

1980—Pub. L. 96-466 designated existing provisions as subsec. (a), substituted in par. (4) “chapters 32, 34, 35, and 36 of this title and the former chapter 33;” for “chapters 31, 34, 35, and 36 of this title, and the former chapter 33”, in provisions following par. (4) struck out “, but this section shall not be deemed to limit the period for which assistance may be received under chapter 31 alone” after “(or the part-time equivalent thereof)”, and added subsec. (b).

1972—Pub. L. 92-540, § 403(13), inserted reference to chapter 36 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title IV, § 401(b), Aug. 6, 2012, 126 Stat. 1188, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2013, and shall not operate to revive any entitlement to assistance under chapter 35 of title 38, United States Code, or the provisions of law referred to in section 3695(a) of such title, as in effect on the day before such date, that was terminated by reason of the operation of section 3695(a) of such title, as so in effect, before such date.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-252 effective Aug. 1, 2009, see section 5003(d) of Pub. L. 110-252, set out as a note under section 16163 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, see section 802(a)(6) of Pub. L. 96-466, set out as a note under section 3681 of this title.

EFFECTIVE DATE

Section effective first day of second calendar month which begins after Oct. 23, 1968, see section 6(a) of Pub. L. 90-631, set out as a note under section 3500 of this title.

REVIVAL OF ENTITLEMENT REDUCED BY PRIOR UTILIZATION OF CHAPTER 35 ASSISTANCE

Pub. L. 112-154, title IV, § 401(c), Aug. 6, 2012, 126 Stat. 1188, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual whose period of entitlement to assistance under a provision of law referred to in section 3695(a) of title 38, United States Code (other than chapter 35 of such title), as in effect on September 30, 2013, was reduced under such section 3695(a), as so in effect, by reason of the utilization of entitlement to assistance under chapter 35 of such title before October 1, 2013, the period of entitlement to assistance of such individual under such provision shall be determined without regard to any entitlement so utilized by the individual under chapter 35 of such title.

“(2) LIMITATION.—The maximum period of entitlement to assistance of an individual under paragraph (1) may not exceed 81 months.”

§ 3696. Prohibition on certain advertising, sales, and enrollment practices

(a) PROHIBITION ON ENGAGING IN SUBSTANTIAL MISREPRESENTATION.—An educational institution with a course or program of education approved under this chapter, and an entity that owns such an educational institution, shall not engage in substantial misrepresentation described in subsection (b).

(b) SUBSTANTIAL MISREPRESENTATION DESCRIBED.—(1) Substantial misrepresentation described in this paragraph is substantial misrepresentation by an educational institution, a representative of the institution, or any person

with whom the institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, concerning any of the following:

(A) The nature of the educational program of the institution, including misrepresentation regarding—

(i) the particular type, specific source, or nature and extent, of the accreditation of the institution or a course of education at the institution;

(ii) whether a student may transfer course credits to another institution;

(iii) conditions under which the institution will accept transfer credits earned at another institution;

(iv) whether successful completion of a course of instruction qualifies a student—

(I) for acceptance to a labor union or similar organization; or

(II) to receive, to apply to take, or to take an examination required to receive a local, State, or Federal license, or a non-governmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(v) the requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(vi) whether the courses of education at the institution are recommended or have been the subject of unsolicited testimonials or endorsements by—

(I) vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(II) officials of a local or State government or the Federal Government;

(vii) the size, location, facilities, or equipment of the institution;

(viii) the availability, frequency, and appropriateness of the courses of education and programs to the employment objectives that the institution states the courses and programs are designed to meet;

(ix) the nature, age, and availability of the training devices or equipment of the institution and the appropriateness to the employment objectives that the institution states the courses and programs are designed to meet;

(x) the number, availability, and qualifications, including the training and experience, of the faculty and other personnel of the institution;

(xi) the availability of part-time employment or other forms of financial assistance;

(xii) the nature and availability of any tutorial or specialized instruction, guidance

and counseling, or other supplementary assistance the institution will provide students before, during, or after the completion of a course of education;

(xiii) the nature or extent of any prerequisites established for enrollment in any course of education;

(xiv) the subject matter, content of the course of education, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of education; and

(xv) whether the degree that the institution will confer upon completion of the course of education has been authorized by the appropriate State educational agency, including with respect to cases where the institution fails to disclose facts regarding the lack of such authorization in any advertising or promotional materials that reference such degree.

