



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

JACK CONWAY
ATTORNEY GENERAL

May 29, 2012

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

Honorable Patty Murray, Chairwoman
Senate Committee on Veterans' Affairs
448 Russell Senate Office Building
Washington, DC 20510

Honorable Jeff Miller, Chairman
House Committee on Veterans' Affairs
2416 Rayburn House Office Building
Washington, DC 20515

Honorable Richard Burr, Ranking Member
Senate Committee on Veterans' Affairs
217 Russell Senate Office Building
Washington, DC 20510

Honorable Bob Filner, Ranking Member
House Committee on Veterans' Affairs
2428 Rayburn House Office Building
Washington, DC 20515

Honorable Tom Harkin, Chairman
Senate Committee on Health, Education,
Labor & Pensions
731 Hart Senate Office Building
Washington, DC 20510

Honorable Michael Enzi, Ranking Member
Senate Committee on Health, Education,
Labor & Pensions
379A Russell Senate Office Building
Washington, DC 20510

Dear Chairwoman Murray, Ranking Member Burr, Chairman Miller, Ranking Member Filner,
Chairman Harkin and Ranking Member Enzi:

We, the undersigned Attorneys General¹, write to add our voices to the growing number of policymakers urging you to pass legislation modifying federal law to close an apparent loophole in the Higher Education Act (HEA) of 1965 to require that GI Bill and Veterans Assistance educational benefits be subject to the "90/10 rule" that prohibits proprietary schools from deriving more than 90% of their revenue from Title IV funding sources.²

Under the 90/10 rule, enacted as part of the 1998 HEA Amendments, Section 102 of the HEA, schools may derive no more than 90% of their revenue from federal Title IV funding sources. The original 90/10 rule was enacted to instill more accountability in the for-profit school industry

¹ Hawaii is being represented on this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii.

² In doing so we join Holly Petraeus, wife of CIA Director David Petraeus and Assistant Director of Service Members Affairs under the Consumer Financial Protection Bureau who wrote about the need for such an amendment in a piece appearing in the New York Times September 21, 2011. (See attached).



following Congressional investigations in the early 1990's. Allowing for-profit schools to count Department of Veteran's Affairs (VA) and Department of Defense (DoD) benefits towards the 10% violates the intent of the law.³

The issues that prompted Congress to tighten Title IV rules on for-profit schools in the early 1990's are remarkably similar to the issues gaining national attention nearly 20 years later. Default rates of student loans for students that attended for-profit schools are disproportionately higher than rates for students attending public and non-profit schools.⁴ Investigations by the U.S. Government Accountability Office (GAO), Senate HELP Committee, Attorneys General, Department of Justice and investigative journalists have revealed that some for-profit schools engage in high-pressure sales tactics, targeting vulnerable populations including disabled veterans. Investigations by the Department of Justice and state Attorneys General have identified other illegal conduct including alleged violations of Education Department recruiter compensation laws, false representations concerning post-graduation employment rates and improper handling of student financial aid.⁵

One dynamic that was not present during the early 1990's was a large population of veterans and service men and women with access to new and generous educational benefit packages who have become a rich target for aggressive college recruiters. In response to the recession and transition of military service members into civilian jobs, Congress in 2008 enacted the Post 9/11 GI Bill making billions of dollars in educational benefits available for veterans and their families. According to a February, 2011, GAO report, \$9 billion in educational benefits were provided to service-members and veterans in fiscal year 2010. **Of 20 for-profit schools analyzed by the HELP Committee, total military educational benefits increased from \$66.6 million in 2006 to a projected \$521.2 million in 2010 - an increase of 683%.**

Although these benefits are funded by federal taxpayers, none of these dollars in education funding counts against the 90% cap on federal funding received by for-profit colleges. Accordingly, for-profit schools may count any funding received from DoD or VA sources as part of the 10% revenue under the 90/10 rule. Theoretically then, a for-profit school could receive 100% of its revenue from federal sources, despite Congress' clear intent when enacting Title IV amendments that they obtain at least 10% of their revenue from non-federal sources. It is well

³ See December 15, 2009 Bloomberg Article: *Marine Can't Recall His Lessons at For-profit College (Update 2)* quoting Sarah Flanagan, Senate staffer who helped draft 90/10 rule, now Vice President of National Association of Independent Colleges and Universities.

⁴ Almost half of defaulting students entering repayment between 2007-2009 attended for-profit schools although less than 10 % of all students attended them. HELP Committee June 24, 2101 Report: *Emerging Risk: ? An Overview of Growth, Spending, Student Debt and Unanswered Questions in For-Profit Higher Education.*

⁵ New York Times: *For-profit College Group Sued as U.S. Lays out Wide Fraud*, August 8, 2011 <http://www.nytimes.com/2011/08/09/education/09forprofit.html> ; GAO 10-948T: *For-profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*; California Watch, August 10, 2011: *For-profit education company inflated job placement rates*, <http://californiawatch.org/dailyreport/profit-education-company-inflated-job-placement-rates-11987>; Press Release July, 2011: Attorney General Conway (KY) Files Suit Against Daymar College, <http://migration.kentucky.gov/Newsroom/ag/daymarsuit.htm>; Press Release October 27, 2011, Attorney General Conway Files Suit Against Third For-profit School, <http://migration.kentucky.gov/Newsroom/ag/nationalcollegesuit.htm>

documented that the economic downturn has resulted in an exodus of private lenders from the subprime student loan market upon which for-profits depended in part to obtain their 10% of non-Title IV funding.⁶

