

# VETERANS AT THE GATES: EXPLORING THE NEW GI BILL AND ITS TRANSFORMATIVE POSSIBILITIES

## INTRODUCTION

The Post-9/11 Veterans Educational Assistance Act<sup>1</sup> of 2008 (“Act”)—popularly referred to as the “GI Bill for the 21st century”<sup>2</sup>—restores veterans’ educational benefits to the generous level of the famed post-World War II GI Bill. The original bill has been widely assessed as among the most culturally transformative pieces of legislation of the twentieth century.<sup>3</sup> Nearly eight million veterans—many of whom otherwise would have lacked access to the nation’s elite institutions of higher learning—pursued higher education through the GI Bill in the years immediately following World War II.<sup>4</sup> It has been credited with ensuring the successful reintegration of millions of veterans into civil society,<sup>5</sup> creating a new American middle class,<sup>6</sup> and making higher education available to African Americans in significant numbers for the first time.<sup>7</sup> However, despite the clear precedent of veterans’ educational benefits profoundly impacting society, the new GI Bill legislation has attracted only modest attention that largely omits discussion of the Act’s likely societal impact.<sup>8</sup>

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1. Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, 122 Stat. 2357 (to be codified in scattered sections of 38 U.S.C.).

2. 154 CONG. REC. H5702 (daily ed. June 19, 2008) (statement of Rep. Van Hollen); *see also* Rick Maze, *Sweeping New GI Bill Plan Gets Final Approval*, ARMY TIMES, (June 22, 2008), available at [http://www.armytimes.com/news/2008/06/military\\_gibill\\_061908w/](http://www.armytimes.com/news/2008/06/military_gibill_061908w/) [hereinafter *Final Approval*].

3. *See* 154 CONG. REC. H5701 (daily ed. June 19, 2008) (statement of Rep. Mitchell); *see also* A *Brief History of: The GI Bill*, TIME, June 9, 2008, at 25 [hereinafter *Brief History*]; James Wright, *Serving Those Who Served Their Country*, PRESIDENCY, Spring 2008, at 14, 15 [hereinafter *Served Their Country*]; Milton Greenberg, *The New GI Bill is No Match for the Original*, CHRON. HIGHER EDUC., July 25, 2008, at A56 [hereinafter *No Match for Original*] (“To say that the GI Bill of 1944 was transformative is an understatement. It was revolutionary. It is widely acknowledged to be one of the major tipping points in American history.”).

4. *Brief History*, *supra* note 3.

5. *See id.*

6. *Id.*; Anne L. Alstott & Ben Novick, *War, Taxes, and Income Redistribution in the Twenties: The 1924 Veterans’ Bonus and the Defeat of the Mellon Plan*, 59 TAX L. REV. 373, 436–37 (2006) [hereinafter *Veterans’ Bonus*]; James Wright, *The New GI Bill: It’s a Win-Win Proposition*, CHRON. HIGHER EDUC., May 16, 2008, at A34 [hereinafter *Win-Win Proposition*].

7. THOMAS SOWELL, INSIDE AMERICAN EDUCATION 134 (1993).

8. Two exceptions warrant mention. *Win-Win Proposition*, *supra* note 6, recognizes the Act’s potential to help reintegrate combat veterans into civil society, although it does not take the argument as far as I will in Part V. Additionally, *No Match for Original*, *supra* note 3, compares the World War II era GI Bill’s societal impact to the Act’s likely societal impact. However, as will be illustrated, this piece’s conclusion that the Act will not have a substantial impact on society is erroneous. *See infra* note 98.

This Note thus seeks to inform the reader about the Act, explain its shortcomings, articulate its likely societal impact, and offer recommendations for improving the Act's substance and enhancing its impact. Part I will examine the Act's passage, focusing on the political and policy context in which the Act was passed. Part II will articulate the central substantive provisions of the Act and compare them to previous GI Bills. Part III will then examine omissions and complex features of the Act that may forestall full realization of the Act's objectives. Part IV will demonstrate how the Act is likely to have unintended consequences on universities' pricing practices, potentially causing the Act to substantially exceed cost estimates.<sup>9</sup> Part V will articulate how the resulting infusion of significant numbers of veterans with recent overseas combat experience into America's universities will force society to confront an unhealthy, growing gulf between civil society and the military, with the potential for either renewed understanding or an explosive clash. Finally, Part VI will draw upon the preceding sections to offer a series of recommendations designed to ensure realization of the Act's objectives, prevent gouging of the taxpayer, and facilitate a positive outcome to the heightened level of civil-military interaction.