(B) The financial charges of the institution, including misrepresentation regarding—

(i) offers of scholarships to pay all or part of a course charge;

(ii) whether a particular charge is the customary charge at the institution for a course;

(iii) the cost of the program and the refund policy of the institution if the student does not complete the program;

(iv) the availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; and

(v) the student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(C) The employability of the graduates of the institution, including misrepresentation regarding—

(i) the relationship of the institution with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(ii) the plans of the institution to maintain a placement service for graduates or otherwise assist graduates to obtain employment;

(iii) the knowledge of the institution about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(iv) job market statistics maintained by the Federal Government in relation to the potential placement of the graduates of the institution; and

(v) other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such require-

ments, such as prior criminal records or pre-existing medical conditions.

(2) In this subsection:

(A) The term "misleading statement" includes any communication, action, omission, or intimation made in writing, visually, orally, or through other means, that has the likelihood or tendency to mislead the intended recipient of the communication under the circumstances in which the communication is made. Such term includes the use of student endorsements or testimonials for an educational institution that a student gives to the institution either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program of education.

(B) The term "misrepresentation" means any false, erroneous, or misleading statement, action, omission, or intimation made directly or indirectly to a student, a prospective student, the public, an accrediting agency, a State agency, or to the Secretary by an eligible institution, one of its representatives, or any person with whom the institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services.

(C) The term "substantial misrepresentation" means misrepresentation in which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(c) LIMITATION ON CERTAIN COMMISSIONS, BONUSSES, AND OTHER INCENTIVE PAYMENTS.—(1) An educational institution with a course or program of education approved under this chapter, and an entity that owns such an educational institution, shall not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(2) In determining whether a violation of paragraph (1) has occurred, the Under Secretary for Benefits shall construe the requirements of this paragraph in accordance with the regulations and guidance prescribed by the Secretary of Education under section 487(a)(20) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(20)).

(d) REQUIREMENT TO MAINTAIN RECORDS.—(1) To ensure compliance with this section, any educational institution offering courses approved for the enrollment of eligible persons or veterans shall maintain a complete record of all advertising, sales, or enrollment materials (and copies thereof) utilized by or on behalf of the institution during the preceding two-year period. Such record shall be available for inspection by the State approving agency or the Secretary.

(2) Such materials shall include but are not limited to any direct mail pieces, brochures, printed literature used by sales persons, films, video tapes, and audio tapes disseminated through broadcast media, material disseminated

through print, digital, or electronic media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel, agents, or representatives of such institution.

(e) AGREEMENT WITH FEDERAL TRADE COMMISSION.—(1) The Secretary shall, pursuant to section 3694 of this title, enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, consistent with its available resources, in carrying out investigations and making the Under Secretary of¹ Benefit's² preliminary findings under subsection (g)(1).

(2) Such agreement shall provide that cases arising under subsection (a) of this section or any similar matters with respect to any of the requirements of this chapter or chapters 34 and 35 of this title may be referred to the Federal Trade Commission which in its discretion will conduct an investigation and make preliminary findings.

(3) The findings and results of any investigation under paragraph (2) shall be referred to the Under Secretary for Benefits, who shall take appropriate action under subsection (g) in such cases not later than 60 days after the date of such referral.

(f) FINAL JUDGMENTS FROM OTHER FEDERAL AGENCIES.—Whenever the Secretary becomes aware of a final judgment by a Federal agency against an educational institution or owner of an educational institution pertaining to substantial misrepresentation described in subsection (b) or of other credible evidence relating to a violation of subsection (a), the Secretary, in partnership with the applicable State approving agency, shall—

(1) within 30 days, alert the educational institution or owner that it is at risk of losing approval under this chapter of its courses or programs of education;

(2) provide the educational institution or owner 60 days to provide any information it wishes to the Secretary;

(3) require the educational institution or owner to submit to the Secretary a report prepared by an approved third-party auditor of the advertising and enrollment practices of the educational institution or owner; and

(4) refer the matter to the Under Secretary of¹ Benefits, who may thereafter make a preliminary finding under subsection (g).

