

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



Veterans Benefits Administration

*Audit of
Post-9/11 G.I. Bill
Tuition and Fee
Payments*

September 30, 2016
14-05118-147

ACRONYMS

CELO	Chief Education Liaison Officer
CFR	Code of Federal Regulations
ELR	Education Liaison Representative
FY	Fiscal Year
GAO	Government Accountability Office
GPA	Grade Point Average
LTS	Long Term Solution
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
RPO	Regional Processing Office
SCO	School Certifying Official
U.S.C.	United States Code
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration

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EXECUTIVE SUMMARY

We evaluated the Veterans Benefits Administration's (VBA) oversight of Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 G.I. Bill) tuition and fee payments to determine if payments were appropriate and accurate. This is our fourth review of the program due to the program's significant financial risks.

What We Did

The audit focused on all schools and programs that received Post-9/11 G.I. Bill tuition and fee payments for students during academic year 2013–2014 (August 1, 2013, to July 31, 2014). Based on the parameters of the audit objective, we identified more than \$5.2 billion in VA's Benefits Delivery Network tuition and fee payments made to nearly 796,000 Post-9/11 G.I. Bill students during our 12-month review period. Of the \$5.2 billion, we reviewed more than \$1.7 million in tuition and fee payments made to 50 statistically selected schools on behalf of 225 students for this academic year. We used this academic year data because they were the most current full academic year data available at the start of our audit.

For each statistically selected student, we validated VBA's student records and compared payment calculations with school-supplied information, such as tuition rates and transcripts, to verify the appropriateness and accuracy of tuition and fee payments. We evaluated student and schools records to determine if Regional Processing Offices (RPOs) paid schools the appropriate amount for the student's tuition and fees and recouped tuition payments, as required by 38 Code of Federal Regulations (CFR) § 21.9695, and/or 38 CFR § 21.9675, and VBA's *School Certifying Official Handbook* (SCO Handbook).

We conducted a site visit to the RPO in Buffalo, NY, and completed virtual site visits for the remaining three RPOs in Atlanta, GA; Muskogee, OK; and St. Louis, MO. Additionally, we interviewed VBA officials to obtain clarification of the SCO Handbook and RPO staff to identify and evaluate local policies and procedures for processing tuition and fee payments. We reviewed all findings with VBA RPO supervisors, Education Liaison Representatives (ELRs), and Chief Education Liaison Officers (CELOs) and received their concurrence on reported exceptions.

Lastly, because VBA disagreed that the payments we identified were improper payments that required adjudication and possible recovery, we reviewed the definition of improper payments under OMB Circular A-123, Appendix C, *Requirements for Effective Estimation and Remediation of Improper Payments*, (October 20, 2014), Part I-A, VA and other agency improper payments reporting practices and conferred with OMB.

What We Found

We found that VBA staff at the RPOs made 46 improper payments totaling just under \$90,900 on behalf of 43 of the reviewed students. Of these 46 improper payments, 40 were overpayments to

16 schools totaling more than \$86,500, and 6 were underpayments to 6 schools totaling just under \$4,400. In addition, we identified 39 missed recoupments¹ for which the RPOs had not initiated recoupment actions in accordance with 38 CFR § 21.9695(b), 38 CFR § 21.9675(a) and VBA's SCO Handbook. These 39 missed recoupments totaled just under \$96,400 and were related to 37 students.

VBA staff have no visibility over what services, supplies, or fees they are actually approving for payment. Thus, 85 of the 650 payments (13 percent) had exceptions and more than \$187,000 of the more than \$1.7 million reviewed payments (11 percent) resulted in either an improper payment or a missed recoupment. In total, 32 of the reviewed schools, including 19 for-profit schools, had improper payments and missed recoupments. The 19 for-profit schools represented more than \$149,000 or 80 percent of the identified improper payments and missed recoupments. Furthermore, 20 of the 32 identified schools—7 of which VBA should have completed compliance surveys in accordance with 38 U.S.C. § 3693(a)—did not have a compliance survey conducted.

Due to program design, VBA must make Post-9/11 G.I. Bill payments prospectively based on the enrollment information submitted by the schools. Many of these improper payments and missed recoupments occurred due to the SCOs' submission of incorrect and/or incomplete information on students' enrollment certifications to VBA. VBA needs to strengthen Post-9/11 G.I. Bill and Yellow Ribbon Program controls to help reduce improper payments and missed recoupments. Thus, VBA needs to:

- Improve the SCOs' awareness of program requirements related to the submission of accurate and complete enrollment certifications for payment.
- Refine the school selection process and ensure the completion of required compliance surveys to improve the verification and monitoring of tuition and fee certifications.
- Develop adequate guidance regarding allowable book fees and repeated classes.
- Verify and obtain supporting documentation for mitigating circumstances.

Based on the more than \$5.2 billion in tuition and fee payments made to schools during academic year 2013–2014, we projected that VBA issues an estimated \$247.6 million in improper payments and had a projected error rate of about 5 percent (\$247.6 million divided by \$5.2 billion). In addition, VBA did not recoup an estimated \$205.5 million annually. As a result, VBA might issue an estimated \$1.2 billion in improper payments² and might not recoup an estimated \$1 billion from students and schools within the next 5 academic school years if it does not strengthen payment and recoupment controls. This equates to an estimated \$2.3 billion in improper tuition and fee payments and missed recoupments.

¹ These payments are not improper payments because they were correctly made based on the student's initial enrollments; recoupments only became necessary because of changes in enrollment status.

² OMB requires agencies to use gross total improper payments (overpayments + underpayments) when presenting improper payment estimates.

What We Recommended

We recommended the Acting Under Secretary for Benefits:

1. Improve outreach by periodically requiring Education Liaison Representatives to review Post-9/11 G.I. Bill and Yellow Ribbon Program requirements with School Certifying Officials to help them submit accurate and complete tuition and fee certifications.
2. Develop risk profiles for schools that are prone to certification problems, improper payments, and missed recoupments, and implement a process to periodically review and verify the certification information submitted by these schools.
3. Incorporate improper payment and missed recoupment risk factors into VBA's risk-based system for the prioritization and completion of compliance surveys.
4. Revise the *School Certifying Official Handbook* to clarify guidance on allowable book and supply fees.
5. Review and strengthen Education Service policies and controls regarding the discontinuance and recoupment of payments, repeated classes, and satisfactory academic progress to ensure compliance with Federal regulations and prevent possible education benefits abuse.
6. Ensure that mitigating circumstances are properly verified and supporting documentation is obtained before tuition repayments are forgiven.
7. Initiate action to recover identified improper payments when collections are deemed appropriate and reasonable.
8. Review the identified missed recoupments to determine if collections would be appropriate and reasonable.

Agency Comments

VBA management did not agree with our findings. VBA management concurred or concurred in principle with seven recommendations and nonconcurred with one recommendation. VBA management provided action plans for five recommendations. Our application of improper payments in this report is consistent with the Government Accountability Office's application in its *Post-9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections* (GAO-16-42, October 2015) report. Regardless of whether it is in Compensation and Pension Service Programs or Education Service's Post-9/11 G.I. Bill Program, VBA must issue payments prospectively due to program design and rely on information provided by third parties; thus, improper payments will occur until VBA receives proper notification of events that affect the benefits payments.

This audit identified events affecting the students' Post-9/11 G.I. Bill education benefits payments that in many cases were not correctly or properly reported on the enrollment certifications provided by VBA. Thus, similar to VBA's Compensation and Pension Programs, Education Service's Post-9/11 G.I. Bill Program is susceptible to improper payments due to program design. VBA's comments are in Appendix E. Our response is on page 21. We will follow up on the report's open recommendations.



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INTRODUCTION

Objective

The audit evaluated the Veterans Benefits Administration's (VBA) oversight of Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 G.I. Bill) tuition and fee payments. Because of significant financial risks that three prior OIG reports identified in the Post-9/11 G.I. Bill Program, we assessed whether tuition and fee payments to schools were appropriate and accurate.

The Post-9/11 G.I. Bill Program

On June 30, 2008, the Post-9/11 G.I. Bill expanded education assistance to veterans who served on active duty on or after September 11, 2001. The program entitles eligible service members, veterans, and family members (students) up to 36 months of payments to pursue their education. VA establishes an annual maximum tuition and fee amount for students attending private schools but has no annual limit for in-state students attending public schools. Students may also receive financial assistance through the Yellow Ribbon Program if their tuition and fees are not fully covered by the Post 9/11 G.I. Bill Program. Under the Yellow Ribbon Program, VA pays the schools' additional costs on a one-for-one matching basis with the schools up to an agreed-upon maximum amount.

Post-9/11 G.I. Bill and Yellow Ribbon Payment Process

VBA's Education Service uses four Regional Processing Offices (RPOs) to administer the Post-9/11 G.I. Bill and Yellow Ribbon Programs and process payments to schools on behalf of students. VBA requires each school to designate at least one school certifying official (SCO) to process certifications and to notify VA of students' enrollment changes and academic progress. SCOs submit enrolled students' tuition and fee certifications to the RPOs through the VA Online Certification of Enrollment system. SCOs are expected to submit accurate and complete certifications for payment in accordance with the *School Certifying Official Handbook*, 3rd Edition, Revision 2 (SCO Handbook) requirements.

Program Magnitude

As of the end of fiscal year (FY) 2015, VA estimated that it issued just over \$12.5 billion in Post-9/11 G.I. Bill benefits payments to assist just under 891,000 service members, veterans, and their families pursue their education. VA projected Post-9/11 G.I. Bill spending would increase to about \$13.6 billion in FY 2016. During academic year 2013–2014, almost 21,000 schools received more than \$5.2 billion in tuition and fee payments as part of the Post-9/11 G.I. Bill and Yellow Ribbon Programs.

Other Information

The following appendixes provide additional information:

- Appendix A provides background information.
- Appendix B provides details on the audit's scope and methodology.

RESULTS AND RECOMMENDATIONS

Finding

VBA Did Not Always Make Appropriate and Accurate Payments or Recoup Payments as Required

RPO staff were unaware they made improper Post-9/11 G.I. Bill and Yellow Ribbon tuition and fee payments (payments) to schools and did not always recoup payments in accordance with 38 Code Federal Regulations (CFR) § 21.9695(b), 38 CFR § 21.9675(a) and VBA's SCO Handbook (*Chapter 33 Fiscal Issues, School Overpayments, and Student Overpayments*).

RPO staff made improper payments to schools because SCOs submitted inaccurate and incorrect tuition and fee amounts on students' enrollment certifications and did not maintain required supporting documentation for students' attendance. This included submitting certifications for an academically ineligible student. RPO staff also did not always recoup payments, as required, when students withdrew, reduced their course loads, or repeated courses that were not allowable under the SCO Handbook (*Student Overpayments*) and/or 38 CFR § 21.9695(b) and 38 CFR § 21.9675(a). Recoupments are important in the proper administration of the Post-9/11 G.I. Bill and Yellow Ribbon Programs because recouped funds:

- Are taxpayer dollars and VA has a responsibility to provide sound stewardship of Government funds.
- Allow students' annual Post-9/11 G.I. Bill entitlements to be credited for the recouped amount, thus ensuring students' benefits are not inappropriately reduced and allowing the students to retake or add courses during the academic year.
- Ensure students receive only their proper entitlements and schools only retain the appropriate tuition and fees allowed under the SCO Handbook (*Post-9/11 G.I. Bill, Chapter 33 Entitlement*) and Federal regulations.³

We selected a statistical sample of 225 students and reviewed almost 650 payments the RPOs made to schools on behalf of students during academic year 2013–2014, August 1, 2013, to July 31, 2014. The payments made to the students' 50 schools totaled more than \$1.7 million.⁴ We found that the RPOs made 40 overpayments to 16 schools totaling more than \$86,500 and 6 underpayments to 6 schools totaling just under \$4,400. In

³ 38 CFR § 21.9700(d)(1), 38 CFR § 21.9570, and/or 38 CFR § 21.9550(a).

⁴ As needed when discussing these cases, we redacted students' personally identifiable information and/or the identity of their schools to protect the students' privacy.

addition, we identified 39 missed recoupments⁵ for which the RPOs had not initiated recoupment actions in accordance with 38 CFR § 21.9695(b), 38 CFR § 21.9675(a), and VBA's SCO Handbook (*Chapter 33 Fiscal Issues, School Overpayments, and Student Overpayments*).

Thus, 85 of the 650 payments (13 percent) had exceptions and more than \$187,000 of the more than \$1.7 million reviewed payments (11 percent) resulted in either an improper payment or a missed recoupment. In total, 32 of the reviewed schools, including 19 for-profits schools, had improper payments and/or missed recoupments. The 19 for-profit schools represented more than \$149,000 or 80 percent of the identified improper payments and missed recoupments. Furthermore, 20 of the 32 identified schools—7 of which should have had completed compliance surveys in accordance with 38 U.S.C. § 3693(a)—did not have a compliance survey conducted.

Although some of the improper payment and missed recoupment occurred due to the actions of RPO staff, many occurred because SCOs made errors or were unaware of program requirements when they submitted students' certifications for payment. VBA needs to strengthen Post-9/11 G.I. Bill and Yellow Ribbon Program controls to help reduce improper payments and missed recoupments. Thus, VBA needs to:

- Improve the SCOs' awareness of program requirements related to the submission of accurate and complete enrollment certifications for payment.
- Refine the school selection process and ensure the completion of required compliance surveys to improve the verification and monitoring of tuition and fee certifications.
- Develop adequate guidance regarding allowable book fees and repeated classes.
- Verify and obtain supporting documentation for mitigating circumstances.

Based on the more than \$5.2 billion in tuition and fee payments made to schools during academic year 2013–2014, we projected that VBA issues an estimated \$247.6 million in improper payments and had a projected error rate of about 5 percent (\$247.6 million divided by \$5.2 billion). In addition, VBA did not recoup an estimated \$205.5 million annually in accordance with 38 CFR § 21.9695(b), 38 CFR § 21.9675(a), and VBA's SCO Handbook (*Chapter 33 Fiscal Issues, School Overpayments, and Student Overpayments*). As a result, VBA may issue an estimated \$1.2 billion in

⁵ These payments are not improper payments because they were correctly made based on the student's initial enrollments; they later became overpayments and required recoupments only because of the changes in the students' enrollment status.

improper payments⁶ and may not recoup an estimated \$1 billion from students and schools within the next 5 academic school years⁷ if it does not strengthen payment and recoupment controls. This equates to an estimated \$2.3 billion in improper tuition and fee payments and missed recoupments.

**Improper
Payments**

Our review of more than \$1.7 million in payments made during academic year 2013–2014 disclosed that VBA staff made 46 improper payments to 20 schools totaling just under \$90,900. The RPOs made these improper payments on behalf of 43 of the 225 students in our sample (19 percent). The Office of Management and Budget (OMB) Circular A-123, Appendix C, *Requirements for Effective Estimation and Remediation of Improper Payments*, (October 20, 2014), *Part I-A. Risk-Assessing, Estimating, and Reporting Improper Payments*, defines an improper payment as any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. OMB also considers payments to be improper if they lack sufficient documentation or they are made to ineligible recipients.