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9. Excepting this endnote, this note refrains from analyzing whether the new GI Bill will stimulate the economy. However, it should be briefly noted that many historians assert the World War II era GI Bill somehow paid for itself. *See* Interview by Jim Lehrer with Stephen Ambrose, Historian, Doris Kearns Goodwin, Presidential Historian, Michael Beschloss, Presidential Historian, and Haynes Johnson, Journalist/Historian (July 4, 2000), *available at* [http://www.pbs.org/newshour/bb/military/july-dec00/gibill\\_7-4.html](http://www.pbs.org/newshour/bb/military/july-dec00/gibill_7-4.html) (arguing the GI Bill was a major stimulus to the U.S. economy with positive effects extending beyond a generation). The Act's sponsor boldly asserted the same claim. *See* Fact Sheet, Office of Senator James Webb (June 2008), [http://webb.senate.gov/pdf/factsheet\\_gi061108.pdf](http://webb.senate.gov/pdf/factsheet_gi061108.pdf) [hereinafter Webb Fact Sheet]. Finally, this claim was likewise made during the Act's floor debates. *See* 154 CONG. REC. H5701 (daily ed. June 19, 2008) (statement of Rep. Mitchell) ("For every dollar we spent on the GI Bill, we generated seven more into our national economy."). While formally disproving the assertion that World War II era GI Bill spending was costless is difficult, it should be noted that this "free lunch" argument appears to overlook the fundamental economic concept of opportunity cost. In other words, while each tax dollar spent on GI Bill benefits might have indeed triggered several dollars of additional economic activity through the multiplier effect, that fact does not mean the program was necessarily "free." Since the funds might have triggered *even greater* economic activity through the multiplier effect were they allowed to remain in the private sector in the first place, the proposition that this instance of federal social spending was truly costless is highly dubious.

## I. CONVERGENCE OF POLITICAL FACTORS CONTRIBUTING TO THE ACT'S PASSAGE

For years, bills expanding GI Bill benefits have been introduced unsuccessfully in Congress.<sup>10</sup> A brief survey of the political climate in early 2008 would lead one to believe that such an act would have virtually no chance of passage, due to the firm opposition of the president, the Pentagon, and Senator John McCain, a then-presumptive nominee for president who is also arguably the nation's most respected voice regarding veterans' affairs.<sup>11</sup> Nonetheless, a perfect storm of factors led to the Act passing with overwhelming majorities in both houses,<sup>12</sup> as part of a greater defense spending package<sup>13</sup> that finally passed just in time to avert a fiscal meltdown in Department of Defense (DOD) operations.<sup>14</sup>

A bill to dramatically restructure GI Bill benefits, by fully covering the varying costs of a four-year university degree,<sup>15</sup> was introduced in January 2007 and steadily gained support. Since its enactment in 1985, the Montgomery GI Bill<sup>16</sup> had served as veterans' primary educational benefit and offered modest, flat-rate payments to help qualifying veterans pay for college.<sup>17</sup> Democratic Senator James Webb introduced Senate Resolution 22 as a stand-alone act<sup>18</sup> in 2007, noting the "very small percentage of the country who answers the call to duty" and calling for military members

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10. See, e.g., H.R. 320, 107th Cong. (2001); H.R. 1634, 104th Cong. (1995).

11. See *Brief History*, *supra* note 3 (deeming Senator John McCain "a veteran's veteran if ever there was one").

12. The Senate voted 92–6 to approve the House's final amendments. The House voted 416–12 to approve the amendment tacking the GI Bill expansion onto the war supplemental, and a less overwhelming (but still significant) 268–155 in approving an amendment codifying the finalized version of the war funding. Govtrack.us: A Civic Project to Track Congress, <http://www.govtrack.us/congress/bill.xpd?bill=h110-2642> (last visited July 16, 2009).

13. The broader legislative vehicle was the Supplemental Appropriations Act, 2008, Pub. L. No. 110-252, 122 Stat. 2396 (2008).

14. See Briefing by Dana Perino, Press Sec'y, White House, & Jim Nussle, Director, Office of Mgmt. and Budget, Budget Briefing (May 21, 2008) (stating that more than a year of political deadlock in considering the war supplemental left DOD on the brink of issuing furlough notices and having to play "budget shell games" to keep critical operations afloat).

15. See *infra* notes 41–45 and accompanying text.

16. Veterans' Educational Assistance Act of 1984, Pub. L. No. 98-525, 98 Stat. 2553 (codified in scattered sections of 38 U.S.C.).

17. See generally DEP'T OF VETERANS AFFAIRS, PAMPHLET 22-90-2: SUMMARY OF EDUCATIONAL BENEFITS UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY EDUCATIONAL ASSISTANCE PROGRAM, CHAPTER 30 OF TITLE 38 U.S. CODE (1997) [hereinafter MONTGOMERY GI BILL PAMPHLET].