(g) PRELIMINARY FINDINGS, FINAL DETERMINATIONS, AND PROCESSES.—(1) The Under Secretary for Benefits shall make preliminary findings and final determinations on violations of subsections (a), (c), and (d).

(2)(A) The Under Secretary shall establish a process for making preliminary findings and final determinations under paragraph (1).

(B) The process established under subparagraph (A) shall—

(i) clearly define what triggers an oversight visit by the Under Secretary for purposes of enforcing subsections (a), (c), and (d);

(ii) set forth factors an educational institution, or the owner of the educational institu-

tion, must meet in order to retain approval status under this section, including with respect to the factors set forth under subsection (h)(2);

(iii) include a process for the provision of notice to an educational institution, or the owner of the educational institution, that the Under Secretary has made a preliminary finding under paragraph (1) that the education institution or owner has violated subsection (a), (c), or (d), which the Under Secretary shall provide to the educational institution or owner within such period after making the preliminary finding as the Under Secretary shall establish for purposes of this clause, except that, in every case, such period shall end before the date on which the Under Secretary makes a final determination under such paragraph; and

(iv) include—

(I) a process for receipt of findings from a third-party pertinent to this section; and

(II) a process for an educational institution or an owner to provide such information as the educational institution or owner determines appropriate to the Secretary, including information about corrective actions the educational institution or owner may have taken in response to preliminary findings under paragraph (1).

(C) The process established under subparagraph (A) shall not prohibit a State approving agency from—

(i) independently investigating a potential violation of subsection (a), (c), or (d); or

(ii) taking action if the State approving agency finds a violation of subsection (a), (c), or (d).

(3) Upon a preliminary finding under this subsection of a violation of subsection (a), (c), or (d) by an educational institution, or the owner of an educational institution, the Under Secretary shall require the educational institution or owner to submit to the Under Secretary a report prepared by an approved third-party auditor of the advertising and enrollment practices of the educational institution or owner.

(4)(A) Before making a final determination under this subsection regarding a violation of subsection (a), (c), or (d) by an educational institution or owner of an educational institution, the Under Secretary shall—

(i) review the practices of the educational institution or owner that pertain to activities and practices covered by subsections (a), (c), and (d);

(ii) consider the results of a risk-based survey conducted by a State approving agency, if available; and

(iii) review—

(I) the findings and information received pursuant to the processes established under paragraph (2)(B)(iii);

(II) in a case in which a report was submitted under subsection (f)(3), such report;

(III) the report submitted under paragraph (3);

(IV) any findings and results submitted under subsection (e)(3);

(V) the marketing and outreach material of the educational institution and the contractors of the educational institution.

¹ So in original. Probably should be "for".

² So in original. Probably should be "Benefits".

(B) The Under Secretary may not make a final determination under this subsection solely based on preliminary findings.

(5) The Under Secretary may not delegate authority to make a final determination under this subsection, including to any employee of the Department or to the Federal Trade Commission.

(h) ENFORCEMENT.—(1)(A) Upon a final determination by the Under Secretary for Benefits under subsection (g) that an educational institution or the owner of an educational institution violated subsection (a), (c), or (d), the Under Secretary shall, but subject to subparagraphs (B), (C), and (D) of this paragraph, take one of the following actions independent of any actions taken under section 3690 of this title:

(i) Publish a caution flag on the GI Bill Comparison Tool, or successor tool, about that educational institution and alert its currently enrolled eligible veterans and eligible persons.

(ii) Suspend the approval of the courses and programs of education offered by the educational institution by disapproving new enrollments of eligible veterans and eligible persons in each course or program of education offered by that educational institution.

(iii) Revoke the approval of the courses and programs of education offered by the educational institution by disapproving all enrollments of eligible veterans and eligible persons in each course or program of education offered by that educational institution.

(B) In deciding upon a course of action under subparagraph (A), for the first violation of this section, the Secretary shall consider the factors set forth in paragraph (2).

(C) Subject to subsection (i), any repeat violation and final finding within five years of the first violation of this section shall result in—

(i) a suspension of approval of new enrollments as described in subparagraph (A)(ii) of this paragraph until reinstatement under subsection (j); or

(ii) a revocation of approval under this chapter as described in subparagraph (A)(iii) of this paragraph until reinstatement under subsection (j).