Our review identified just under \$90,900 in improper payments consisting of more than \$86,500 in overpayments and just under \$4,400 in underpayments.

⁶ OMB requires agencies to use gross total improper payments (overpayments + underpayments) when presenting improper payment estimates.

⁷ VA OIG monetary benefit estimates generally include future year estimates of up to 5 years (\$247.6 million multiplied by 5 years equals \$1.2 billion in improper payments and \$205.5 million multiplied by 5 years equals \$1.0 billion in missed recoupments).

Table 1 shows the categories of improper payments by payment issue.

Table 1. Categories of Improper Payments

Payment Issue	Number of Payments	Number of Students	Number of Schools	Total Improper Payments
Incorrect Certifications	40	37	18	\$50,100
Insufficient Documentation	5	5	1	32,000
Ineligible Recipient	1	1	1	8,800
Totals	46	*43	*20	\$90,900

Source: VA OIG Review Results

Note: Total improper payment amounts have been rounded to the nearest hundred.

*Three schools and two students had more than one improper payment in the “incorrect and inaccurate certifications” category.

Inaccurate Certifications

VBA relies on SCOs to accurately certify students’ tuition and fees when they submit certifications to RPOs for payment. These certifications include minimal information, such as the student name, type of program, enrollment dates, and a total amount payable. It does not include an itemized list of the tuition and fees the schools are charging so VA cannot identify the specific tuition amount, services, or supplies the school is charging VA. VBA does not require other documentation to support payments to schools. Our review found SCOs sometimes submitted certifications that included:

- Unsupported fees (\$21,600)
- Duplicate charges (\$13,200)
- Unsupported/inaccurate Yellow Ribbon Program tuition amounts (\$8,100)
- Erroneous tuition amounts (\$7,200)

An example of a certification is shown below. In this example, an SCO certified just over \$4,400 each for two school terms. However, just under \$260 in unsupported book fees was commingled in these amounts. VBA staff have no visibility over what services, supplies, or fees they are actually approving for payment.

Figure. VA-ONCE Certification

Enrollment Certification VA-ONCE ver.P036 - Chapter 33

[REDACTED]

Student Information
[REDACTED]

Type of Training
Nondegree College

Name of Program
MARINE SPECIALIST;099;915

Credit for Prior Training
NA

Enroll Begin	Dates End	Revised End Date	Res Hrs	Dist Hrs	R/D Hrs	Clock Hrs	T&F Amt	Yellow Ribbon Amount	Program Out	St Chg
01/14	02/14		12				\$4,406.96	\$.00		
02/14	04/14		12				\$4,406.96	\$.00		

Remarks
Change-Of-Address requested by School Certifying Official
CERTIFICATION: All Provisions on VA Form 22-1999 Are Certified.

Date Signed 11/25/2013 School Information [REDACTED]

Electronically Received by VA:

VA Form 22-1999-6
APR 2000 OMB Approved No. 2900-0073

CertID: [REDACTED]
TransId: [REDACTED]

Source: VA-ONCE

Unsupported Fees

RPO staff made 25 improper payments (24 for unsupported book fees, and 1 for an unnecessary off-campus fee) totaling almost \$21,600 to 9 schools when SCOs included unsupported fees on the tuition and fee certifications of 25 students. Seven of the nine schools were for-profit schools. According to the SCO Handbook (*Glossary and Abbreviations, Tuition and Fees*), VA tuition and fees do not include the cost of books or supplies students are required to purchase at their own expense. Post-9/11 G.I. Bill students receive a separate stipend for books and supplies based on their enrollment.

In the 25 cases we identified, VBA's Long Term Solution (LTS)⁸ automatically paid schools the book fees the SCOs submitted. When we questioned VBA officials as to when SCOs could certify book and supply fees for payment as part of the student's tuition and fees, we received conflicting interpretations. Some officials and staff stated that the SCOs could do this when the books or supplies were proprietary to the schools, and were unavailable online or from other sources. This interpretation appeared consistent with the guidance in the SCO Handbook since schools or programs that develop proprietary materials for courses might include the costs in the enrollment fees and not give students the option to purchase the materials separately at their own expense. Another VBA official stated that the RPOs could elect to pay schools for books and supplies if the costs exceeded the amount covered by the student's book and supplies stipend.

Regardless of VBA's policy interpretations regarding the inclusion of books and supplies in students' tuition and fees, the RPO staff's use of LTS to automatically process students' enrollment certifications did not include itemized expenses. Thus, RPO staff were unaware that SCOs included book and supply fees on the certifications and could not ensure the book and supply fees met the SCO Handbook's requirements or the policy interpretations that VBA staff provided during the audit.

Duplicate Charges

RPO staff made two improper payments totaling over \$13,200 to two schools when the SCOs submitted duplicate charges for two students. This occurred when an SCO at one school mistakenly certified that a student was taking courses for an undergraduate program, instead of a graduate program. Instead of amending the original certification to correct the error, the SCO submitted a second certification for the same courses under the graduate program. Consequently, the school received a duplicate tuition and fee payment for the student totaling just over \$13,100. The other duplicate charge occurred at a second school when an SCO mistakenly certified just under \$70 in duplicate service fees for a student due to a computer system error after the student changed from full to part-time status. The SCOs contacted the RPO to repay VA after we informed the schools of the duplicate charges.

Unsupported or Inaccurate Yellow Ribbon Tuition Amounts

RPO staff made over \$8,100 in improper Yellow Ribbon Program payments to two schools for four students. In total, our review identified three overpayments totaling over \$4,800 and two underpayments totaling under \$3,300. The SCOs at these two schools sometimes submitted Yellow Ribbon Program tuition amounts for payment that were not supported, as required, by matching contributions, thus, creating overpayments. In addition, the SCOs created underpayments when they erred and sometimes certified

⁸ LTS is VBA's automated system for processing Post-9/11 G.I. Bill benefits and tuition and fee payments.

tuition amounts for less than what they were allowed under the individual Yellow Ribbon Program agreements they had with VA. In these instances, the schools made up the difference in the costs through the use of the students' other sources of financial aid even though VBA would have covered the additional costs under the Yellow Ribbon Program if the SCOs had certified the correct amounts.

Below are examples of a Yellow Ribbon Program overpayment and underpayment:

Example 1

One SCO certified that VA owed \$3,500 in Yellow Ribbon Program tuition and fees to the school, and the RPO paid this amount on behalf of a student. However, the school was not entitled to the \$3,500 because it did not make the matching contribution required by the program and, instead, used the student's general grant funds to cover its share of the additional costs. The SCO acknowledged that for the school to properly match VBA's Yellow Ribbon funds using a grant, it should have used a clearly designated "Yellow Ribbon" grant, as it had for the other Post-9/11 G.I. Bill students at this school, instead of this student's general grant to cover these costs.

Example 2

The same SCO also submitted a certification for just under \$4,400 to VA to cover a student's Yellow Ribbon Program tuition and fees. However, the school contributed a total of \$7,000 and was entitled to more than \$2,600 in additional tuition from VA under the Yellow Ribbon Program. If the SCO had submitted the correct amount on the certification, the school would not have had to use the student's general grant to cover the Yellow Ribbon costs, and the student might have been able to use the general grant funds for other purposes.

We notified the RPOs and/or the schools of the need to address these overpayments and underpayments during our site visits. VA overpaid these two schools a net (overpayments minus underpayments) of more than \$1,500 due to the SCOs' certification of the incorrect Yellow Ribbon tuition amounts.

*Erroneous
Tuition or Fee
Amounts*

RPO staff made eight improper payments totaling over \$7,200 to eight schools when the SCOs submitted the incorrect tuition amount or did not properly amend the certifications of eight students. The improper payments consisted of four overpayments that totaled over \$6,100 and four underpayments that totaled just under \$1,100.

The four overpayments included certifications where:

- One SCO improperly charged VA the school's tuition rate instead of the tuition rate of the community college where the student completed his general education classes. Thus, the SCO certified that the student's

tuition was \$357 per credit instead of \$108 per credit; consequently, the RPO overpaid the school almost \$4,300.

- Two SCOs did not reduce the tuition amounts on the certifications, as required, based on the financial assistance the two students had received from other sources. As a result, the RPO overpaid the schools just under \$1,300.
- Another SCO erroneously certified that a student had taken six credit hours when the student had only taken four credit hours for the term, thus, resulting in an overpayment of over \$500.

The four underpayments included certifications where:

- One SCO understated the student's tuition and fees on a certification by over \$1,000 because the school expected the student to receive a grant. However, the SCO did not amend the certification to have VBA pay the additional \$1,000 when the student did not receive the grant.
- An SCO certified the correct tuition and fee amount but the RPO for some unknown reason paid the school about \$30 less than the certified amount.
- Two SCOs did not include a total of \$25 in allowable fees in the certified tuition and fee amount for two students.

We notified the RPOs and/or the schools of the need to address the overpayments and underpayments at the time of our site visit. The net amount (overpayments minus underpayments) in incorrect tuition and fees that VA paid totaled over \$5,000.

**Insufficient
Supporting
Documentation**

RPO staff made five improper payments totaling \$32,000 to a commercial truck driving training school that lacked documentation to show that five students in our sample had attended during academic year 2013–2014.⁹ Both 38 CFR § 21.4209 and the SCO Handbook (*School Responsibilities, Responsibilities for Reporting*) require schools to maintain student records and to make them available for inspection. Subsequently, schools should maintain records of the students' grades (transcripts), tuition and fee charges, academic progress, and program pursuit. In addition, as a participant in the Post-9/11 G.I. Bill Program, the school agreed during the state approval process to make all student records, including contracts, enrollment agreements, attendance records, and financial records, available for review.

Despite these requirements, the SCO, the owner of the commercial truck driving school, could not provide the required documentation, such as student

⁹ This school also received just under \$20,000 for an additional three Post-9/11 G.I. Bill students who were not part of our statistical sample. Most likely, these were also improper payments since the school, as a practice, did not maintain required documentation for Post-9/11 G.I. Bill students.

attendance records, enrollment agreements, and financial records, to support that the students actually attended the school. We attempted to contact the five students to verify that they had attended the school, but could not reach them. Consequently, we could not verify the appropriateness of any of the tuition and fee payments the RPO made to this school.

The SCO eventually provided the OIG with information from the state licensing Web site that showed the five students received commercial truck driver's licenses. However, this information did not make up for the lack of school records or allow us to verify that the students had attended this school before they obtained their licenses. After we discussed these cases with the responsible RPO, Education Service staff initiated a compliance survey of the school in response to our audit and stated that they recovered more than \$13,400 in erroneous payments related to two of the five students we reviewed.

Ineligible Recipient

RPO staff made an improper payment to one school for almost \$8,800 when the SCO mistakenly certified the tuition and fees of an academically ineligible student. Under 38 CFR § 21.9725(a) and the SCO Handbook (*Unsatisfactory Progress, Conduct and Attendance*), RPOs can only pay Post-9/11 G.I. Bill tuition and fees for students who meet the schools' academic eligibility requirements.

In this case, the school required students to maintain a grade point average (GPA) of 2.0. However, the SCO submitted about \$8,800 in enrollment certifications for a student who was academically ineligible when the school's automated system incorrectly calculated the student's GPA. The system showed the student's GPA was 2.17 and 1.95, respectively, for two quarters, when it was actually 1.95 and 1.77. The SCO did not realize the student was academically ineligible when she submitted the certifications and did not know why the school's system miscalculated the GPA. RPO staff agreed that the student was ineligible based on the school's academic policy, but stated the RPO had no way of knowing the student was academically ineligible unless the SCO reported it.

Missed Recoupments

Our review of more than \$1.7 million in payments made during academic year 2013–2014 also disclosed that VBA staff did not recoup just under \$96,400 paid to 25 schools for 37 students. This occurred because RPO staff did not always take appropriate action after schools notified them of enrollment changes or the schools did not always properly notify the RPO staff of students' changes in enrollment. Under the Post-9/11 G.I. Bill, VBA is required to recoup tuition and fee payments from either the students or the schools when students reduce their course enrollments and/or repeat classes that do not meet requirements established in the 38 CFR § 21.9695(b) and 38 § CFR 21.9675(a).

*Criteria for
Recouping
Overpayments*

The SCO Handbook (*Chapter 33 Fiscal Issues, Debts and Overpayments*) requires schools to repay VBA the tuition and fees costs of students who withdraw completely from all classes before or on the first day of class. If a student withdraws from all his or her classes after the first day of class, the student is generally responsible for repaying VBA the full amount of the tuition and fees. VBA is allowed to forgive the repayment of the full amount only when one or both of the following conditions apply:

- If it is the student's first withdrawal or reduction in course load, VBA will grant a one-time, six-credit-hour exemption whereby the student is required to repay only the tuition and fees for any courses beyond the six-credit hours.
- If the student withdraws due to a mitigating circumstance, such as an illness, active duty deployment, or a death in the family, and provides VBA evidence of the mitigating circumstance, VBA will require the student to repay only a reduced, prorated amount based on the student's number of days of attendance.

Similar repayment policies apply when students reduce their course loads (drop classes) but do not withdraw entirely from school. In these cases, however, the student is responsible for repaying VBA even if the student drops the classes before or on the first day of class. Based on the schools' drop policies, schools may provide students prorated refunds of the tuition and fees when students drop classes after the start of school but within the schools' allowed drop period. Regardless of the schools' drop policies, students are responsible for repaying VBA for reductions in their enrollment.

Under 38 United States Code (U.S.C.) § 3680(a), educational assistance should not be paid for classes that are not included in the computation of the requirements for graduation or, in other words, classes that are not counted toward the student's GPA. Furthermore, 38 CFR § 21.9675 specifically states that VA will not pay for these types of classes. In essence, these provisions prevent students from repeatedly withdrawing from or failing the same classes without consequence from VA. According to VA's Office of General Counsel Precedent Opinion, *Mitigating Circumstances-Six Semester Hour Exemption* (VAOPGCPREC 10-1999, August 24, 1999), members of Congress were greatly concerned when they passed 38 U.S.C. 3680(a) that schools could maintain students in a fully matriculated status even when the students displayed a pattern of failing to complete courses. This would allow individuals to continue to draw education benefits even when they were making no progress toward their educational goals.

Schools have differing policies regarding the retaking of classes. Some schools allow students to retake the same class multiple times and "forgive" classes so that the failing grades and the repeated classes are not included in the calculation of the students' GPAs. As a result, the RPOs must rely on the

SCOs to properly report students' repeated classes so that they can initiate the recoupment of tuition and fees for classes that the schools have not counted toward the students' GPAs.

VBA Did Not Always Recoup Funds

Table 2 displays the just under \$96,400 in missed recoupments the RPOs did not pursue after students withdrew, reduced their course loads, or repeated classes that were not allowable under 38 CFR § 21.9695(b), 38 CFR § 21.9675(a), and VBA's SCO Handbook, (*Chapter 33 Fiscal Issues, School Overpayments, and Student Overpayments*).