18. See Webb Fact Sheet, *supra* note 9. A companion bill was introduced in the House on April 9, 2008. *Id.*

“serving since 9/11 to receive a GI Bill that is worthy of their service.”<sup>19</sup> Webb’s reference to enhanced benefits for veterans serving in an era of significant conflict accurately reflects American history, including both the “bonus” for veterans of World War I and the GI Bill benefits for World War II era veterans.<sup>20</sup> The bill attracted strong support in the educational community, as the American Council on Education and the National Association of Independent Colleges and Universities formally endorsed it.<sup>21</sup> Dartmouth University president and former marine James Wright characterized existing benefits as “seriously inadequate” in making an explicit comparison to earlier eras: “[F]ew Americans realize that the young people who are serving their country in Iraq and Afghanistan will not receive the kind of assistance that their grandfathers received when they returned from World War II.”<sup>22</sup> Veterans groups likewise voiced support for the bill.<sup>23</sup>

The focal point of the initial opposition to the bill by the administration, the Pentagon, and Senator McCain was a concern that the generous benefits would entice large numbers of experienced personnel away from the military services during a time of war.<sup>24</sup> The bill’s major

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19. Sufiya Abdur-Rahman, *New GI Bill to Restore Educational Benefits for Soldiers*, CRISIS, Nov./Dec. 2007, at 8 (emphasizing Senator Webb’s justifications for the Act).

20. See *Veterans’ Bonus*, *supra* note 6, at 379. While the post-World War I bonus was originally not payable for twenty years, the World War II era GI Bill provided an “immediate and unconditional recognition of military service.” *Id.* at 436. Indeed, enhanced benefits for wartime veterans have even earlier historical roots, as veterans of the Revolutionary War received land grants and other benefits. See *Win-Win Proposition*, *supra* note 6.

21. See *Served Their Country*, *supra* note 3, at 19–20.

22. See *Win-Win Proposition*, *supra* note 6.

23. *Id.*; *Pending Montgomery GI Bill Legislation: Hearing Before the Subcomm. on Econ. Opportunity of the Comm. on Veterans’ Affairs*, 110th Cong. 5 (2008) [hereinafter *Subcomm. Hearing*] (statement of Col. Robert F. Norton, United States Army (ret.), Deputy Director, Government Relations, Military Officers Association of America) (“On raising GI Bill rates, I will focus on H.R. 2702 because this bill is similar to . . . S. 22. We strongly endorse [its] most important feature . . . namely raising GI Bill rates to cover more of the cost of education. That is our top priority this year.”).

24. *Brief History*, *supra* note 3; see also Sarah Chacko, *McCain Praises Jindal, Urges Obama to Debate—GOP Hopeful Raps Rival on Iraq, Defends GI Bill Vote*, *ADVOC.*, June 5, 2008, at 1A, <http://www.2theadvocate.com/news/politics/19554709.html> [hereinafter *GI Bill Vote*]; see also OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY: H.R. 2642—SUPPLEMENTAL APPROPRIATIONS BILL OF 2008 (May 15, 2008) [hereinafter STATEMENT OF POLICY] (“[W]e are concerned that provisions included in this bill could harm retention rates within the armed forces.”); see also Gerry J. Gilmore, *Pentagon Endorses Transfer of GI Bill Benefits to Spouses, Children*, *AMERICAN FORCES PRESS SERVICE*, May 15, 2008, <http://www.defenselink.mil/news/newsarticle.aspx?id=49888> [hereinafter *Transfer of Benefits*] (“Re-introducing the old GI Bill ‘would have a sharp effect on retention and be a shock to the system,’ [Deputy Undersecretary of Defense for Military Personnel Policy, Bill] Carr emphasized, adding it would hurt Army re-enlistment rates . . . when the Army is working to add 65,000 additional soldiers to the force.”).

opponents each endorsed alternative expansions of benefits, such as allowing service members to transfer their benefits to spouses,<sup>25</sup> and staying within the existing Montgomery GI Bill framework while raising the flat-rate benefits by approximately forty-five percent.<sup>26</sup> Another substantial basis of opposition voiced by many in Congress was a critique of substantially expanded entitlement spending without paying for it, since leading versions of the bill did not offer corresponding tax increases or spending reductions elsewhere.<sup>27</sup>

