing to draw them in."<sup>9</sup> She also noted that for-profit schools "torment" veterans

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<sup>6</sup> Information provided by the New York State Higher Education Services Corporation (2018).

<sup>7</sup> 20 U.S.C. § 1094(a)(24).

<sup>8</sup> Alia Wong, '*Dollar Signs in Uniform*': Why For-Profit Colleges Target Veterans, THE ATLANTIC (June 24, 2015), <https://www.theatlantic.com/education/archive/2015/06/for-profit-college-veterans-loophole/396731/>.

<sup>9</sup> VETERANS EDUCATION SUCCESS, WHY FOR-PROFIT INSTITUTIONS ARE TARGETING VETERANS EDUCATION BENEFITS 4 (Jan. 2014),

<https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/57ed2866f5e23125aa07a0b2/1475160167821/VES-Policy-Backgrounder.pdf>.

until they enroll and pressure those recovering from traumatic brain injuries to attend.<sup>10</sup> Further, a 2012 Senate Health Education Labor and Pensions Committee investigation into the for-profit school industry revealed for-profit schools' reliance on veteran education benefits led them to pursue the most vulnerable veterans, recruiting at wounded warrior centers and veterans hospitals.<sup>11</sup> The investigation also showed that some recruiters were so desperate to enroll veterans that they lied about whether the veteran's tuition would be fully covered by benefits.<sup>12</sup>

As a further result of the incentive to target veterans, for-profit schools like American Military University (a subsidiary of American Public University System, a for-profit school company),<sup>13</sup> lure veterans by falsely associating themselves with the government. In the same vein, for-profit schools have often used deceptive lead generators to recruit veterans. For instance, for-profit schools paid a site called GIBill.com to push students towards their schools.<sup>14</sup>

In all, veterans are intensely targeted by for-profit schools for their education benefits due to the 90-10 loophole. For years veterans organizations have advocated to close the loophole to stop the targeting of veterans,<sup>15</sup> and now New York has the opportunity to do so.

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<sup>10</sup> Kimberly Hefling, *GI Bill funds still flow to troubled for-profit colleges*, POLITICO (Feb. 2, 2016), <https://www.politico.com/story/2016/02/veterans-education-for-profit-colleges-219758>.

<sup>11</sup> FOR-PROFIT HIGHER EDUCATION, *supra* note 1, at 4.

<sup>12</sup> *Id.*

<sup>13</sup> American Military University, <http://start.amu.apus.edu/degrees/overview>.

<sup>14</sup> VETERANS EDUCATION SUCCESS, UNDERSTANDING MISLEADING WEBSITES AND "LEAD GENERATORS": A CASE STUDY: VICTORY MEDIA'S "MILITARY FRIENDLY SCHOOLS" (2017), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/58bec03020099e2d8e76aaab/1488896051219/Victory+Media+Report.FINAL.2.pdf>. In 2017 the Federal Trade Commission reached a settlement with Victory Media, the operator of GIBill.com, after allegations it deceptively advertised to military troops and veterans about Kaplan University and other for-profit colleges with poor records of serving students. David Halperin, *FTC Slaps Wrist Of For-Profit College Marketer That Tricked Vets; Many Bad Wrists Remain*, HUFFINGTON POST (Oct. 24, 2017), [https://www.huffingtonpost.com/entry/ftc-slaps-wrist-of-for-profit-college-marketer-that\\_us\\_59ef73f9e4b04809c0501189](https://www.huffingtonpost.com/entry/ftc-slaps-wrist-of-for-profit-college-marketer-that_us_59ef73f9e4b04809c0501189).

<sup>15</sup> For once example of such advocacy, see Public Comment from Veterans Service Organizations & Military Service Organizations (Sept. 20, 2017), [https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59c2edaae3df28c1f3fe3374/1505947050782/Public+Comment+-+Dept+of+Ed+-+MSO-VSO+Letter\\_Signatures+9.20.2017.pdf](https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/59c2edaae3df28c1f3fe3374/1505947050782/Public+Comment+-+Dept+of+Ed+-+MSO-VSO+Letter_Signatures+9.20.2017.pdf).

### **III. New York Can Help Protect Student Veterans from For-Profit Schools**

Federal entities tasked with overseeing for-profit schools and protecting student veterans are failing to do so. This is especially true of the U.S. Department of Education (USED) and the U.S. Department of Veterans Affairs (VA). A report issued in December 2018 by the VA Office of Inspector General detailed how the VA's inadequate oversight has resulted in veterans attending schools in New York that engage in erroneous, deceptive, or misleading advertising.<sup>16</sup> Further, the USED has reduced oversight and protections for all students. As a result, NYLAG has multiple ongoing suits against the USED for its failure to fulfill its obligations under the law to protect students defrauded by their schools.

With the For-Profit College Accountability Act, New York has the opportunity to step up where the federal government has failed to hold for-profit schools to an adequate standard. New York can help stop the targeting of veterans by for-profit schools. The Act proposes a stronger state equivalent of the 90-10 rule, which would limit revenue from "limited revenue sources" to 80 percent. This would require for-profit schools to decrease their reliance on taxpayer funds. However, for this 80-20 rule to achieve its goal of holding for-profit schools accountable, it is critical that the rule close the loophole that incentivizes the targeting of veterans by including all state and federal veteran education benefits, in "limited revenues sources," as defined in the Act.

**The Act must include veteran benefit programs as a limited source of funding or else it will create an even greater incentive for for-profit schools to target veterans.** If for-profit schools are allowed to use veteran education benefits to satisfy the 20 percent of their revenue from non-limited sources, they will have even more of an incentive to target veterans. While the current Act language would include veteran education benefits as limited revenue

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<sup>16</sup> DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL, VA'S OVERSIGHT OF STATE APPROVING AGENCY PROGRAM MONITORING FOR POST-9/11 GI BILL STUDENTS (2018), <https://www.va.gov/oig/pubs/VAOIG-16-00862-179.pdf>.

sources, to avoid any uncertainty the Act should be edited to explicitly enumerate veteran education benefits as being included in the same way it currently explicitly enumerates federal Title IV loan and grant programs and the New York Tuition Assistance Program.

It is time for New York to decrease the amount taxpayers subsidize fraudulent for-profit schools and to end the incentive for such schools to target veterans.

Thank you for holding this hearing. We appreciate the opportunity to share these comments and to continue a productive conversation on how to protect student veterans.

Respectfully submitted,

New York Legal Assistance Group