Table 2. Categories of Missed Recoupments

Recoupment Issue	Number of Payments	Number of Students	Number of Schools	Missed Recoupments
Class Withdrawals	7	7	7	\$21,100
Reduced Course Load	12	12	11	13,200
Repeated Classes	20	20	13	62,100
Total	39	*39	*31	\$96,400

Source: VA OIG Review Results

Note: Missed recoupment amounts have been rounded to the nearest hundred.

*Six schools and two students had missed recoupments in two categories.

Class Withdrawals

The RPO staff did not initiate recoupment actions for over \$21,100 in overpayments when seven students withdrew from classes at seven schools. 38 CFR § 21.4203(c) and the SCO Handbook (*Reductions and Withdrawals (Chapter 33)*) require SCOs to report changes in enrollment, such as withdrawals and reductions in course loads, to the RPO within 30 days. Once the SCO notifies the RPO of the enrollment change, the RPO staff process the change in LTS, and a debt letter is generated and sent to the student or the school.

Six of the seven schools had notified the RPOs of the students' withdrawals, but the RPOs did not initiate recoupment of the tuition from the students, as required by 38 CFR § 21.9695(b)(4), 38 CFR § 21.9675(a), and the SCO Handbook (*Debts and Over-Payments, School Overpayments, and Student Overpayments*). In four of the six cases, we found that the RPO staff checked whether it was the student's first withdrawal and whether a six-credit-hour exemption applied but, based on VBA guidance, they did not as a practice verify the existence of mitigating circumstances before they forgave the recoupments. Thus, they improperly forgave the recoupments

that totaled just under \$12,100 for the four students. In the remaining two cases, the RPO staff erred and either did not process or did not correctly process the students' withdrawals and did not initiate the recoupment of over \$7,400.

Finally, the SCO at one school did not properly notify the RPO of one student's withdrawal. The student withdrew before classes started but the SCO did not amend the student's tuition and fee certification, as required. Thus, the RPO did not know about the withdrawal, nor that it needed to recoup just over \$1,600 from the school, until we notified the school just under 17 months after the student's withdrawal.

**Reduced
Course Load**

RPO staff did not initiate the recoupment of 12 overpayments totaling just under \$13,200 after 12 students reduced their course loads at 11 schools. For 9 of the 12 students, the SCOs notified the RPOs that the students had reduced their course loads and amended the tuition and fee certifications to show the students dropped classes. However, similar to the class withdrawals, RPO staff improperly forgave the recoupment of nearly \$11,500 in tuition for the dropped classes because VBA's practice was to automatically forgive recoupments for dropped classes without verifying that the students had any mitigating circumstances.

For the remaining three students, the SCOs neither reported the change in enrollment nor amended the students' tuition and fee certifications to reflect the dropped classes. Subsequently, the RPOs were unaware they needed to initiate recoupments for just over \$1,700. For example, a student dropped a class after the first day of school and was entitled under the school's policy to a full refund of the class of almost \$1,600 in tuition and fees. Furthermore, the student should have reimbursed VBA after he received the refund. However, the school had neither provided the student a refund nor notified the RPO of the dropped class almost 9 months after the change in enrollment.

When SCOs do not report dropped classes, VBA does not have the opportunity to recoup the related tuition and fees. Moreover, students do not have the opportunity to repay VBA, to have their Post-9/11 G.I. Bill entitlements adjusted, and to use their restored entitlements to retake the dropped class or to take another class during the academic year.

**Repeated
Classes**

RPO staff did not initiate the recoupment of just over \$62,100 in overpayments made on behalf of 20 students when the classes did not meet 38 CFR § 21.9675(a) requirements. In general, the SCOs at 13 schools did not keep the RPOs properly informed of the students' academic performance and did not report that the students had repeated classes and that certain classes had been forgiven and not counted in the students' GPAs. Submitted enrollment certifications typically only show the amount due for tuition and fees and the number of credit hours students are taking. As a result, RPOs must rely on the SCOs to enter relevant information (in the comments section

of amended certifications) about the repeated classes and on whether the grades have been counted toward the student's GPA. Without these comments, the RPOs are unable to determine whether recoupments are needed.

For example, one student in our sample took the same math class three times (one of the classes occurred after the review period of our audit) and never passed the class. The SCO certified and the RPO paid the tuition and fees for this class three times. The school counted the grade from the student's final attempt but had forgiven the previous two attempts. Based on 38 CFR § 21.9675, the RPO should have recouped just under \$2,000 in tuition for the first two attempts because the grades for these two classes were not included in the calculation of the student's GPA. However, the SCO never reported this information to the RPO so the RPO was unaware of the repeated classes and that any funds needed to be recouped.

***Improved
Payment and
Recoupment
Controls
Needed***

Many of the improper payments and missed recoupments identified by our audit occurred because SCOs made mistakes when they submitted certifications or they lacked an adequate understanding and awareness of Post-9/11 G.I. Bill and/or Yellow Ribbon Program requirements. Some SCOs who did not understand or were unaware of the program requirements were new to their positions or had not used available VBA training and information resources, such as Education Service's quarterly online training Webinars, the SCO hotline staffed by RPO education case managers, and the ELRs assigned to their schools. VBA encourages the SCOs to take the available training and to use available resources, but it cannot require the SCOs to do so since it is not a requirement for participation in the Post-9/11 G.I. Bill Program.

VBA needs to strengthen its program controls to reduce Post-9/11 G.I. Bill improper payments and missed recoupments. We found that VBA:

- Needed a more refined school selection process for compliance surveys and did not always complete required compliance surveys during its post-payment verification and monitoring of tuition and fee certifications.
- Lacked adequate guidance on allowable book fees and the reporting and recoupment of tuition for repeated classes.
- Improperly allowed RPO staff to forgive tuition repayments related to withdrawals and reduced course loads without verifying the existence of mitigating circumstances.

***Inadequate
Monitoring of
Certifications***

VBA does not require RPO staff to verify and monitor the accuracy of the information submitted on enrollment certifications before they process payments because it considers its compliance survey process an adequate control mechanism to monitor the certification process.

Based on VBA's current compliance survey criteria, 33 of the 50 schools in our sample (66 percent) were not required to have annual compliance surveys. Thirteen of these schools had 33 of the total 85 improper payments and missed recoupments (39 percent) that we identified. The improper payments and missed recoupments at these 13 schools totaled just under \$73,900. Thus, we projected that an estimated \$96.7 million in annual improper payments and missed recoupments occur annually at schools that are not currently required to have compliance surveys.

Furthermore, we noted that 17 schools in our sample should have had compliance surveys based on 38 U.S.C. § 3693(a), but Education Service did not complete 7 of the required compliance surveys (41 percent). These 7 schools did not have waivers and also had 15 improper payments and missed recoupments totaling just over \$67,800 or 36 percent of the more than \$187,000 in improper payments and missed recoupments we identified. Based on these results, we projected that annually an estimated \$133.6 million in improper payments and missed recoupments occur at schools where required compliance surveys are not completed.

*Compliance
Survey Process*

Under 38 U.S.C. § 3693(a), VBA is required to conduct annual compliance surveys of schools with populations of 300 or more students receiving VBA education benefits and non-college degree schools unless a waiver has been granted. VBA's compliance surveys review areas, such as tuition rates, financial assistance, and enrollment changes, to assess whether SCOs are accurately certifying students' tuition and fees and complying with 38 CFR § 21.4203, § 21.4204, § 21.4253, and the SCO Handbook (*Compliance Surveys*).

During the compliance surveys, VBA randomly selects a sample of students based on the school's VA population size and reviews records, such as transcripts, financial ledgers, and approved courses. The compliance surveys help identify problems and assist schools with the preparation of accurate certifications. When VBA compliance survey specialists identify problems during the surveys, they typically provide the SCOs additional guidance to assist them in preventing future problems.

VBA's compliance survey process likely helps schools and SCOs submit more accurate and complete certifications and, this in turn, helps VBA limit some of the programs' improper payments and missed recoupments. However, the current process VBA uses to select schools for compliance surveys does not sufficiently cover all of the schools and programs that are prone to improper payments and missed recoupments. Thus, VBA cannot ensure the effective monitoring of certifications through the compliance survey process and effectively reduce improper Post-9/11 G.I. Bill and Yellow Ribbon payments and missed recoupments.

*Reason
Surveys Not
Always
Completed*

For FY 2014, Education Service reported that it completed about 5,000 of the just over 6,000 compliance surveys (83 percent) required by the current 38 U.S.C. § 3693(a). The director of Education Service stated that his service does not have the staff resources to complete all of the required compliance surveys. Consequently, Education Service has focused its compliance survey efforts on identifying potentially ineligible schools and programs. The Chief Education Liaison Officers (CELOs) also acknowledged that Education Service staff did not always complete required compliance surveys. The CELOs cited limited staff, high turnover, and time constraints as reasons for the required surveys not being completed. They also stated that resources were sometimes used to conduct compliance surveys at schools that had received student complaints rather than at schools where it was required by 38 U.S.C. § 3693(a).

The identification of just under \$142,000 in improper payments and missed recoupments at schools that did not have compliance surveys—either because they were not required or because they simply were not performed—demonstrates the gaps in VBA's current compliance survey process. These gaps in VBA's current compliance survey process prevent it from effectively monitoring the accuracy and completeness of students' enrollment certifications and minimizing related improper payments and missed recoupments.

According to VBA officials, Congress is currently considering legislation that would change the compliance survey requirement to once every 2 years for all schools and programs with populations of 20 or more students receiving VBA education benefits. However, this legislation may not significantly help VBA minimize improper payments and missed recoupments because it does not ensure the identification and timely review of schools and programs prone to improper payments and missed recoupments.

*Lack of
Adequate
Guidance*

VBA also lacked adequate guidance on allowable book fees and the reporting and recoupment of tuition for repeated classes. As a result, RPO staff and SCOs were not always aware of when book fees were allowed and recoupments were necessary for repeated classes. The SCO Handbook (*Glossary and Abbreviations, Tuition and Fees*) stated tuition and fee certifications should not include the cost of books or supplies that students are required to purchase at their own expense. However, VBA officials and staff provided different interpretations as to when RPO staff could pay schools directly for students' books and supplies, when the books and supplies were proprietary or the cost of books and supplies exceeded the student's book and supply stipend.

Because VBA did not clearly spell out the conditions under which book and supplies were allowable, SCOs tended to include book fees on the students' enrollment certifications, and staff at the different RPOs developed their own

interpretations as to when it was appropriate to pay the book fees. We found that even VBA's compliance survey specialists were unclear about when it was appropriate for SCOs to include book fees on the certifications and that they could not provide SCOs proper guidance on book fees during the compliance surveys.

SCOs and RPO staff were also confused about the reporting requirements for repeated classes due to the lack of clear guidance in the SCO Handbook. According to guidance on repeated classes in the SCO Handbook (*Repeated Courses*), "Courses that are failed or for which the grade does not meet minimum requirements for graduation may be certified for VA purposes if they are repeated." In other words, the SCO Handbook (*Repeated Courses*) stated that VA may pay schools for classes a student fails or classes in which the student has not achieved a grade that meets the school's minimum requirements for graduation if the student repeats the class.

The additional information VBA provided in the SCO Handbook (*Repeated Courses*) to explain this policy was limited and focused on two examples. In the first example, the student took a class twice before he received a passing grade and VA paid for both classes. However, if the student did not pass the second attempt, based on the information reported by the school, VA recouped the tuition for one of the classes. In the second example, the student took a class three times and received a passing grade, and VA paid for all three attempts but recouped the tuition for the second attempt.

The SCO Handbook (*Repeated Courses*) did not provide clear guidance on when, and what, the SCOs should report if students did not pass a class after several attempts or repeated a class more than three times before they passed. In these situations, many SCOs and RPO staff were unsure about what needed to be reported about the repeated classes.

The confusion over VBA's policy on repeated classes and the issue of recoupments was further compounded by guidance in the SCO Handbook (*Repeated Courses*) that conflicted with 38 CFR § 21.9675. The SCO Handbook (*Repeated Courses*), which states VBA may pay for failed classes or classes that do not meet graduation requirements when students repeat classes, contradicts 38 CFR § 21.9675, which states VBA cannot pay for any failed classes where the schools have not counted the grades toward the students' GPAs and graduation except where an individual is ordered to active duty service or there are mitigating circumstances.

When we discussed this discrepancy with the deputy director of Operations for Education Service, she stated that VBA relied on the school's "forgiveness" policies to determine if students were required to repeat classes and achieve a passing grade. Furthermore, she stated that VBA generally paid for all classes regardless of the number of times the student repeated the class and regardless of whether the grades counted toward the student's GPA,

as long as the school required the classes for graduation and the student was still academically eligible under the schools' policies. Education Service apparently communicated this policy to its ELRs, and the ELRs communicated it to schools during compliance surveys.

This position is based on VBA's interpretation of several different Federal regulations¹⁰ regarding VA's authority to discontinue payments for unsatisfactory academic progress. In short, VBA contends that various Federal regulations limit VA's authority to address excessive repeated classes, through the discontinuance or recoupment of payments, and that it cannot do so unless students have ceased making satisfactory progress based on the schools' or programs' own established policies. In practice, this means that VBA will not act to discontinue or recoup payments for repeated classes unless schools or programs have deemed students are not making satisfactory academic progress.

Consequently, many of the identified missed recoupments for repeated classes occurred because of the confusing guidance provided in the SCO Handbook (*Repeating Courses*) and VBA's interpretation of various Federal regulations. In our opinion, VBA's position—that it lacks the authority to take action regarding excessive repeated classes unless the schools or programs have declared students are not making satisfactory academic progress—weakens the safeguards established by 38 U.S.C. § 3680 and 38 CFR § 21.9675. According to VA's Office of General Counsel Precedent Opinions, *Mitigating Circumstances-Six Semester Hour Exemption* (VAOPGCPREC 10-1999, August 24, 1999), Congress put 38 U.S.C. § 3680 in place out of a concern that some schools would allow students to continue to attend even if the students demonstrated a pattern of not completing classes and not progressing toward their educational goals. Thus, this safeguard is particularly important for the Post-9/11 G.I. Bill Program where the students' enrollments provide schools money and students housing allowances, as well as book stipends.

*VBA Improperly
Forgave
Repayments*

Since the inception of the Post-9/11 G.I. Bill in 2008, RPO staff have followed VBA guidance that allowed them to improperly forgive tuition and fee recoupments related to withdrawals and reduced course loads without verifying the existence of mitigating circumstances. According to the SCO Handbook, VA should not pay for any courses where students have withdrawn and claimed mitigating circumstances unless VA has received adequate evidence of the mitigating circumstances. However, VBA has not enforced this requirement for Post-9/11 G.I. Bill Program students. We identified a similar issue during the *Audit of VBA's Post-9/11 G.I. Bill Monthly Housing Allowance and Book Stipend Payments* (Report

¹⁰ 38 U.S.C. § 3474, 38 U.S.C. § 3675(a)(3)(B)(ii), 38 U.S.C. § 3676(b)(6), 38 CFR § 21.4253(d)(2), and 38 CFR § 21.4253(d)(4).

