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CENTER CHILDREN'S ADVOCACY
INSTITUTE VETERANS LEGAL CLINIC

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August 23, 2022

The Honorable Gavin Newsom
Governor, State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814
Submitted via email to Leg.Unit@gov.ca.gov

RE: REQUEST FOR SIGNATURE: AB 1731 (DAVIES)

Dear Governor Newsom:

The Veterans Legal Clinic, the Children's Advocacy Institute, and the Consumer Protection Policy Center at the University of San Diego School of Law are pleased to co-sponsor and urge your signature on AB 1731 (Davies), a bill with no opposition and that has been unanimously endorsed by the Legislature as a measure that will benefit our veterans.

Applicable State Law.

California Education Code section 67101 imposes a duty upon California State Approving Agency for Veterans Education (CSAAVE) regarding approval of Title 38 programs.¹ However, while CSAAVE pre-COVID began to issue regulations that would have transparently and accountably established "reasonable criteria" for approval as permitted by state law, it has so far not finalized such "criteria" or finally promulgated such regulations. In the absence of such regulations, California's veterans and the public that honors their service should, at the barest minimum, assure through enduring legislation that CSAAVE will always have before it the most basic information needed to weigh whether or not an education business should be entrusted with a veteran's future and hard-won, one-time benefits.

¹ Ed. Code section 67101: "[CSAAVE] shall approve qualifying institutions desiring to enroll veterans or persons eligible for Title 38 awards in accordance with federal law, this chapter, **and other reasonable criteria established by [CSAAVE].**" (Emphasis added).

AB 1731: What It Does And Does Not Do.

Discretion untouched. AB 1731 does not direct or constrain CSAAVE's approval discretion. Neither does AB 1731 limit the information CSAAVE can obtain from an institution when weighing whether they or their programs are veteran-worthy.

An informational floor. AB 1731 in essence asks, shouldn't an agency charged with ensuring that our tax dollars are wisely spent and our veterans' sacrifice honored at least ask and be legally entitled to the following information from an educational institution when considering whether to approve them to serve veterans?

- How consistently are your non-veteran graduates able to re-pay their loans? *Perhaps no data point is more revealing of whether an institution will be of practical benefit to a veteran as this one.* .
- Are you or your program accredited?
- Do you have the financial wherewithal to be open through a veteran's entire education?
- Have you been sued for fraud or deceit in the five years before the application?
- Do you (for licensing or certificate oriented programs) actually have the required approvals so your students are in fact eligible to obtain the certificate or license?
- At what rate are your students passing licensing or certificate exams?
- What are the employment prospects for your students who graduate?

The need to embed such questions in law. None of the basic information required by this bill is currently codified in state or federal law or, clearly, even in CSAAVE's applications. Moreover, CSAAVE's current self-generated applications for institutions do not have the force of law so if an institution simply refused to provide relevant information to CSAAVE as a part of an application (e.g., is the institution being sued by state attorneys general for fraud?) CSAAVE would not have a legal basis to deny the application on the basis of such a refusal. *This is why AB 1731 is needed and not duplicative of any current law or practice. There is no current state law on what information CSAAVE is legally entitled to.*

Thus, to the extent AB 1731 codifies information already being provided to CSAAVE as a part of its existing application, that does not make the bill duplicative. *It makes the bill one that codifies a welcome practice so the practice both endures and can be enforced.* To the extent that AB 1731 requires information not already being provided to CSAAVE to be provided, that is an omission that should be cured given the foundational and obviously needed information required by AB 1731.

Amendments taken to reduce current application redundancies. Even so, it is not the intent of the supporters or the author to require duplicative work where such duplication might exist. Working with stakeholders, including colleagues at the California State University, the author and supporters agreed to the following cost-saving amendments that both improve current practice and clarify that the regulations required by this bill shall ensure no duplicate information is required:

- That California’s publicly funded institutions of higher learning are not required to provide evidence of financial responsibility.
- That information that has previously been submitted elsewhere, whether it be to the BPPE, the federal government, or in a prior application to CSAAVE, need not be duplicated in an application but may in an application be referred to either with a copy of the prior submission, a cross reference, or a link.²

Additional Background: Education Sectors Are Not Approved For Title 38 Funding. Individual Institutions Are.