(D) Subject to subsection (i), any third violation within three years of the second violation of this section shall result in revocation of approval under this chapter as described in subparagraph (A)(iii) of this paragraph until reinstatement under subsection (j).

(E) Any action taken under subparagraph (A) of this paragraph regarding a violation of subsection (a), (c), or (d) by an educational institution or the owner of an educational institution shall be taken on or before the date that is 180 days after the date on which the Under Secretary provided notice to the educational institution or owner regarding the violation in accordance with the process established under subsection (g)(2)(B)(iii).

(2) The factors set forth in this paragraph are the following:

(A) That the Secretary's action brings sufficient deterrence for future fraud against students and the programs of education carried out under this title. Fraud against veterans

must be met with a repercussion strong enough to send a deterrent message to this and other educational institutions and owners.

(B) That the educational institution has secured an approved third-party auditor to verify the educational institution's, or owner's, advertising and enrollment practices for at least three years going forward.

(C) That the educational institution or owner has repudiated the deceptive practices and has communicated to all employees that deceptive practices will not be tolerated, and has instituted strong governance procedures to prevent recurrence.

(D) That the educational institution has taken steps to remove any pressure on its enrollment recruiters, including by removing enrollment quotas and incentives for enrollment.

(E) That the State approving agency or the Secretary acting in the role of the State approving agency, has completed a risk-based survey and determined the educational institution is worthy of serving eligible veterans and eligible persons.

(3) Enforcement action under this section shall not preclude enforcement action under section 3690 of this title.

(4) No action may be carried out under this subsection with respect to a final determination by the Under Secretary under subsection (g) while such final determination is pending review under subsection (i).

(i) APPEALS.—(1) The Secretary shall establish a process by which an educational institution or the owner of an educational institution that is the subject of more than one final determination by the Under Secretary under subsection (g)(1) that the educational institution or owner violated subsection (a), may request a review of the most recent final determination.

(2)(A) The Secretary shall—

(i) review each final determination for which a review is requested under paragraph (1); and

(ii) pursuant to such review, issue a final decision sustaining, modifying, or overturning the final determination.

(B) The Secretary may not delegate any decision under subparagraph (A).

(C)(i) Review under subparagraph (A)(i) of this paragraph shall be the exclusive avenue for review of a final determination under subsection (g)(1).

(ii) A decision issued pursuant to a review under subparagraph (A)(i) may not be appealed to the Secretary for review under section 7104(a) of this title.

(3)(A) Not later than 30 days after the date on which the Secretary issues a final decision under paragraph (2)(A)(ii), the Secretary shall submit to Congress a report on such final decision.

(B) A report submitted under subparagraph (A) shall include the following:

(i) An outline of the decisionmaking process of the Secretary that led to the final decision described in subparagraph (A).

(ii) Any relevant material used to make the final decision under paragraph (2)(A)(ii), including risk-based surveys and documentation from the educational institution or the owners of the educational institution.

(iii) Materials that were submitted to the Secretary after the date of the final determination under subsection (g) that was the subject of the final decision under paragraph (2)(A)(ii) of this subsection and before the date on which the Secretary issued such final decision.

(j) *Reinstatement of Approval.*—(1) If an educational institution or the owner of an educational institution has had the approval of the courses or programs of education of the educational institution suspended as described in clause (ii) of subsection (h)(1)(A) or revoked as described in clause (iii) of such subsection for a violation of subsection (a), (c), or (d) pursuant to subparagraph (C) or (D) of subsection (h)(1), the educational institution or owner may submit to the applicable State approving agency or the Secretary when acting as a State approving agency an application for reinstatement of approval under this subsection.

(2) Approval under this chapter may not be reinstated under this subsection until—

(A) the educational institution or owner submits to the applicable State approving agency or the Secretary when acting as a State approving agency an application for reinstatement of approval under paragraph (1);

(B) the date that is 540 days after the date of the most recent suspension or revocation described in paragraph (1) of the educational institution or owner;

(C) the educational institution submits a report by an approved third-party auditor on the advertising and enrollment practices of the educational institution, including those of its third-party contractors;

(D) procedures are in place to prevent any future violation of subsection (a), (c), or (d);

(E) that the educational institution has met all factors set forth in subsection (h)(2); and

(F) the Secretary agrees to such reinstatement.