No. 13-01452-214, July 11, 2014) in which VBA did not require the repayment of book stipends even though students withdrew without mitigating circumstances.

VBA officials and RPO staff stated that they automatically forgave the recoupment of tuition and fees because of LTS system limitations. In November 2015, VBA updated LTS and required the RPOs to inquire about possible mitigating circumstances when schools notify them that students have reduced their course loads or withdrawn. Based on the information schools provide in their response to the RPOs' inquiries, RPO staff can indicate in LTS that they have accepted the existence of a mitigating circumstance, not accepted it, or determined that the six-credit-hour exclusion applies.

Although the LTS update allowed RPO staff to identify the existence of mitigating circumstances, the process VBA implemented in November 2015 did not require the RPOs to obtain descriptions of the mitigating circumstances or any information from the schools to verify the mitigating circumstances. The SCO Handbook (*Mitigating Circumstances*) provides a definition of "mitigating circumstances" and examples of what VBA considers acceptable mitigating circumstances that prevent students from continuing in school or may cause them to reduce their course loads. It also states that when mitigating circumstances are an issue for a student and adequate documentation is not received, VA will not pay for the course in question. According to the SCO Handbook, schools should also retain documentation of mitigating circumstances in the student's file, and if documentation is not retained, then VA should ask the student to provide the evidence.

VBA's November 2015 LTS implementation policy did not provide RPOs adequate guidance on how to comply with the mitigating circumstances requirements established in the SCO Handbook. The policy did not require the RPOs to review the SCOs' description of the students' mitigating circumstances to ensure they met the criteria established in the SCO Handbook. Moreover, the policy did not require the RPOs to ensure the schools obtained evidence or supporting documentation of the students' mitigating circumstances. Thus, the RPOs would not know when they forgave payments due to mitigating circumstance whether the schools had any supporting documentation or whether they needed to ask the students to provide evidence of the mitigating circumstances. For these reasons, we did not consider VBA's issuance of the November 2015 policy sufficient for us to remove the mitigating circumstances cases from our future year estimates of missed recoupments.

Conclusion

VBA needs to improve payment and recoupment controls to ensure that Post-9/11 G.I. Bill tuition and fee payments are properly made and recoupments are properly performed. Based on the more than \$5.2 billion in

payments VBA made during academic year 2013–2014, we projected that VBA had an error rate of about 5 percent and issued an estimated \$247.6 million in improper Post-9/11 G.I. Bill tuition and fee payments to about 8,100 schools on behalf of just under 125,000 students. This will lead to an estimated \$1.2 billion in improper payments to schools within the next 5 academic school years unless controls are strengthened. In addition, we projected that VBA did not recoup an estimated \$205.5 million annually and that it will not recoup more than \$1 billion within the next 5 academic school years. Therefore, we estimated that improper payments and missed recoupments will total an estimated \$2.3 billion within the next 5 academic school years if VBA does not strengthen payment and recoupment controls.

Recommendations

1. We recommended the Acting Under Secretary for Benefits improve outreach by periodically requiring Education Liaison Representatives to review Post-9/11 G.I. Bill and Yellow Ribbon Program requirements, the *School Certifying Official Handbook*, and other available Veterans Benefits Administration training resources with School Certifying Officials to help them submit accurate and complete tuition and fee certifications.
2. We recommended the Acting Under Secretary for Benefits develop risk profiles for schools that are prone to certification problems, improper payments, and missed recoupments; and implement a process to periodically review and verify the certification information submitted by these schools.
3. We recommended the Acting Under Secretary for Benefits incorporate improper payment and missed recoupment risk factors into Veterans Benefits Administration's risk-based system for the prioritization and completion of compliance surveys.
4. We recommended the Acting Under Secretary for Benefits revise the *School Certifying Official Handbook* to clarify guidance on allowable book and supply fees.
5. We recommended the Acting Under Secretary for Benefits review and strengthen Education Service policies and controls regarding the discontinuance and recoupment of payments, repeated classes, and satisfactory academic progress to ensure compliance with Federal regulations and prevent possible education benefits abuse.
6. We recommended the Acting Under Secretary for Benefits ensure that mitigating circumstances are properly verified and supporting documentation is obtained before tuition repayments are forgiven.
7. We recommended the Acting Under Secretary for Benefits initiate action to recover identified improper payments when collections are deemed appropriate and reasonable.

8. We recommended the Acting Under Secretary for Benefits review the identified missed recoupments to determine if collections would be appropriate and reasonable.

**Management
Comments
and OIG
Response**

In a March 23, 2016, response to the OIG, the former Acting Under Secretary for Benefits concurred or concurred in principle with seven of the report's eight recommendations, but only provided corrective action plans to address five of these recommendations. We considered these action plans acceptable and will follow up on their implementation. The former Acting Under Secretary for Benefits did not provide adequate action plans for three recommendations—two where he concurred in principle and one where he nonconcurred. The former Acting Under Secretary specifically nonconcurred with the OIG's recommendation to review the identified missed recoupments for possible collections. The three recommendations without action plans will remain open until the OIG and VBA can resolve the various issues VBA has related to the OIG's findings.

The former Acting Under Secretary for Benefits and VBA generally did not agree with the OIG's findings related to the number and amounts of improper payments and missed recoupments and the estimates derived from the OIG's sampling results. VBA disagreed with the OIG's identification of 43 payments totaling just under \$77,700 in improper payments or essentially almost every improper payment we identified that was not a duplicate payment. Moreover, VBA disagreed with all 39 overpayments totaling \$96,400 in missed recoupments.

After we received the former Acting Under Secretary's response, we reviewed OMB Circular A-123 and other relevant legal authorities, considered improper payments reporting practices at VA and other agencies, conferred with OMB, and thoroughly reviewed and considered VBA's comments and response. After taking these steps, we reaffirmed our findings. We did not make the suggested report changes VBA provided in the technical comments section of its response (Appendix E), but we did add a more detailed discussion and explanation of our position regarding VBA's November 2015 LTS policy update regarding mitigating circumstances.

In our review of the VA position paper, we found that VBA's responses regarding its review of the 85 identified improper payments and missed recoupments did not provide sufficient evidence for us to revise our findings. In addition, we disagreed with VBA's interpretation and application of various statutes and policies related to book fees and repeated classes. After the retirement of the former Acting Secretary for Benefits, we met with the Principal Deputy Under Secretary for Benefits to discuss the VBA's response and to give him the opportunity to reconsider the response and/or provide additional information for us to consider. He demurred and opted to stand by the positions in VBA's March 23, 2016 response.

**Improper
Payments
Discussion**

VBA did not dispute the events and circumstances the OIG identified related to the 43 payments totaling just under \$77,700. When we reviewed VBA's response, VBA agreed that three payments were improper payments but it did not consider any of the other erroneous or incorrect payments we identified improper payments. VBA's views on improper payments, related recoveries, and allowable costs conflicted with or diverged significantly from those of the OIG, OMB Circular A-123, and other agencies' reporting practices to include VA's own reporting practices. Brief summations of VBA's positions regarding these payments, and the OIG's responses, including discussions of OMB's definition of improper payments, 38 U.S.C. § 3313 related to allowable fees and other educational costs, and an Office of General Counsel (OGC) Memorandum, dated February 10, 2016, (Appendix E) follow.

**Correct Versus
Improper
Payments**

VBA asserted that 14 payments totaling just over \$24,100, which we identified as improper payments, were correct, or proper, because the staff accurately processed the awards based on the enrollment certification submitted by the schools. Thus, it did not consider these payments improper payments even though the submission of incorrect information on the enrollment certifications resulted in the payment of unsupported and/or inaccurate Yellow Ribbon Program tuition amounts, erroneous tuition amounts, and tuition for an ineligible recipient.

In these 14 cases, VBA did not acknowledge that the schools often were overpaid (or in some cases underpaid) due to the submission of incorrect or incomplete information on the enrollment certifications. These cases are no different from the three improper payments we identified during the audit where the submission of inaccurate information caused overpayments in the form of duplicate payments to be issued to the schools. However, while VBA agreed that the three payments are improper payments, it does not acknowledge that tuition and fee payments made in the incorrect amount, regardless of the cause, are improper payments under OMB Circular A-123, Appendix C, *Requirements for Effective Estimation and Remediation of Improper Payments*.

In this appendix, OMB clearly defined an improper payment as any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Our application of improper payments in this report is consistent with the Government Accountability Office's (GAO's) application in its *Post-9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections* (GAO-16-42, October 2015) report, and VA's own treatment of improper payments in VBA's Compensation and Pension Service.

GAO's report distinguished between overpayments that were not considered "improper" and those that were. Payments that were correct when originally

issued, but subsequently became overpayments due to enrollment changes, were not “improper payments.” However, overpayments caused by school reporting or VA processing errors were counted as improper payments because an improper payment is defined by statute as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements.

Also as early as FY 2013, VA noted in its Performance and Accountability Report that program design was a major cause for improper payments. Specifically, VA acknowledged that VBA’s reliance on outside parties to notify it of events affecting benefits payments resulted in improper payments until proper notice was provided. In the FY 2015 Agency Financial Report, VA specifically discussed this concept relative to VBA Compensation and Pension Programs, including drill pay,¹¹ acknowledging that the late notification of events will subsequently cause improper payments until adequate notification is received.

Regardless of whether it is in Compensation and Pension Service Programs or Education Service’s Post-9/11 G.I. Bill Program, VBA must issue payments prospectively due to program design and rely on information provided by third parties; thus, improper payments will occur until VBA receives proper notification of events that affect the benefits payments. This audit identified events affecting the students’ Post-9/11 G.I. Bill education benefits payments that in many cases were not correctly or properly reported on the enrollment certifications provided VBA. Thus, similar to VBA’s Compensation and Pension Programs, Education Service’s Post-9/11 G.I. Bill Program is susceptible to improper payments due to program design.

Moreover, VBA’s position that it should not have to adjudicate and possibly recoup these improper payments is inconsistent with the statutory requirements in 38 U.S.C. 3313(d) and 38 U.S.C. 3680(a). As discussed in the OGC Memorandum, dated February 10, 2016, Congress recognized with these statutes that VBA had to make Post-9/11 G.I. Bill educational assistance payments prospectively and that these advance payments could become overpayments subject to recovery if they were made based on erroneous information.

Classification of Book and Supply Costs

VBA asserted that it was proper for it to make 24 payments totaling just under \$21,600 to schools for books and supplies because 38 CFR § 21.9505 defined fees as “any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education.” Subsequently, VBA

¹¹ See *Audit of the Management of Concurrent VA and Military Drill Pay Compensation*, Report No. 13-02129-177, published June 3, 2014.

contended in its response that schools may certify charges associated with books, equipment, and/or supplies as fees, provided that such charges are mandatory for all individuals enrolled in the program.

VBA's position does not acknowledge that schools make processing errors and bill for non-allowable fees, including book fees, even though GAO identified this as a cause for overpayments in its *Post-9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections* (GAO-16-42, October 2015) report.

In addition, VBA's position is inconsistent with the statements VBA officials made to the OIG during the audit as to when VBA could pay book fees, as well as the guidance in the SCO Handbook that stated tuition and fees could not include the cost of books or supplies students are required to purchase at their own expense. VBA's own Education Service officials, CELOs (responsible for VBA's Compliance Survey process), and RPO staff had agreed during the performance of the audit that VBA should only pay schools fees for books and supplies if the materials were proprietary and mandatory for all students enrolled in the class.

Due to the lack of specific guidance in the SCO Handbook regarding the payment of book fees, the staff's interpretation of the guidance that only proprietary books and supplies should be paid for appeared consistent with the guidance in the SCO Handbook. Schools or programs that develop proprietary materials for courses might include the costs in the enrollment fees and not give students the option to purchase the materials separately at their own expense. However, we noted during the audit that the RPOs did not know they had paid schools for books because the costs were not itemized on the certification. Therefore, VBA had no way to ensure the book fees were for proprietary materials based on its staff's interpretation of the SCO Handbook guidance or were mandatory for all individuals in the program as required by 38 CFR § 21.9505.

Yellow Ribbon Payments

VBA generally asserted in its response that the \$8,100 in Yellow Ribbon Program overpayments and underpayments we identified were not improper payments because VBA did not exceed the agreed upon Yellow Ribbon Program cap—the maximum amount VA has agreed to pay the school under the Yellow Ribbon Program when a student's tuition exceeds the amount paid for by the Post-9/11 G.I. Bill Program. On the spreadsheet that VBA provided to support this statement, two Yellow Ribbon Program cases had the following annotation:

VBA completed an audit. Based on the enrollment information provided by the school, the claim was adjudicated correctly in LTS. The yellow ribbon payment amount cap during 2014-2015 academic year for [REDACTED] [REDACTED] was \$15,000.00. A review of the yellow

ribbon payments during that year shows that the yellow ribbon cap was not exceeded.

The three Yellow Ribbon Program cases on the spreadsheet had annotations that stated, "VBA completed an audit of the claim and no action is necessary. Payment is correct." VBA provided no other support for these five cases or the related annotations on the spreadsheet. Thus, we can only assume VBA applied the same logic described in the annotation for the first case to all of the Yellow Ribbon Program cases that totaled just over \$8,100.

VBA's assertions that these payments were processed correctly based on the enrollment certifications and that the Yellow Ribbon Program cap amounts were not exceeded are correct. However, VBA does not address whether the schools met the Yellow Ribbon Program matching fund requirements or claimed the correct or incorrect amount on the certifications. Our review found that these schools either were not entitled to the full payment amounts they received because they did not completely meet the program's one-for-one matching fund requirement or they simply submitted the incorrect tuition amount.

As a result, we affirm our position that these Yellow Ribbon Program payments are improper payments and that this is an area that VBA should specifically address as it conduct its outreach for the Yellow Ribbon Program. SCOs need to understand the program's matching fund requirements so that they do not use students' general grants or financial aid to cover tuition and fees the schools or VA should pay for under the program.

*Lack of
Supporting
Documentation
for Payments*

VBA asserted that \$32,000 in payments made to a commercial truck driving school for five students were proper and supported because a state licensing Web site showed the five students had received truck driver's licenses. Even though the school lacked student enrollment and attendance records required by 38 CFR § 21.4209 and its own SCO Handbook (*Review of School Records by VA and SAA*) for the five students, VBA concluded these students must have attended the truck driving school and that these payments were not improper payments.

VBA's contention that these payments were not improper payments contradicted the definition of improper payments in OMB Circular A-123, Appendix C, Part I. The circular clearly stated that ". . . when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment."

Furthermore, we generally did not find VBA's contention that these payments were properly supported because the students possessed commercial trucking licenses compelling. VBA did not consider the failure to maintain records an indicator of potential fraud either by the school or the

students even after VBA's own compliance survey of the school resulted in the recovery of more than \$13,400 in erroneous payments. Furthermore, VBA did not acknowledge in its response that the \$13,400 in erroneous payments made for two of the five students were improper payments.