As the Assembly Committee on Veterans and Military Affairs analysis of AB 1731 correctly summarized the duties of CSAAVE under current law, CSAAVE must under current law approve all institutions individually, whatever their sector:

“CSAAVE is California’s State Approving Agency (SAA), an agency appointed by the Chief Executive of a state to approve institutional programs of education and training for payment of benefits under the various laws administered by U.S. Department of Veterans Affairs. CSAAVE is responsible for the review, evaluation, approval, and oversight of schools and training facilities to ensure state and federal quality criteria are met for veterans using their G.I. Bill funds. CSAAVE also assists the U.S. Department of Veterans Affairs in preventing fraud, waste, and abuse in the administration of the G.I. Bill. CSAAVE evaluates and approves specific educational programs at the following for use of veterans' education and training benefits. These include:

- 1) Public and private accredited degree-granting institutions.
- 2) Public and private non-college degree (certificate) institutions, accredited or non-accredited. ...”

There are four reasons why the bill in its text must “apply to all postsecondary institutions, including public colleges and universities” leaving any nuances in application between kinds of institutions to AB 1731’s required regulatory process and CSAAVE’s expertise.

First, this is CSAAVE’s laudable practice now and this practice makes sense if protecting veterans is the aim. Veterans do not enroll in sectors. They enroll in institutions. A poorly performing institution should not be able to obtain approval because it is in a sector where its sister institutions are performing well. The law should not deviate from this veteran-protecting practice.

² The amendments are to the proposed subdivision (f) which reads with emphases supplied as follows: “(f) *To the extent that a School Performance Fact Sheet **accepted by the Bureau for Private Postsecondary Education** pursuant to Section 94910, documents submitted to the United States Department of Education, documents submitted to the United States Department of Veterans Affairs, or previously submitted applications to CSAAVE contain information **required by this section or a CSAAVE application**, the institution may provide, as part of the application, a copy of the information previously submitted or a reference, including, but not limited to, an internet website link, to the fact sheet or documents.*” Thus, under this language, **for the first time applicants would have the legal right as a part of their application simply to refer to previously filed documents, including even previously filed CSAAVE applications.**

Second, under both current federal and state law, CSAAVE has no authority in a blanket fashion to favor one “sector” over another when it is determining whether an educational institution is eligible to enroll veterans using their for G.I. Bill benefits. Indeed, “sectors” are not approved under current federal or state law; *individual institutions are*. There is respectfully no known current basis in either federal or state law for one “sector” or another to be entirely immune from CSAAVE review and approval.³ Under federal law, for example, State Approving Agencies like CSAAVE are responsible for approving all educational institutions and courses that receive G.I. Bill funding. (38 U.S.C. § 3672(a)(1)) The same is true under state law. Education Code section 67101 imposes mandatory duties upon CSAAVE to approve the participation in all institutions on an individualized basis:

“The Title 38 Funding Program is hereby established, under the administration of the California State Approving Agency for Veterans Education. The California State Approving Agency for Veterans Education **shall⁴ approve qualifying institutions** desiring to enroll veterans or persons eligible for Title 38 awards in accordance with federal law, this chapter, and other reasonable criteria established by the California State Approving Agency for Veterans Education.”

Third, the bill does not categorically require any information that is different than what CSAAVE should always be requesting now from all individual institutions. It is best practices for state agencies to memorialize their standards through a public regulatory process as modestly contemplated by AB 1731. Indeed, it is forbidden to use or enforce standards unless promulgated in regulation.⁵

Fourth, if public or nonprofit institutions are indeed more inherently worthy of approval than the other sectors, it is in part because they will be acting so thoroughly in the public interest they will have the information minimally required by this bill at their finger-tips. For example, we would rightly expect each public institution and every non-profit truly acting philanthropically to know its cohort default rates, know its accreditation status, and know whether its licensing programs are approved by the relevant state licensing board.

While the bill does not differentiate between the information required of public, private nonprofit, or private for-profit educational institutions, in part the bill is motivated by the well-documented, lavishly funded, and aggressively pressed veteran recruitment practices of some of

³ For example, the provision of federal law permitting public and nonprofit institutions to be approved on the basis of accreditation (38 U.S. Code section 3672 (b)(2)(A)(i)) is conditional on a searching review of coursework by CSAAVE: “A course that is described in both subparagraph (A)(i) of this paragraph and in paragraph (14) or (15) of section 3676(c) of this title [namely, courses that prepare for licensure or employment] shall not be deemed to be approved for purposes of this chapter unless—

(i) a State approving agency, or the Secretary when acting in the role of a State approving agency, determines that the course meets the applicable criteria in such paragraphs; or (ii) the Secretary issues a waiver for such course under section 3676(f)(1) of this title.” (38 U.S. Code section 3672 (b)(2)(C))

⁴ The statute’s use of the word “shall” makes CSAAVE’s role mandatory. (See *Doe v. Albany Unified School Dist.* (2011) 190 Cal.App.4th 668, 676 [reflecting the “well-settled principle” that the word “shall” is ordinarily construed as mandatory. . . .].)