(k) **RULE OF CONSTRUCTION REGARDING STATE APPROVING AGENCIES AND RISK-BASED SURVEYS.**—Nothing in this section shall be construed to prohibit a State approving agency from conducting any risk-based survey the State approving agency considers appropriate at any educational institution that it considers appropriate for oversight purposes.

(l) **DEFINITIONS.**—In this section:

(1) The term “approved third-party auditor” means an independent third-party auditor that is approved by the Secretary for purposes of third-party audits under this section.

(2) The term “risk-based survey” means the risk-based survey developed under section 3673A of this title.

(Added Pub. L. 93-508, title II, §212(a), Dec. 3, 1974, 88 Stat. 1585, §1796; amended Pub. L. 94-502, title V, §§512, 513(a)(22), Oct. 15, 1976, 90 Stat. 2402, 2403; Pub. L. 98-543, title IV, §401, Oct. 24, 1984, 98 Stat. 2749; Pub. L. 101-237, title IV, §423(b)(1)(A), (2), Dec. 18, 1989, 103 Stat. 2092; renumbered §3696 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 112-249, §2, Jan. 10, 2013, 126 Stat. 2401; Pub. L. 116-315, title I, §1020(a)(1), Jan. 5, 2021, 134 Stat. 4950; Pub. L. 117-16, §7(a)(5), June 8, 2021, 135

Stat. 285; Pub. L. 117-76, §3(b)(3), Dec. 21, 2021, 135 Stat. 1518.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-315 amended section generally. Prior to amendment, section related to limitation on certain advertising, sales, and enrollment practices.

Subsec. (c). Pub. L. 117-76 designated existing provisions as par. (1), inserted “, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance” after “assistance”, and added par. (2).

Subsec. (g)(4)(A)(iii)(III). Pub. L. 117-16 substituted “paragraph (3)” for “paragraph (3)(B) of this subsection”.

2013—Subsec. (d). Pub. L. 112-249 added subsec. (d).

1991—Pub. L. 102-83, §5(a), renumbered section 1796 of this title as this section.

Subsec. (c). Pub. L. 102-83, §5(c)(1), substituted “3694” for “1794”.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing and “Secretary’s” for “Administrator’s” in subsec. (c).

1984—Subsec. (d). Pub. L. 98-543 struck out subsec. (d) which provided that not later than 60 days after the end of each fiscal year the Administrator would be required to report to Congress regarding the disposition of cases under this section.

1976—Subsec. (b). Pub. L. 94-502, §512, added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 94-502, §§512(1), 513(a)(22), redesignated former subsec. (b) as (c) and substituted “making the Administrator’s determinations” for “making his determinations”. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 94-502, §512(1), redesignated former subsec. (c) as (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-315 effective on Aug. 1, 2021, see section 1020(c) of Pub. L. 116-315, set out as a note under section 3676 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by sections 512 and 513(a)(22) of Pub. L. 94-502 effective Dec. 1, 1976, and Oct. 15, 1976, respectively, see section 703(b), (c) of Pub. L. 94-502, set out as an Effective Date note under section 3693 of this title.

EFFECTIVE DATE

Section effective Dec. 3, 1974, see section 503 of Pub. L. 93-508, set out as an Effective Date of 1974 Amendment note under section 3452 of this title.

§ 3697. Funding of contract educational and vocational counseling

(a) Subject to subsection (b) of this section, educational or vocational counseling services obtained by the Department of Veterans Affairs by contract and provided to an individual under section 3697A of this title or to an individual applying for or receiving benefits under section 1524 or chapter 30, 32, 33, 34, or 35 of this title, or chapter 106 of title 10, shall be paid for out of funds appropriated, or otherwise available, to the Department of Veterans Affairs for payment of readjustment benefits.

(b) Payments under this section shall not exceed \$6,000,000 in any fiscal year.

(Added Pub. L. 100-687, div. B, title XIII, §1302(a), Nov. 18, 1988, 102 Stat. 4127, §1797;