**Missed
Recoupments
Discussion**

The nature of VBA's disagreement with the OIG over missed recoupments is very similar to that which it set forth for improper payments. VBA does not dispute the events and circumstances the OIG identified related to the 39 payments totaling \$96,400. However, VBA contended that it did not have to adjudicate and possibly seek recoupment of these payments because:

- It was not required to recoup funds for repeated classes under 38 U.S.C. § 3680(a)(3).
- RPO staff had processed payments for students with mitigating circumstances according to VBA policy and procedures in place at the time.
- Schools had not notified the RPOs of the students' withdrawals.

We do not agree with VBA's interpretation of 38 U.S.C. § 3680(a)(3). Furthermore, VBA policies and procedures and the schools' failure to report enrollment changes do not change the fact that these payments are subject to possible recoupment under Federal statute and regulations.

**Repeated
Classes**

VBA asserted that it did not need to recoup 20 payments totaling just over \$62,100 for repeated classes that were not counted toward the students' GPAs. 38 CFR § 21.9675 specifically states that VA shall not pay for grades that do not count toward a student's GPA (non-punitive grades). However, VBA interpreted 38 U.S.C. § 3680(a)(3) to mean that VA could pay for any courses a student retook to meet graduation requirements as long as the courses were not repeated solely to improve the student's academic standing. Thus, VBA did not consider payments for repeated courses that students took to meet graduation requirements to be improper and subject to recoupment.

To support its interpretation of 38 U.S.C. § 3680(a)(3), VBA took a very narrow view of students' assigned grades as static and unchanging. VBA argued that it was authorized to pay for any class a student needed for graduation, regardless of the number of times the class was repeated, as long as the students received grades for the classes that are counted toward the student's GPA (punitive grades) at the end of the term. Thus, VBA did not consider the payments for repeated classes we identified as missed recoupments because the schools changed the students' grades from punitive to non-punitive after the term ended. A "punitive" grade is distinguished from a "non-punitive" grade in that it "does affect the criteria to be met by the student for graduation, i.e., it is a factor in computing the student's grade average . . . for example." Moreover, VBA did not find its interpretation

inconsistent with 38 U.S.C. § 3680(a)(3) even though 38 CFR § 21.9675 clearly stated VA shall not pay for non-punitive grades.

VBA asserted that an OGC Memorandum, dated February 10, 2016, confirmed its position. However, the OGC Memorandum merely stated 38 U.S.C. § 3680(a)(3) did not expressly prohibit VBA from instituting a policy that allowed the RPOs to repeatedly pay education benefits for the same course if the course was mandatory for graduation and the student received a grade that was insufficient to meet school requirements for graduation but the grades were punitive at the time they were assigned.

Because the statute and regulations did not state whether a grade that was “not used in computing graduation requirements,” and that VA could not pay for had to be assessed at the end of term or at graduation, OGC advised that VA was not prohibited from assessing the grade at graduation—allowing RPOs to repeatedly pay for the same failed course so long as the course was required for graduation.

Notwithstanding this opinion, OGC expressed concern because, in its view, the practice of continuously paying for a class that would ultimately not count towards graduation is “inconsistent with the statutory structure” and the statutory prohibition on paying for a course for which the grade assigned is not used in computing the requirements for graduation. Based on the legislative history wherein Congress expressed great concern veterans would repeatedly take the same class and fail without consequence from VA, OGC concluded a court would likely find VA’s interpretation of its regulations is not consistent with statute.

This OGC opinion coupled with the general rule of statutory interpretation is that the expenditure of public funds is proper only when authorized by Congress—not that public funds may be expended unless prohibited by Congress support our position; consequently, we affirm our position that the identified payments for repeated classes were improper under the statute, if not, the regulations as well. *See United States v. MacCollom*, 426 U.S. 317, 321 (1976).

*Mitigating
Circumstances*

VBA did not consider 13 cases totaling just under \$23,600 that lacked the verification of mitigating circumstances to be missed recoupments because VBA staff processed these claims in accordance with VBA policy and procedures in place before November 2015. VBA’s response that these payments were not missed recoupments ignores requirements in its own SCO Handbook (*Chapter 33 Fiscal Issues*) and Federal statutes and regulations.

Generally, veterans may not receive education benefits for a course where “the grade assigned is not used in computing the requirements for graduation including a course from which the student withdraws.” (38 U.S.C. § 3680(a)). In other words, VA is prohibited from paying

education benefits to a veteran who withdraws from course and where a veteran is entered into a course that is not used in graduation requirements. There are two exceptions to this general rule under 38 U.S.C. § 3680(a).

The first exception allows a veteran to receive education benefits for a course where he or she withdraws because he or she is ordered to active duty and the second exception permits VA to pay for education benefits where VA finds “mitigating circumstances.” In addition, in the first instance of withdrawal from a course or courses not totaling more than six credits, the statute states VA must find “mitigating circumstances.” (*Id.* at 3680(a) (3) (B); 38 CFR § 21.9635(b)) Mitigating circumstances are defined as “circumstances beyond the individual’s control that prevent him or her from continuously pursuing a program of education” such as an illness or mental illness of the individual, or an unavoidable change in the individual’s conditions of employment. (38 CFR § 21.9505)

Specifically, VA regulations expressly forbid VA from paying for a course not used in computing the requirements for graduation (that is, a non-punitive course) unless “there are mitigating circumstances, and [t]he eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed...[and] [t]he eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence” (38 CFR § 21.9675(a)(2)(i)-(ii)) Even in the case of an overpayment, VA regulations provide that individuals who have “*substantiated mitigating circumstances* will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs.” (38 CFR § 21.9695(b) (4) (ii) (C) (emphasis added))

VBA did not agree the cases we identified were overpayments subject to adjudication and potential recoupment because “due to system limitations at the implementation of the Post-9/11 GI Bill, VBA *issued streamlining policies and procedures* to facilitate the processing of Post-9/11 GI Bill claims [which *allowed VBA staff to* **assum[e]** *the existence of ‘mitigating circumstances’* for individuals terminating or reducing course” Because *assuming* mitigating circumstances for individuals terminating or reducing course load was a VBA policy, VBA did not consider any payments in which mitigating circumstances were assumed to be an overpayment. However, the statute provides only one time when mitigating circumstances can be assumed—the first withdrawal where the course or courses total not more than six credits. In all other circumstances, VA regulations, which were subject to notice and comment, provide VA must find “mitigating circumstances.” VA’s regulations do not allow mitigating circumstances to be assumed except as allowed by statute. Therefore, VBA’s previous policies related to mitigating circumstances were contrary to VA regulations and statute.

VBA lacked documentation to discern whether students had mitigating circumstances when they reduced their course loads and assumed mitigating circumstances existed without making an affirmative finding. Thus to the extent that we found no mitigating circumstances for students' course reductions, the identified tuition and fee payments became overpayments subject to adjudication and potential recoupment.

Consequently, we affirmed our position that VBA should adjudicate these missed recoupments and either properly grant mitigating circumstances or recoup the payments.

*Lack of
Notification of
Withdrawals*

VBA contended that payments totaling more than \$10,700 for six students who withdrew from schools should not be considered missed recoupments and that it should not be required to recoup these funds because the schools did not notify the RPOs of the withdrawals. VBA's contention that the schools failure to notify the RPOs of the withdrawals somehow made these payments not subject to adjudication and possible recoupment contradicts statutory requirements in 38 U.S.C. 3680 and 3313(d) requiring recoupment, as well as existing regulations.

38 CFR § 21.9675 states VBA is not authorized to pay for classes when students withdraw. 38 U.S.C. § 3680(e) regarding the recovery of erroneous payments also states that if students do not pursue a course for which VA has made an advance payment that the payment in whole or in part should be recovered, even if it was due to the previous submission of erroneous information.

Finally, VBA's own SCO Handbook (*Chapter 33 Fiscal Issues, Debts and Overpayments*) also specifically stated that schools were required to repay VBA the tuition and fees costs of students who withdrew completely from all classes before or on the first day of class. Students who withdrew from all their classes after the first day of class were generally responsible for repaying VBA the full amount of the tuition and fees.

Since VBA must pay for students' enrollments when certifications are processed, subsequent class withdrawals implicitly require RPOs to adjudicate, adjust, and recoup payments afterwards or retrospectively. Moreover, VA acknowledged in the FY 2015 Agency Financial Report and FY 2013 Performance Accountability Report that the retroactive adjustment of VBA benefits may be necessary when VBA is notified of changes in beneficiaries' statuses. Consequently, we affirmed our classification of these payments as missed recoupments because the schools did not properly notify the RPOs of the students' withdrawals.

Appendix A Background

Purpose of the Post-9/11 G.I. Bill Program

The Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 G.I. Bill) provides veterans educational benefits to assist them with readjustment to civilian life. On January 4, 2011, Public Law 111-377 amended the Post-9/11 G.I. Bill and extended program eligibility to members of the National Guard. The law also made educational institutions that offered non-college degrees, on-the-job training, and apprenticeships eligible. Veterans are eligible for Post-9/11 G.I. Bill benefits after they have served a minimum of 90 days on active duty or at least 30 days if discharged for a service-connected disability. The percentage of program benefits that veterans, spouses, or other family members receive is based on the veteran's qualifying days of service.

Compliance Survey Process

38 U.S.C. § 3693 currently require annual compliance surveys for non-college degree schools and schools with a population of 300 or more students receiving VBA education benefits unless a waiver has been granted. VBA grants waivers and will not conduct compliance survey for 2 years if a school's prior compliance survey identified no more than two errors. According to VBA officials, currently proposed legislation is seeking to change the compliance survey requirement to once every 2 years for any school with a population of 20 or more students receiving VBA education benefits.

The compliance surveys include reviews of student records, such as transcripts, financial ledgers, and approved courses. The purpose of the compliance surveys is to:

- Ensure compliance with 38 U.S.C. § 3693 and the SCO Handbook (*Compliance Surveys*)
- Identify and minimize errors
- Take corrective action in areas where SCOs have not submitted accurate and complete tuition and fee certifications
- Prevent deficiencies or violations due to misunderstandings or misinterpretations of the law

Related OIG Reports

Prior OIG reports had identified significant financial risks in VBA's administration of the Post-9/11 G.I. Bill Program. Three prior OIG reports have identified issues with delayed payment processing, improper payments, and missed recoupments in the Post-9/11 G.I. Bill Program. The *Audit of VBA's Post-9/11 G.I. Bill Monthly Housing Allowance and Book Stipend Payments* (Report No. 13-01452-214, July 11, 2014), found that students experienced delays in the payment of about \$60.8 million in benefits and that improper payments and missed recoupments would total about \$205 million over 5 years if VBA did not strengthen processing controls. Another report,

Audit of Education Claims and Payments for the Post-9/11 G.I. Bill (Report No. 09-03458-18, November 3, 2010), identified processing delays and systemic errors due to software functionality and inadequate staffing levels. In addition, the *Review of Alleged Improper Emergency Payments for Education Benefits* (Report No. 10-01248-249, September 14, 2010) found that VA emergency payments to ineligible military service members and veterans who did not participate in VA education programs resulted in about \$87 million in unrecoverable debts.

Appendix B Scope and Methodology

Scope

We conducted our audit work from November 2014 through December 2015. The audit focused on all schools and programs that received Post-9/11 G.I. Bill tuition and fee payments for students during academic year 2013–2014 (August 1, 2013, to July 31, 2014) from one of VBA's four RPOs located in Atlanta, GA; Buffalo, NY; Muskogee, OK; and St. Louis, MO. We developed a sampling methodology that resulted in the review of 225 students from 50 schools in the four RPOs' catchment areas. We also conducted a site visit to the Buffalo RPO and completed virtual site visits for the remaining RPOs in Atlanta, Muskogee, and St. Louis.

Methodology

For each statistically selected student, we validated VBA's student records, such as payment calculations against school-supplied information such as tuition rates and transcripts, to verify the appropriateness and accuracy of tuition and fee payments. We evaluated student and schools records to determine if RPOs paid schools the appropriate amount for the student's tuition and fees and recouped tuition payments, as required by 38 CFR § 21.9695, and/or 38 CFR § 21.9675, and the SCO Handbook, (*Debts and Overpayments*). Lastly, we interviewed VBA officials to obtain clarification of the SCO Handbook and RPO staff to identify and evaluate local policies and procedures for processing tuition and fee payments. We reviewed all findings with VBA RPO supervisors, ELRs, and CELOs and received their concurrence on reported exceptions.

Fraud Assessment

The audit team assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this audit. The audit team exercised due diligence in staying alert to any fraud indicators by taking actions, such as:

- Soliciting the OIG Office of Investigations for potential fraud indicators
- Analyzing tuition and fee payment, school, and student data for fraud indicators, such as payment amounts greater than the authorized amounts, payments made after the student's date of death, and payment amounts above the regulatory limits

We referred two schools where we identified potential fraud indicators to the OIG Office of Investigations for further evaluation.

Data Reliability

To achieve the audit's objectives, we relied on computer-processed data contained in VA's Benefits Delivery Network reporting system. We assessed the reliability of these data by tracing the accuracy of student information using source documents across various VA systems. Additional data reliability tests included steps to identify any missing data in key fields, calculation errors, and data outside of our period of performance. Based on

these tests and assessments, we concluded the data were sufficiently reliable to use to meet the audit's objectives.

**Government
Standards**

Our assessment of internal controls focused on those controls relating to our audit objectives. We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix C Statistical Sampling Methodology

Population

The audit focused on tuition and fee payments during the 12-month period ending July 31, 2014. We selected the population based on the parameters of the audit objective by identifying more than \$5.2 billion in VA's Benefits Delivery Network tuition and fee payments made to nearly 796,000 Post-9/11 G.I. Bill students during our 12-month review period.

Sampling Design

We developed a stratified sampling design based on the location of the RPOs, the number of students at each school, and the school's status as a public, private, or for-profit. Using these strata in our sampling methodology, we segregated the universe to give all of the RPOs, schools, and students an equal chance of being selected. This allowed us to project our results over the whole population and the different RPOs. The sampling design was representative and ensures projections describe the entire population. The sampling methodology resulted in the review of 225 randomly selected students who received tuition and fee payments totaling more than \$1.7 million.

Weights

We calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling.

Since each VBA RPO had a different number of students and the sample sizes were varied across all RPOs, the sampling weights also varied in size. This accounts for the percentages calculated from the raw sample numbers being different from the percentages calculated from the weighted projections.

Projections and Margins of Error for Overpayments and Recoupments

The margins of error and confidence intervals are indicators of the precision of the estimates. If we repeated this audit with multiple samples, the confidence intervals would differ for each sample, but would include the true population value 90 percent of the time.

We used the point estimate amounts for each of the projections.¹² Based on the more than \$5.2 billion in tuition and fee payments made during academic year 2013–2014, we projected that VBA issued an estimated \$247.6 million in improper payments annually and that it had an error rate of 5 percent (\$247.6 million in improper payments divided by \$5.2 billion). These payments were made to about 8,100 schools on behalf of just under 125,000 students and could total an estimated \$1.2 billion (\$247.6 million

¹² The amount of underpayments identified during the audit was statistically insignificant so we only used the point estimates for the identified overpayments to calculate our potential monetary benefits and to project the estimated annual number of affected schools and students.

multiplied by 5 years) in overpayments within the next 5 academic school years.