⁵ “If a state agency issues, utilizes, enforces, or attempts to enforce a rule without following the APA when it is required to, the rule is called an “underground regulation.” State agencies are prohibited from enforcing underground regulations.” https://oal.ca.gov/underground_regulations/

the worst performing for-profit education businesses,⁶ including even efforts to recruit injured veterans at military hospitals. This has been so thoroughly and repeatedly documented it cannot be disputed.⁷ As *The Los Angeles Times*, reported in “**For-profit colleges are using the GI Bill to make money off veterans**”:

To keep the GI Bill money flowing, the industry aggressively targeted veterans, and often hired them to help recruit their brethren returning home from the battlefields ... U.S. Army veteran Don're Walker took one of those recruiting jobs at an ITT campus in Orange County in 2012. He quit less than a year later. His department faced intense pressure to enroll GI Bill beneficiaries, Walker said. Once he understood the school's high tuition costs — and students' low probability of transferring credits to traditional colleges — he regularly advised veterans against attending. "It was basically 'Get people in any way possible,'" he said. "They were exploiting my brothers."

The documented efforts of some for-profit businesses to recruit veterans who might otherwise enroll in less expensive public institutions (community colleges, Cal State, or University of California) where their Title 38 dollars might stretch farther reinforces the need for CSAAVE's to have clear legal authority to obtain minimally relevant information for its reviews so that CSAAVE's entitlement to such patently relevant information is clearly established, beyond debate, and consistently applied. AB 1731 provides just such authority while permitting flexibility by requiring that authority to be implemented through regulations.

The Costs Should Be Nil.

There are three reasons why the costs of AB 1731 should be, if not nil close to it. First, CSAAVE has previously done the work required to develop a far more comprehensive set of

⁶ It is important to note that as scrutiny of for-profits has increased, for-profits are increasingly seeking to insulate themselves from such scrutiny by cynically converting to non-profits; what observers call “covert for-profits”. This has been documented by the GAO and widely denounced by industry observers. See, e.g., <https://www.diverseeducation.com/leadership-policy/article/15288610/forprofit-colleges-seeking-to-become-nonprofits-may-face-tighter-regulations>, <https://tcf.org/content/commentary/dubious-conversions-profit-colleges-decoding-gao-report/?agreed=1>

⁷ Here is just some of the documentation: <https://www.bloomberg.com/news/articles/2009-12-30/for-profit-colleges-target-the-military><https://www.bloomberg.com/news/articles/2009-12-30/for-profit-colleges-target-the-military><https://www.businessinsider.com/for-profit-colleges-target-military-veterans-2017-12>https://www.huffingtonpost.com/alexandra-rice/why-forprofit-colleges-a_b_5420822.htm<https://www.pbs.org/newshour/education/why-these-veterans-regret-their-for-profit-college-degrees-and-debt>https://www.washingtonpost.com/education/2019/02/20/veterans-groups-ask-va-secretary-keep-gi-benefits-out-hands-predatory-colleges/?utm_term=.b42c886827a9<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1550&context=jpl><https://rebootcamp.militarytimes.com/news/education/2019/02/19/vet-groups-are-blasting-trumps-education-secretary-heres-why/><https://www.nytimes.com/2019/02/18/opinion/betsy-devos-student-veterans.html><https://www.nytimes.com/2017/11/24/opinion/exploiting-veterans-profit.html><https://www.npr.org/sections/ed/2016/01/29/464579497/veterans-to-higher-ed-big-room-for-improvement><https://protectborrowers.org/the-predatory-underworld-of-companies-that-target-veterans-for-a-buck/><https://rebootcamp.militarytimes.com/news/education/2019/01/25/millions-of-gi-bill-dollars-are-going-to-questionable-schools-and-it-could-soon-be-billions-va-watchdog><https://www.republicreport.org/2018/scam-websites-tried-to-trick-military-recruits-into-entering-for-profit-colleges/>

Title 38 pre-screening regulations.⁸ That work on the more ambitious package can be used to craft the regulatory materials for this, far more modest bill. Second, by clearly establishing CSAAVE's entitlement to the information in the bill, CSAAVE will not have to engage in time-consuming back-and-forths with applicants about whether such information is permitted. Nor, third, for the same reason, will CSAAVE have to engage in *ad hoc*, independent research on the topics covered by the bill.

Conclusion.

Please sign AB 1731 (Davies). CSAAVE should be clearly empowered no matter who is Governor or President to obtain the common sense information set forth in the bill for every application, for the enduring benefit of every veteran. What AB 1731 modestly requires is certainly not too much to honor their service and to protect their hard-won, one-time benefits.

Sincerely,



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⁸ See, e.g., <https://www.calvet.ca.gov/Regulations/CSAAVETextFinal.pdf#search=cohort>