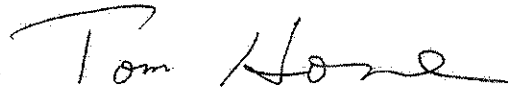
This exodus of private lenders that were a critical source of these schools' non-federal 10% coupled with the enormous infusion of Congressional funding for educational benefits for service members and veterans, has provided for-profit schools with a strong incentive to enroll students using their GI Bill benefits. As a result, for-profit schools are targeting military men and women and their families with high-pressure recruiting tactics in order to meet the 90/10 requirement. Moreover, perversely, schools are actually using the military benefits to leverage even more Title IV funds since each (\$1) dollar they obtain from DoD or VA sources allows them to obtain an additional nine (\$9) dollars in Title IV funding.⁷

The undersigned Attorneys General strongly support our military men and women and the GI Bill's policy of providing educational benefits to those who have sacrificed so much for our country. Unfortunately, the current loophole in federal law allowing for-profit schools to count GI Bill benefits against the 10% non-federal revenue component of Title IV not only undermines the balance Congress established, it has created a harmful incentive for these businesses, and they are businesses, to target service members. We urge you to take action to close this loophole, protect our tax dollars and protect our service members from these predatory practices.

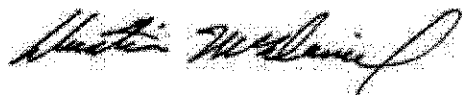
Sincerely,



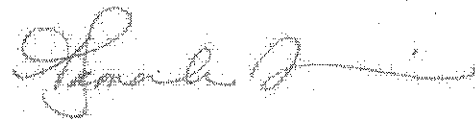
Jack Conway
Attorney General of Kentucky



Thomas C. Horne
Attorney General of Arizona



Dustin McDaniel
Attorney General of Arkansas



Kamala D. Harris
Attorney General of California

⁶ See Washington Post, January 24, 2008, "Bad Loans Push Sallie Mae to Loss" "Bad loans were partly to blame as the loose lending practices that crippled the mortgage industry also infected the student loan business. Chief executive Albert L. Lord told investors and Wall Street analysts during a briefing here that the Reston-based lender had ignored its own precepts by issuing loans to students who had poor prospects of paying them back." <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/23/AR2008012301275.html>

⁷ See December, 2010 HELP Committee Report: "Benefitting Whom? For-Profit Education Companies and the Growth of Military Educational Benefits".



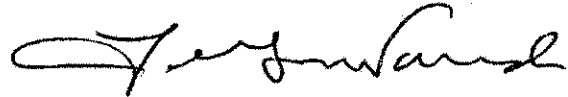
George Jepsen
Attorney General of Connecticut



Joseph R. Biden, III
Attorney General of Delaware



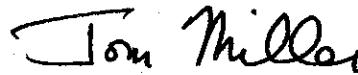
Bruce B. Kim, Executive Director
Hawaii Office of Consumer Protection



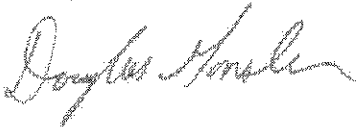
Lawrence G. Wasden
Attorney General of Idaho



Lisa Madigan
Attorney General of Illinois



Tom Miller
Attorney General of Iowa



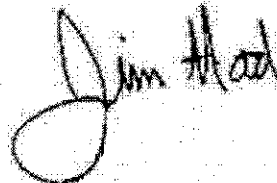
Douglas F. Gansler
Attorney General of Maryland



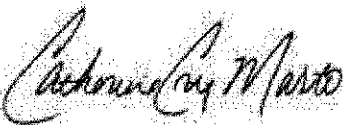
Martha Coakley
Attorney General of Massachusetts



Bill Schuette
Attorney General State of Michigan



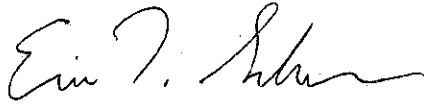
Jim Hood
Attorney General State of Mississippi



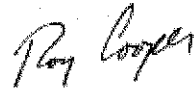
Catherine Cortez Masto
Attorney General of Nevada



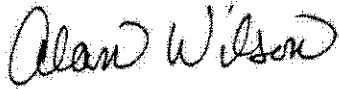
Gary King
Attorney General of New Mexico



Eric T. Schneiderman
Attorney General of New York



Roy Cooper
Attorney General of North Carolina



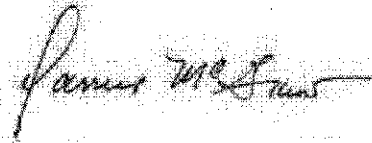
Alan Wilson
Attorney General of South Carolina



Marty J. Jackley
Attorney General of South Dakota



Robert E. Cooper, Jr.
Attorney General of Tennessee



Darrell V. McGraw, Jr.
Attorney General of West Virginia