In addition, we projected that VBA does not recoup an estimated \$205.5 million annually from about 115,000 students, and could miss opportunities to recoup an estimated \$1 billion (\$205.5 million multiplied by 5 years) within the next 5 academic school years. Thus, the Post-9/11 G.I. Bill tuition and fee overpayments and missed recoupments will total an estimated \$453.1 million (\$247.6 million added to \$205.5 million) annually and an estimated \$2.3 billion (\$453.1 million multiplied by 5 years) within the next 5 academic school years if VBA does not strengthen RPO payment and recoupment controls.

Table 3 and Table 4 provide the projections associated with Post-9/11 G.I. Bill overpayments and missed recoupments for tuition and fees payments.

Table 3. Statistical Projections Summary for Overpayments
(Dollars in thousands)

Error Types	Lower Limit	Point Estimate	Upper Limit	Margin of Error
Overpayments-Amount	\$135,900	\$247,600	\$359,300	\$111,700
Overpayments-Student Count	81,600	125,000	168,000	43,300
Overpayments-School Count	3,400	8,100	12,800	4,700
Improper Payment Error Rate	3%	5%	7%	2%

Source: VA OIG analysis of statistically sampled overpayments

Note: Projected using a 90 percent confidence interval.

Table 4. Statistical Projections Summary for Missed Recoupments
(Dollars in thousands)

Error Types	Lower Limit	Point Estimate	Upper Limit	Margin of Error
Missed Recoupments-Amount	\$135,800	\$205,500	\$275,200	\$69,700
Missed Recoupments-Student Count	69,400	115,000	160,000	45,400

Source: VA OIG analysis of statistically sampled missed recoupments

Note: Projected using a 90 percent confidence interval.

Projections and Margins of Error for Compliance Surveys

Table 5 provides the projected improper payments and missed recoupments for those schools that lacked compliance surveys because either they were not required or they were not performed. We found that the 13 schools, which were not required to have compliance surveys, had 33 overpayments and missed recoupments totaling just under \$73,900. Thus, we projected that an estimated \$96.7 million in improper payments and missed recoupments annually occur at schools that are not required to have compliance surveys.

Furthermore, we found that 7 schools that lacked required compliance surveys had 15 overpayments and missed recoupments totaling just over \$67,800. Thus, we projected that an estimated \$133.6 million in improper payments and missed recoupments occur annually at schools where required compliance surveys have not been completed.

Table 5. Statistical Projections Summary for Compliance Surveys
(Dollars in thousands)

Compliance Survey Category	Lower Limit	Point Estimate	Upper Limit	Margin of Error
Survey Not Required	\$11,800	\$96,700	\$181,600	\$84,900
Required Survey Not Performed	\$71,400	\$133,600	\$195,800	\$62,200

Source: VA OIG analysis of overpayments and missed recoupments from not completing compliance surveys

Note: Projected using a 90 percent confidence interval.

Appendix D Potential Monetary Benefits in Accordance With the IG Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs
1-4	Improve payment controls to reduce improper payments.	\$0	\$1.24 Billion
1-3 and 5-6	Improve recoupment controls to ensure payments are properly recovered	\$0	\$1.03Billion
Total		\$0	\$2.27 Billion

Appendix E Management Comments

Department of Veterans Affairs

Memorandum

Date: March 23, 2016

From: Acting Under Secretary for Benefits (20)

Subj: OIG Draft Report—Audit of Post-9/11 G.I. Bill Tuition and Fee Payments—VAIQ
7664833

To: Office of Inspector General for Audits and Evaluations (52)

1. Attached is VBA's response to the OIG Draft Report: Audit of Post-9/11 G.I. Bill Tuition and Fee Payments.

2. Questions may be referred to Ruma Mitchum, Program Analyst, at 632-8987.

(Original signed by:
DANNY G.I. PUMMILL

Attachments

Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
Audit of Post-9/11 G.I. Bill Tuition and Fee Payments

VBA provides the following general comments:

VBA does not agree with the findings of the Office of Inspector General (OIG) related to the number and amounts of improper payments or missed recoupments – or the estimates that were derived from the OIG's sampling results. Based on VBA's review of the 46 cases identified by the OIG as involving improper payments and the 39 cases identified as missed recoupments, corrective action was needed on only 5 of the cases. VBA did not find any of the payments made on the remaining 80 cases to have been improperly made for the reasons cited below and further explained in the technical comments that follow.

Throughout this draft report, the OIG made incorrect statements regarding the roles and responsibilities of VBA Regional Processing Office (RPO) staff and School Certifying Officials (SCOs). In order for VA to pay an education claim, the school (or training establishment) providing the training must certify the enrollment of a beneficiary to VA. Education claims are processed at the RPOs located in Atlanta (Georgia), Buffalo (New York), Muskogee (Oklahoma), and St. Louis (Missouri). The education division at each RPO is structured into two broad sections: claims processing and compliance. Veterans Claims Examiners (VCEs) are part of the claims processing section and are responsible for reviewing documentation submitted by the SCO and/or claimant, determining eligibility, processing payments, and notifying the claimant of the decision rendered.

VA considers that a payment is correct when the award is accurately processed based on the enrollment certification submitted by the school. The school is responsible for submitting accurate enrollment certifications, maintaining supporting documentation for students' attendance and academic progress, and certifying the information is true and accurate. If the school subsequently notifies VA or if it is determined through a VA compliance survey that the initial certification was incorrect or a change in enrollment has occurred, VA will make adjustments as necessary. However, it is not the responsibility of the VCEs to further verify the correctness of each enrollment certification submitted by the school before processing it for payment. VBA's Education RPOs processed over 4.2 million enrollment certifications in fiscal year (FY) 2015. If, prior to processing enrollment documents for payment, VCEs were required to complete the type of compliance check of each enrollment as was conducted by the OIG in this audit, the delivery of education benefits would essentially be brought to a halt.

The RPO compliance sections are responsible for conducting surveys to ensure that schools and training establishments, and their approved programs, are adhering to all applicable provisions of the laws and regulations governing VA educational assistance programs. Schools are required to make records of progress and training, tuition and fee charges, and other information available upon request by a compliance staff member. Compliance staff members provide on-the-spot training to SCOs when deficiencies and violations are identified and ensure that the appropriate adjustments are submitted to VA for correction.

Therefore, VBA does not agree with OIG's findings regarding alleged improper payments made by VCEs if the payments were correct at the time they were processed based on the enrollment certification received from the SCO.

Additionally, VBA does not agree with OIG's findings related to cases involving mitigating-circumstance determinations, repeated classes, and allowable fees for the following reasons:

- Mitigating Circumstances - Due to system limitations at the implementation of the Post-9/11 GI Bill, VBA issued streamlining policies and procedures to facilitate the processing of Post-9/11 GI

Bill claims. Assuming the existence of “mitigating circumstances” for individuals terminating or reducing course load was one of the streamlined measures. As the Long Term Solution was developed, VA encountered technical challenges with implementing this capability; however, new system functionality was deployed in November 2015 to support the process of adjudicating mitigating circumstances. VBA does not consider any education claims processed in accordance with the policies and procedures that existed prior to November 2015 to be improper payments or missed recoupments.

- **Repeated Classes** - There are instances where a school will allow a student to retake a course to improve the grade initially received. The school may require the student to retake a course if the student's initial grade is insufficient to meet the school's graduation requirements (e.g., a failing grade such as “F” is awarded; or a “C” is awarded when the minimal requirement is a “B”). The school may allow the student to voluntarily opt to retake the course if the grade is sufficient for graduation requirements but the student wishes to repeat the course solely to improve his or her grade point average. VBA has interpreted 38 U.S.C. § 3680(a)(3) to mean that VA can pay for courses that must be retaken to meet graduation requirements, but cannot pay for courses repeated solely to improve academic standing. In an opinion issued February 10, 2016, VA's Office of General Counsel (OGC) confirmed that VBA's policy to pay for repeated courses required for graduation is in accordance with the law (Attachment B). VBA does not consider payment for courses repeated to meet graduation requirements to be improper.
- **Allowable Fees** - For the purpose of awarding benefits under the Post-9/11 GI Bill program, the term “fees” is defined by regulation (38 C.F.R. § 21.9505) as follows: “Fees mean any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.” Charges associated with books, equipment, and/or supplies, may be certified to VA as fees, provided that such charges are mandatory for all individuals enrolled in the program. VBA does not consider payment of these fees to be improper.

VBA provides the following technical comments:

Page 2, paragraph 1:

“RPO staff were unaware they made improper Post-9/11 G.I. Bill and Yellow Ribbon tuition and fee payments (“payments”) and did not always recoup payments in accordance with Federal Regulations and VBA's SCO Handbook. RPO staff processed improper payments to schools when SCOs submitted inaccurate and incorrect tuition and fee amounts on students' enrollment certifications, did not maintain required supporting documentation for students' attendance, and submitted certifications for an academically ineligible student.”

VBA Comment: VBA does not agree that payments are improper if the payments are correct based on the certification submitted by the school. Schools are required to certify accurate enrollment information to VA. Upon receipt of the enrollment certification, a VCE reviews and releases payments based on the information received. If the school subsequently notifies VA, or a compliance survey determines, that the initial certification was incorrect or a change has occurred, VBA will make adjustments, as necessary.

VBA's Compliance Survey Specialists (CSSs) are responsible for conducting compliance surveys to ensure schools are certifying enrollment information in accordance with Federal Regulations and VBA's School Certifying Official Handbook. If a CSS finds certification errors at a particular school, then the SCO is provided on-the-spot training and required to submit corrected information to VA. Upon receipt of a change in enrollment, VCEs make adjustments to claims which may require recoupment of all or part of previous payments issued.

Therefore, VBA suggests the second sentence in the paragraph be replaced with the following revision:

"RPOs rely on the schools to submit accurate enrollment information; however, we found that SCOs sometimes submitted inaccurate and incorrect tuition and fee amounts on students' enrollment certifications and did not maintain required supporting documentation for students' attendance."

Page 2, paragraph 2, second sentence, and first bullet:

"Recoupments are important in the proper administration of the Post-9/11 G.I. Bill and Yellow Ribbon programs because recouped funds:

- Can be made available for the use of other eligible students."

VBA Comment: Funds and entitlement used, or not used, on behalf of any one beneficiary have no bearing on the funding or entitlement that is available to other beneficiaries. Therefore, VBA recommends deleting the first bullet.

Page 3, paragraph 1, first bullet:

"Specifically, VBA did not:

- Require staff to verify and monitor information submitted on certifications and instead relied on an inadequate school selection process to conduct compliance surveys."

VBA Comment: VBA's CSSs are required, by law, to conduct annual compliance surveys at degree-granting schools with 300 or more VA beneficiaries, and for any program not leading to a standard college degree. However, VBA can, and does, visit degree-granting schools with fewer than 300 VA beneficiaries if an issue is identified. VBA's education division processed over 4.2 million education claims in FY 2015, with the majority of the supplemental Post-9/11 GI Bill claims being processed within 7.0 days. Requiring VBA to complete a compliance check of each enrollment prior to processing would eliminate the ability to automate claims and essentially bring claims processing to a halt. Therefore, VBA recommends deleting this bullet.

Page 3, paragraph 2, first sentence:

"Based on the over \$5.2 billion in tuition and fee payments made during academic year 2013-2014, we projected that VBA issues an estimated \$247.6 million in improper payments and had an error rate of about 5 percent ($\$247.6 \text{ million} \div \5.2 billion)."

Page 3, paragraph 3, first and second sentences:

"...that VBA staff made 46 improper payments to 20 schools totaling just under \$90,900. The RPOs made these improper payments on behalf of 43 (19 percent) of the 225 students in our sample."

Page 3, paragraph 4, first sentence:

"Our review identified just under \$90,900 in improper payments consisting of over \$86,500 in overpayments and just under \$4,400 in underpayments."

Page 4, Table 1:

Table 1. Categories of Improper Payments

Payment Issue	Number of Payments	Number of Students	Number of Schools	Total Improper Payments
Incorrect and Inaccurate Certifications	40	37	18	\$50,100
Insufficient Documentation	5	5	1	32,000
Ineligible Recipient	1	1	1	8,800
Totals	46	*43	*20	\$90,900

Source: VA OIG review results

VBA Comment: VBA reviewed the claims labeled improper, and disagrees with OIG's calculations and the above statements (see revised table below and Attachment A).

Table 1. Categories of Improper Payments (as reviewed by VBA)

Payment Issue	Number of Payments	Number of Students	Number of Schools	Total Improper Payments
Incorrect and Inaccurate Certifications	3	3	3	*\$13,227
Insufficient Documentation	2	2	1	\$13,400
Ineligible Recipient	0	0	0	0
Totals	*5	*5	*4	*\$26,627

*Includes adjustments for all improper reconsiderations.

Therefore, OIG should recalculate the 5 percent error rate and dollar amount cited on page 3, paragraph 2, first sentence.

Page 3, paragraph 4:

VBA also suggests the following revisions:

Strike, "...that VBA staff made 46 improper payments to 20 schools totaling just under \$90,900. The RPOs made these improper payments on behalf of 43 (19 percent) of the 225 students in our sample." and replace with "...that VBA staff made 5 improper payments to 20 schools totaling just under \$26,700. The RPOs made these improper payments on behalf of 5 (2 percent) of the 225 students in our sample."

Strike, "Our review identified just under \$90,900 in improper payments consisting of over \$86,500 in overpayments and just under \$4,400 in underpayments.", and replace with, "Our review identified just under \$26,700 in improper payments including \$13,400 for insufficient documentation."

Page 4, paragraph 1:

"VBA relies on SCOs to correctly and accurately certify students' tuition and fees when they submit certifications to RPOs for payment. However, our review found SCOs sometimes submitted certifications that included:

- Unallowable fees (\$21,600)
- Duplicate charges (\$13,200)
- Unsupported/inaccurate Yellow Ribbon Program tuition amounts (\$8,100)
- Erroneous tuition amounts (\$7,200)"

VBA Comment: VBA suggests a modification to the above paragraph to accurately reflect the changes in dollar amounts.

Page 4, paragraphs 2 and 3:

"RPO staff made 25 improper payments totaling almost \$21,600 to 9 schools when School Certifying Officials (SCOs) included unallowable book fees and supplies on the tuition and fee certifications of 25 students. VA generally prohibits schools from certifying book fees for payment since Post-9/11 G.I. Bill students receive separate book and supply allowances to help cover these costs. The SCO Handbook states that tuition and fees do not include the cost of books or supplies that students are required to purchase at their own expense.

According to VBA officials, however, schools may certify book and supply fees for payment if the books or supplies are proprietary to the schools, and are not available online or from other sources. Further, a VBA official stated that RPOs may elect to pay book and supply fees to schools if the fees exceed the amount covered by the student's book and supply allowance. In the 25 cases we identified, RPO staff automatically paid book fees that the SCOs submitted, and they did not consider the amount of the student's book stipend or whether the books and supplies could have been obtained online or from other sources."

VBA Comment: The statement made by a VBA official regarding RPOs may elect to pay book and supply fees to schools if the fees exceed the amount covered by the student's book and supply allowance is incorrect. For the purpose of awarding benefits under the Post-9/11 GI Bill program, the term "fees" is defined by regulation (38 C.F.R. § 21.9505) as follows:

"Fees mean any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education."

It should be noted that the definition provides a non-exhaustive list (i.e., examples) of charges that may be included as fees, and we acknowledge that textbooks are not specifically included as one of the examples. However, by stark contrast, the charges that cannot be included as fees (i.e., tuition, room and board, and charges associated with optional study abroad courses) are strictly defined. Consequently, charges associated with books, equipment, and/or supplies, may be certified to VA as fees, provided that such charges are mandatory for all individuals enrolled in the program.

For the samples where 25 payments totaling \$21,600 were labeled as improper, the amount of incorrect and inaccurate certifications should be reduced by \$21,573. In addition, the 24 improper payments to 9 schools should be reduced to reflect 1 improper payment to 1 school.

Therefore, VBA suggest striking both paragraphs.

Page 5, paragraph 3:

“RPO staff made over \$8,100 in improper Yellow Ribbon Program payments to two schools for four students. In total, our review identified three overpayments totaling over \$4,800 and two underpayments totaling under \$3,300. The SCOs at these two schools sometimes submitted Yellow Ribbon Program tuition amounts for payment which were not supported by matching contributions. Moreover, they certified tuition amounts that sometimes exceeded or were below the program’s allowable payment amounts.”

VBA Comment: VBA completed an audit on these cases and determined that the payments were not improper because VBA is only responsible to match up to 50% of the unmet charges after payment of tuition and fees. Also, we reviewed the 3 overpayments and confirmed the yellow ribbon payments during those years show that the yellow ribbon cap was not exceeded (Attachment A).

Therefore, VBA suggests OIG modify this entire section to reflect VBA’s policy and remove the improper payments from the list.

Page 6, paragraph 2:

“RPO staff made eight improper payments totaling over \$7,200 to eight schools when the SCOs submitted the incorrect tuition amount or did not properly amend the certifications of eight students. The improper payments consisted of four overpayments that totaled over \$6,100 and four underpayments that totaled just under \$1,100.”

VBA Comment: These payments should not be labeled as improper. The SCOs are responsible for netting out financial assistance received to students per guidance in the SCO Handbook. It states, “The actual net cost for in-state tuition and fees assessed by the institution for the program of education after the application of any waiver of, or reduction in, tuition and fees; and any scholarship, or other Federal, State, institutional or employer-based aid or assistance (excluding loans and title IV funds) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees.”

In addition, the SCO certified that the student enrolled for six credit hours. Based on the transcript that was provided to OIG, it was discovered that the student was enrolled in four credits instead of six credits. Schools are required to submit accurate information to VA and submit any changes in enrollment without delay. When conducting compliance surveys, VA reviews records to determine if the certifications submitted to VA are correct. If deficiencies or violations are found, the school is required to submit an amendment.

Therefore, VBA suggests OIG delete the entire section and remove the improper payments from the list.

Page 7, paragraph 1, first sentence:

“RPO staff made five improper payments totaling \$32,000 to a commercial truck driving training school that lacked documentation to show five students in our sample had attended during academic year 2013-2014.”

VBA Comment: Despite the fact that the commercial truck driving school did not maintain proper records, the state licensing website shows that the five students received truck driver’s licenses. This should lead to the conclusion that the courses were completed and licenses were granted by the state to support the initial payment of the claims.

Therefore, VBA suggests the sentence be replaced with the following:

“RPO staff made payments totaling \$13,400 to a commercial truck driving training school that lacked documentation to show two students had attended during the academic year 2013-2014. While these payments were not improper at the time of certification, the lack of supporting documentation provided to OIG lead to a compliance survey of the commercial truck driving school. The compliance survey resulted in the recovery of \$13,400 in erroneous payments.”

Page 7, paragraphs 4 and 5:

“RPO staff made an improper payment to one school for almost \$8,800 when the SCO mistakenly certified the tuition and fees of an academically ineligible student. Under Federal Regulation and the SCO Handbook, RPOs can only pay Post-9/11 G.I. Bill tuition and fees for students who meet the schools’ academic eligibility requirements.

In this case, the school required students to maintain a grade point average (GPA) of 2.0. However, the SCO submitted about \$8,800 in enrollment certifications for a student who was academically ineligible when the school’s automated system incorrectly calculated the student’s GPA. The system showed the student’s GPA was 2.17 and 1.95, respectively for two quarters, when it was actually 1.95 and 1.77. The SCO did not realize the student was academically ineligible when she submitted the certifications and did not know why the school’s system miscalculated the GPA. RPO staff agreed that the student was ineligible based on the school’s academic policy, but stated the RPO had no way of knowing the student was academically ineligible unless the SCO reported it.”

VBA Comment: This payment should not be labeled as improper. At the time VBA issued the payment correctly based on the enrollment information submitted by the SCO. The SCO submitted information that was believed to be correct as the school’s records indicated that the student’s GPA was 2.17, and 1.95, respectively for two quarters. As per the SCO handbook, “When a student has failed to maintain prescribed standards of progress, VA must be informed promptly so that benefit payments can be discontinued in accordance with the law. The termination date assigned by the school will be the last day of the term or other evaluation period in which the student’s progress became unsatisfactory. Schools that provide a period of academic probation may not continue to certify a veteran or eligible person (who remains in a probationary status) for an indefinite period of time. It is reasonable to expect that an institution will report a termination due to unsatisfactory progress if a student remains on academic probation beyond 2 terms, quarters, or semesters.”

Therefore, VBA suggests OIG delete the two paragraphs above and label the payments totaling almost \$8,800 as proper payments.

Page 9, paragraph 2:

“Table 2, below, displays the just under \$96,400 in missed recoupments the RPOs did not pursue after students withdrew, reduced their course loads, or repeated classes that were not allowable under the SCO Handbook and/or Federal Regulations.”

Table 2. Categories of Missed Recoupments

Recoupment Issue	Number of Payments	Number of Students	Number of Schools	Missed Recoupments
Class Withdrawals	7	7	7	\$ 21,100
Reduced Course Load	12	12	11	13,200
Repeated Classes	20	20	13	62,100
Total	39	*39	*31	\$ 96,400

Source: VA OIG review results

VBA Comment: VBA disagrees with the recoupment issues identified in table 2. OIG identified missed recoupments as course withdrawals, reduced course load, and repeated courses. In an opinion issued February 10, 2016, VA’s Office of General Counsel (OGC) confirmed that VBA’s policy to pay for repeated courses required for graduation is in accordance with the law (Attachment B). In addition, due to system limitations at the implementation of the Post-9/11 GI Bill, VBA’s Education Service issued streamlining policies and procedures to facilitate the processing of Post-9/11 GI Bill claims. Assuming the existence of “mitigating circumstances” for individuals terminating or reducing course

load was one of the streamlined measures. As the Long Term Solution (LTS) was developed, VA encountered technical challenges with implementing this capability; however, new system functionality was deployed in November 2015 to support the process of adjudicating mitigating circumstances. VBA does not consider any education claims processed in accordance with the policies and procedures that existed prior to November 2015 to be improper payments or missed recoupments.

Therefore, VBA suggests OIG delete the table and modify the paragraph above and label the payments totaling almost \$96,400 in missed recoupments as proper payments.

Page 10:

“Six of the seven schools had notified the RPOs of the students’ withdrawals but the RPOs did not initiate recoupment of the tuition from the students as required by Federal Regulations and the SCO Handbook. In four of the six cases, we found the RPO staff checked whether it was the student’s first withdrawal and whether a six credit hour exemption applied, but based on VBA guidance, they did not as a practice verify the existence of mitigating circumstances before they forgave the recoupments. Thus, they improperly forgave the recoupments which totaled more than \$12,100 for the four students. In the remaining two cases, the RPO staff erred and either did not process or did not correctly process the students’ withdrawals and did not initiate the recoupment of over \$7,400.

Finally, the SCO at one school did not properly notify the RPO of one student’s withdrawal. The student withdrew before classes started, but the SCO did not amend the student’s tuition and fee certification as required. Thus, the RPO did not know about the withdrawal and that it needed to recoup just over \$1,600 from the school until we notified the school just under 17 months after the student’s withdrawal.

RPO staff did not initiate the recoupment of 12 overpayments totaling just under \$13,200 after 12 students reduced their course loads at 11 schools. For 9 of the 12 students, the SCOs notified the RPOs that the students had reduced their course loads and amended the tuition and fee certifications to show the students dropped classes. However, similar to the class withdrawals, RPO staff improperly forgave the recoupment of nearly \$11,500 in tuition for the dropped classes because VBA’s practice was to automatically forgive recoupments for dropped classes without verifying that the students had any mitigating circumstances.

For the remaining three students, the SCOs neither reported the change in enrollment nor amended the students’ tuition and fee certifications to reflect the dropped classes. Subsequently, the RPOs were unaware they needed to initiate recoupments for just over \$1,700. For example, a student dropped a class after the first day of school and was entitled under the school’s policy to a full refund of the class’ almost \$1,600 in tuition and fees. Further, the student should have reimbursed VBA after he received the refund. However, the school had neither provided the student a refund nor notified the RPO of the dropped class almost 9 months after the change in enrollment. When SCOs do not report dropped classes, VBA does not have the opportunity to recoup the related tuition and fees. Further, students do not have the opportunity to repay VBA, to have their Post-9/11 G.I. Bill entitlements adjusted, and to use their restored entitlements”

VBA Comment: VBA disagrees with OIG’s assessment that there was a missed opportunity to recoup payments. Prior to deployment of system capability in November 2015 to handle mitigating circumstances, VA addressed this issue through policy by simply terminating or reducing the award on the date the student dropped or stopped attending as if mitigating circumstances existed.

Therefore, VBA suggests OIG delete page 10 and label the payments totaling almost \$13,200 as proper payments for the 12 students at the 11 schools.

Page 11, paragraphs 1 and 2:

“RPO staff did not initiate the recoupment of just over \$62,100 in overpayments made on behalf of 20 students when the classes the students’ took did not meet Federal Regulation requirements. In general, the SCOs at 13 schools did not keep the RPOs properly informed of the students’ academic performance when they did not report that the students had repeated

classes and that certain classes had been forgiven and not counted in the students' GPAs. Submitted enrollment certifications typically only show the amount due for tuition and fees and the number of credit hours students are taking. As a result, RPOs must rely on the SCOs to enter relevant information about the repeated classes and whether the grades have been counted toward the student's GPA in the comments section of amended certifications. Without these comments, the RPOs have no way to determine whether or not recoupments are needed.

For example, one student in our sample took the same math class three times (one of the classes occurred after the review period of our audit) and never passed the class. The SCO certified and the RPO paid the tuition and fees for this class three times. The school counted the grade from the student's final attempt but had forgiven the previous two attempts. Based on 38 CFR 21.9675, the RPO should have recouped just under \$2,000 in tuition for the first two attempts because the grades for these two classes were not included in the calculation of the student's GPA. However, the SCO never reported this information to the RPO so the RPO was unaware of the repeated classes and that any funds needed to be recouped."

VBA Comment: VBA disagrees with OIG's assessment that any funds paid for repeated classes needed to be recouped. In an opinion issued February 10, 2016, VA's Office of General Counsel (OGC) confirmed that VBA's policy to pay for repeated courses required for graduation is in accordance with the law (Attachment B).

Therefore, VBA suggests OIG delete the two paragraphs above and label the payments totaling almost \$62,100 as proper payments on behalf of 20 students at 13 schools.

Page 11, paragraphs 4 and Page 12, bullets 1-3:

"At the same time, many of the identified improper payments and missed recoupments occurred due to inadequate VBA program controls. We found that VBA:

- Did not require staff to verify and monitor information submitted on certifications and instead relied on an inadequate school selection process to conduct compliance surveys.
- Lacked adequate guidance on allowable book fees and the reporting and recoupment of tuition for repeated classes.
- Improperly allowed RPO staff to forgive tuition repayments related to withdrawals and reduced course loads without verifying the existence of mitigating circumstances."

VBA Comment: VBA's CSSs are required, by law, to conduct annual compliance surveys at degree-granting schools with 300 or more VA beneficiaries, and for any program not leading to a standard college degree. However, VBA can, and does, visit a degree-granting school with less than 300 VA beneficiaries if an issue is identified. VA defines the term "fees" by regulation. Charges associated with books, equipment, and/or supplies, may be certified to VA as fees, provided that such charges are mandatory for all individuals enrolled in the program. Lastly, due to system limitations at the implementation of the Post-9/11 GI Bill, VBA issued streamlining policies and procedures to facilitate the processing of Post-9/11 GI Bill claims. Assuming the existence of "Mitigating Circumstances" for individuals terminating or reducing course load was one of the streamlined measures. VBA does not consider any education claims processed in accordance with the policies and procedures that existed prior to November 2015 to be improper payments or missed recoupments.

VBA suggests OIG delete this section.

The following comments are submitted in response to the recommendations in the OIG draft report:

Recommendation 1: We recommended the Acting Under Secretary for Benefits improve outreach by periodically requiring Education Liaison Representatives to review Post-9/11 G.I. Bill and Yellow Ribbon program requirements, the School Certifying Official Handbook, and other available Veterans Benefits Administration training resources with School Certifying Officials to help them submit accurate and complete tuition and fee certifications.

VBA Response: Concur. VBA will provide the Education Liaison Representatives (ELRs) a quarterly training newsletter to disseminate to all School Certifying Officials (SCOs) that will include a link to the School Certifying Official Handbook.

Target Completion Date: June 1, 2016

Recommendation 2: We recommended the Acting Under Secretary for Benefits develop risk profiles for schools that are prone to certification problems, improper payments, and missed recoupments and implement a process to periodically review and verify the certification information submitted by these schools.

VBA Response: Concur in principle. Currently, VBA utilizes the results of compliance surveys to determine if a school is at risk or needs further review of all student records to include, but not limited to, improper payments and missed recoupments. VBA is developing a centralized system to store compliance survey information to identify trends, risk factors, and training needs at the national level. Deployment of a new centralized system is contingent upon completion of the Veterans Approval, Certification, Enrollment, Reporting, and Tracking System (VA-CERTS) and resource availability.

Target Completion Date: August 1, 2017

Recommendation 3: We recommended the Acting Under Secretary for Benefits incorporate improper payment and missed recoupment risk factors into its risk-based system for prioritizing and completing compliance surveys.

VBA Response: Concur. VBA will review and modify the fiscal year (FY) 2017 compliance survey guidance to incorporate improper payment and missed recoupment risk factors for consideration when prioritizing and completing compliance surveys.

Target Completion Date: December 1, 2016

Recommendation 4: We recommended the Acting Under Secretary for Benefits revise the School Certifying Official Handbook to clarify guidance on allowable book and supply fees.

VBA Response: Concur in principle. VBA believes the School Certifying (SCO) Handbook provides adequate guidance that is supported by VA's regulations on allowable book and supply fees. VBA will review the SCO Handbook and survey SCOs to determine if clarification is needed regarding fees associated with books and supplies, provided that those charges are mandatory for all students in the program.

Target Completion Date: December 1, 2016

Recommendation 5: We recommended the Acting Under Secretary for Benefits review and strengthen Education Service policies and controls regarding the discontinuance and recoupment of payments, repeated classes, and satisfactory academic progress to ensure compliance with Federal Regulation and prevent possible education benefit abuse.

VBA Response: Concur in principle. The opinion provided by VA's Office of General Counsel (OGC), issued February 10, 2016, in regard to the limitations imposed by 38 U.S.C. § 3680 (Attachment B) found that VBA's policies are in accordance with the law regarding repeated courses.

VBA will ensure Compliance Survey Specialists continue to verify that the facility maintains accurate, current, and complete records of progress or grades and is adhering to the school's published policies regarding standards. VBA's Education Service National Quality Assurance Team will pull a random sample of FY 2016 compliance surveys to ensure Compliance Survey Specialists are accurately reviewing and maintaining records, and recouping or discontinuing payments when deemed appropriate.

VBA will present on each topic listed in the recommendation during the next two Quarterly Education Service Webinars with SCOs, ELRs, and State Approving Agency employees. The Director, Education Service, will focus on these areas during the upcoming FY 2016 national and local school conferences.

Target Completion Date: December 1, 2016

Recommendation 6: We recommended the Acting Under Secretary for Benefits ensure that mitigating circumstances are verified and supporting documentation is obtained before tuition repayments are forgiven.

VBA Response: Concur. VBA's Education Service issued procedures to the regional processing offices (RPOs) regarding the adjustment of educational assistance payments for students who withdraw from courses without mitigating circumstances. The procedural advisory was released on November 17, 2015 (Attachment C). In addition, the Education Service Quality Assurance Team will pull a random sample of cases with mitigating circumstances to ensure proper implementation and compliance.

Target Completion Date: December 1, 2016

Recommendation 7: We recommended the Acting Under Secretary for Benefits initiate action to recover identified improper payments when collections are deemed appropriate and reasonable.

VBA Response: Concur in principle. Based on further review of the sample cases OIG submitted to VBA, corrective action was completed on 5 out of the 46 cases. VBA disagrees that a corrective action is needed on the remaining 41 cases (Attachment A).

Recommendation 8: We recommended the Acting Under Secretary for Benefits review the identified recoupments to determine if collections would be appropriate and reasonable.

VBA Response: Non-concur. Based on a review of the sample cases OIG submitted to VBA, all case reviews were completed. Based on OIG's criteria for missed recoupments, VBA does not believe these cases should be categorized as missed recoupments. OIG identified missed recoupments as course withdrawals and reductions, and repeated courses. The opinion provided by VA's Office of General Counsel (OGC), issued February 10, 2016, in regard to the limitations imposed by 38 U.S.C. § 3680 found that VBA's policy is in accordance with the law regarding repeated courses (Attachment B). In addition, VA implemented system changes to address course reductions and withdrawals (mitigating circumstances) in November 2015. Prior to this time, VA implemented a policy on how to address mitigating circumstances in order to overcome the system challenges. Education claims processed prior to November 2015 should not be identified as missed recoupments or improper payments.

Yellow Ribbon Payment Information (Excerpt from Attachment A)

Improper Payment Amount	Improper Issue Category	Station	Payment Amount in J250/BDN per Student	Corrective Action Needed Requested by OIG	VBA's Response to OIG's Improper Payment	Corrective Action Taken by VBA	VBA's Comments
\$558.85	Incorrect Cert-Yellow Ribbon	351	\$19,757.16	Y	Disagree	N	VBA completed an audit. Based on the enrollment information provided by the school, the claim was adjudicated correctly in LTS. The yellow ribbon payment amount cap during 2014-2015 academic year for [REDACTED] was \$15,000.00. A review of the yellow ribbon payments during that year shows that the yellow ribbon cap was not exceeded
\$784.85	Incorrect Cert-Yellow Ribbon	331	\$24,983.16	Y	Disagree	N	VBA completed an audit of the claim and no action is necessary. Payment is correct.
\$3,500.00	Incorrect Cert-Yellow Ribbon	331	\$22,698.31	Y	Disagree	N	VBA completed an audit of the claim and no action is necessary. Payment is correct.
\$646.22	Incorrect Rates-Yellow Ribbon	351	\$19,757.16	Y			See response on first row
\$2,625.00	Incorrect Rates-Yellow Ribbon	331	\$23,573.31	Y	Disagree	N	VBA completed an audit of the claim and no action is necessary. Payment is correct.

Source: Attachment A (OIG Audit Post-911 Action Items December 2015) referenced in VBA's response.

**Department of
Veterans Affairs****Memorandum**

Date: 10 February 2016

From: Chief Counsel, Benefits Law Group (022)

Subj: Viability of the interpretation by VA's Education Service (EDU) of applicable authority as allowing it to pay a student for repeated attempts to pass a class that is required for completion of a program of education.

To: Director, Education Service (22)

1. You have asked for our legal review on VBA's policy regarding payments for repeated courses. That policy appears on page 47 of the School Certifying Official Handbook, which provides in relevant part: "Classes that are successfully completed may not be certified ... for VA purposes if they are repeated. However, if a student fails a class, or if a program requires a higher grade than the one achieved in a particular class for successful completion, that course class may be repeated and certified to VA again ... [i]f a course is required for graduation, a student may repeat the course and be certified for it until it is successfully completed. No further information needs to be provided to VA regarding those courses." This inquiry arises in response to concerns raised by the Office of the Inspector General (OIG). You have limited your inquiry to whether your interpretation of section 3680(a)(3) of Title 38 of United States Code is correct, namely, whether section 3680(a)(3) allows VA to repeatedly pay education benefits based on the same course, when that course is mandatory for graduation and the student has not received a grade sufficient to satisfy graduation requirements. It appears that EDU views section 3680(a)(3) as containing no limits on how many times the course may be taken, and creating no requirement that VA attempt to collect overpayment for earlier attempts to receive a sufficient grade in a class that were not successful. You have further expressed concern with practical consequences resulting from any interpretation other than the one reached by EDU.

2. We explicitly do not offer an opinion as to whether OIG's conclusion that EDU should "strengthen ... policies and controls regarding the discontinuance and recoupment of payments" is correct, although we note that this conclusion is not dependent on whether EDU's interpretation of 3680(a)(3) is defensible. OIG Report at 17, ¶ 5. Rather, we address only whether EDU is precluded by section 3680(a)(3) from issuing payment for students repeatedly taking a mandatory course after having received a grade that is insufficient to meet school requirements for graduation.

3. VA may not make payment for a course in "which the grade assigned is not used in computing the requirements for graduation including a course from which the student withdraws[.]" 38 U.S.C. § 3680(a)(3). In other words, this section prohibits payment for a course if the student withdraws, or if that course is not used in computing whether requirements to graduate have been met. Congress created two exceptions to the general prohibition on payment contained in section 3680(a)(3), one of which, if VA "finds there are mitigating circumstances," is applicable to the grade-based prohibition on payment. 38 U.S. C. § 3680(a)(3)(B).

4. VA regulations implementing section 3680(a)(3) make clear that VA “will not pay educational assistance for an eligible individual’s pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation” unless there are mitigating circumstances¹. In order for there to be mitigating circumstances justifying payment for a nonpunitive course, the eligible individual must submit a description of, and evidence establishing, the mitigating circumstances within a particular timeframe. 38 C.F.R. § 21.9675. VA regulations define “nonpunitive” grades as “any grade assigned for pursuit of a course ... which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation.” 38 C.F.R. § 21.4200(j). A grade must be a complete non-entity as far as graduation requirements are concerned in order to be nonpunitive. Id (“[n]o credit toward the school’s requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average.”).

5. . To the extent the policy in the SCO handbook allows payment of educational assistance for nonpunitive courses without a finding of mitigating circumstances, it would be inconsistent with statute and regulation. However, it is at least questionable whether the policy has the effect of allowing payment for nonpunitive courses. We note that even a failing grade may be considered punitive insofar as “it is a factor in computing the student’s ... grade point average [(GPA)].” 38 C.F.R. § 21.4200(k). The approach reflected in the SCO handbook is dependent on the idea that punitive grades do not have to retroactively become nonpunitive upon retaking of the course. According to this view, a grade is punitive, or not, as measured upon issuance of the grade. Under the authorities we have been able to consider in the limited time available for this question, we view this interpretation as defensible, but presenting significant litigation risk. It is arguably unclear whether the statutory prohibition on payment for a grade “not used in computing the requirements for graduation” is assessed at graduation, or at the end of the term. 38 U.S.C. § 3680(a)(3). VA has arguably clarified this ambiguity by stating that a grade is considered nonpunitive when that grade precludes “any consideration in determining progress toward” fulfilling graduation requirements, indicating the evaluation of punitive/nonpunitive status of a grade occurs concurrently with the award of that grade. 38 C.F.R. § 21.4200(j) (*italics added*). No statute or regulation of which we are aware explicitly excludes the possibility that the punitive versus non-punitive status of a grade awarded for a course is ascertained at the time the grade is assigned rather than at graduation. Further, the purpose of the current statute was “to preclude individuals from receiving benefit payments for courses they did not actively pursue.” VAOPGCPREC 10-1999. This purpose is inapplicable if the student took the course in a good-faith effort to fulfill a graduation requirement. Additionally, well-established principles of agency deference would operate to hold that if it is not clear whether VA regulations operate to retroactively render a course non-punitive, the agency’s reasonable and pro-veteran interpretation is entitled to significant weight by any reviewing court. Therefore, there is at least a colorable argument that the policy articulated in the SCO handbook would be accepted by a court. We note, however, that this interpretation would likely be afforded less deference by a court because it is not contained in regulation.

¹The regulation also allows for payments for nonpunitive grades in situations in which the individual withdraws due to a return to active duty. 38 C.F.R. § 21.9675(a)(1).

6. We note there is a strong statutory argument that continuously characterizing courses as punitive notwithstanding their ultimate non-use in calculating graduation requirements, with the effect that VA pays for a student to take the same course multiple times, is inconsistent with the statutory structure. Specifically, statutory language stating that “a course for which the grade assigned is not used in computing the requirements for graduation” indicates not just that the grade received must be sufficient to include in assessing graduation requirements, but that the grade must actually be used. 38 U.S.C. § 3680(a)(3) (emphasis added). Congress also mandated that payments should be made prospectively, often for the entire term. 38 U.S.C. § 3313(d). Congress recognized that payments that were valid when prospectively issued might later become invalid, see section 3680(a), and accordingly provided that VA must generally attempt to recoup improper payments, and provided certain record-keeping requirements that eligible institutions must meet in part to facilitate VA's recoupment efforts. 38 U.S.C. §§ 3675(b)(1), 3676(b)(6), 3685. Moreover, legislative history supports this interpretation, as Congress expressed great concern with students repeatedly enrolling in classes and withdrawing or failing those classes without consequence from school or VA. See 122 Cong. Rec. S17640-41 (Oct. 1, 1976); S. Rep. No. 1234, 94th Cong., 2d Sess. 119-121 (Sept. 16, 1976). We view this interpretation of statute as the one most likely to be adopted by a court.

7. We are sensitive to the practical concerns identified by Education Service, but do not believe those concerns significantly inform the interpretation of the statutory terms. Even if section 3680(a) were construed to preclude payment for any course that is ultimately excluded from counting towards graduation requirements, Congress gave VA significant discretion to address the types of practical concerns identified by Education Service by allowing VA to award payment when mitigating circumstances existed regarding an insufficient grade. See 38 U.S.C. § 3680(a)(3)(B); 122 Cong. Rec. S17641 (VA should use its “waiver authority ... with compassion and with an understanding of the domestic difficulties and the problems often encountered by educationally disadvantaged veterans making a serious attempt to obtain an education.”). We note that the interpretation reflected in the SCO handbook may also raise practical concerns. For example, that interpretation seemingly would require VA to pay for any course the individual failed and later re-took, even if the failing grade was assigned because the individual simply did not actively pursue the course. That result arguably would be inconsistent with the general purpose of section 3680(a)(3).

8. As noted above, we believe the interpretation reflected in the SCO handbook is defensible, but there is a significant risk that a court, Congress, or other reviewing authority may view that interpretation as inconsistent with 38 U.S.C. § 3680(a)(3). VA could take steps to mitigate that risk. Specifically, VA could revise its regulations to state clearly that whether a grade is “used in computing the requirements for graduation” is determined at the time the grade is issued, rather than at the time of graduation. Such regulations would enhance the deference accorded to VA's interpretation, although they would not eliminate the possibility that a court could find VA's interpretation inconsistent with the plain language of the statute. Alternatively, VA could revise its regulations to (1) provide that VA generally may not pay for a

course if the grade is not ultimately used in computing the requirements for graduation; and (2) specify circumstances in which mitigating circumstances under 38 U.S.C. § 3680(a)(3)(B) will be presumed to exist, such as where the individual attends and completes the course but receives a failing or inadequate grade. Such a regulation would be consistent with VA's authority under 38 U.S.C. §§ 501(a)(1) and 38 U.S.C. § 3680(a)(3)(B) and would be less vulnerable to challenge on grounds of inconsistency with the governing statute.

9. [REDACTED] is the attorney assigned to this matter and may be reached at 461-[REDACTED] with any questions.

(Original signed by:)

DAVID J. BARRANS

Procedural Advisory: Chapter 33 Mitigating Circumstances

November 17, 2015

Background: Effective November 17, 2015 the Regional Processing Office (RPO) will no longer process claims under streamlining procedures as instructed on September 30, 2009.

Issue: The Long Term Solution (LTS) does not currently possess the functionality to fully apply Mitigating Circumstances (MITC) in certain situations. As a result, the LTS will off ramp cases when the following letter types are generated:

- MITC 1, 2, 3 or 4
- Adverse Action
- School Debt letter

Procedures: The following procedures apply to the correction and/or reviews of the above claims are off ramped:

1. A Veteran Claims Examiner (VCE) should review all 1999b remarks for any message relating to Mitigating Circumstances.
2. Verify if claimant's 6 credit hour exclusion is available

Caution: VCE will have to enter 6X Placeholder if 6-credit hour is available and claimant reduction is greater than 6 hours

3. Review Letter Information tab in the LTS and select corresponding reason(s)
4. Review all Adverse Actions , School Debt , and Mitigating Circumstances Letters for accurate information generated pertaining to school and student debt.

Questions. If you have any questions regarding this advisory, please direct them to the Business Process Development team via email at VAVBAWAS/CO/224A.

V/R

Operation Team
Education Service

For accessibility, the format of the original documents in this appendix has been modified to fit in this document.

Appendix F **OIG Contact and Staff Acknowledgments**

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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Acknowledgments	Janet Mah, Director Milan Gokaldas Gurpreet Kaur John Panzullo Kelly Perry Corina Riba Daniel Rico Jimmy Sembiring Michael Tomasello Nelvy Viguera Butler
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