As Congress formally considered legislation to expand GI Bill benefits throughout the first half of 2008, proponents of the bill continually made explicit comparisons to previous wartime benefits. Testifying on behalf of the Iraq and Afghanistan Veterans of America before a veterans' affairs subcommittee, Patrick Campbell lobbied, "we fulfilled their social contract after World War II . . . and we sent veterans to school for free. This country was rewarded with the greatest generation. How will we fulfill our end of the social contract with this generation?"<sup>28</sup> Representative Christopher van Hollen stated to his peers in the House of Representatives: "Just as a grateful Nation expanded opportunities for GIs returning home from World War II over 60 years ago, so now must our generation invest in our soldiers returning home from Iraq and Afghanistan so that they can get a 4-year college education."<sup>29</sup> Indeed, the language of the draft legislation itself contained an explicit findings section noting the "proud history of offering educational assistance to millions of veterans" while stressing that "[t]he current educational assistance program for veterans is outmoded and designed for peacetime service. . . ."<sup>30</sup>

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25. See *Transfer of Benefits*, *supra* note 24; see also STATEMENT OF POLICY, *supra* note 24; see also *GI Bill Vote*, *supra* note 24; see also President George W. Bush, State of the Union Address (Jan. 28, 2008) (available in 154 CONG. REC. H472 (daily ed. Jan. 28, 2008)).

26. See *Transfer of Benefits*, *supra* note 24.

27. See, e.g., 154 CONG. REC. H5615 (daily ed. June 19, 2008) (statement of Rep. Boyd) ("[W]e ought to be willing to find a way to pay for these things which are so important for the continuation of this great democracy that we have . . . . But what we've chosen to do is to borrow the money . . . and send the bill to the generations of the future."). One version of expanded GI Bill benefits legislation called for a 47% increase on the highest tax bracket to pay for the benefits, but this proposal was rejected. See *Supplemental, Energy, Taxes, Medicare Shape Floor Debates for a Busy Week*, NATIONAL JOURNAL'S CONGRESSDAILY, June 9, 2008, [http://www.nationaljournal.com/congressdaily/cda\\_20080609\\_9021.php](http://www.nationaljournal.com/congressdaily/cda_20080609_9021.php); see also OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY: H.R. 2642—SUPPLEMENTAL APPROPRIATIONS BILL OF 2008 (June 19, 2008) [hereinafter OMB STATEMENT OF POLICY] ("The Administration is pleased this bill does not include any tax increases . . . .").

28. *Subcomm. Hearing*, *supra* note 23, at 8.

29. 154 CONG. REC. H5702 (daily ed. June 19, 2008) (statement of Rep. van Hollen).

30. H.R. REP. NO. 110-720, at 37 (2008).

Moreover, the incorporation of expanded GI Bill benefits into deadlocked<sup>31</sup> supplemental defense appropriations legislation proved to be the unifying feature that overcame a bitter partisan divide.<sup>32</sup> Having decided to ultimately forego substantial direct constraints on maintaining military support for Iraq,<sup>33</sup> congressional Democrats nonetheless obtained a modest constraint on the prosecution of wars across the medium term by raising their cost. Specifically, the final bill established a precedent of including sizeable domestic spending amongst emergency war appropriations.<sup>34</sup> Congresswoman Louise Slaughter of New York encapsulated the Democrats' viewpoint of why enhanced veterans' benefits should be included in an emergency war appropriations bill, proclaiming, "[p]art of the cost of waging war is ensuring that those who fight receive the resources that they need to resume their lives when they return home."<sup>35</sup>

As political support for enhanced GI Bill benefits solidified, the bill's initial opponents ultimately softened their opposition. In May 2008, Defense Secretary Robert Gates noted that the Pentagon could support substantial educational benefit increases, but that it was critical to allow transferability of the benefit to spouses.<sup>36</sup> It was apparent that Senator

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31. See *supra* note 14.

32. Cf. 154 CONG. REC. H5701 (daily ed. June 19, 2008) (statement of Rep. Conyers) ("Forged in the backrooms of the Capitol by Washington politicians, this bill seeks to strike an uneasy compromise. While it continues to fund overseas conflicts, the bill also . . . provides \$52 million [sic] for an expanded G.I. Bill . . .").

33. For example, nothing in the text of the legislation dictates a timeline for the withdrawal of troops from Iraq or mandates a substantial redirection of mission. However, a few modest restrictions on the administration's Iraq policy were included in the final bill, such as a prohibition on the use of supplemental funds to construct permanent U.S. bases in Iraq. Supplemental Appropriations Act, 2008, Pub. L. No. 110-252, 122 Stat. 2325.

34. The expanded GI Bill benefits represented the single largest item of domestic spending, with a projected ten-year cost of \$62 billion. See *infra* note 86 and accompanying text. An additional example of domestic spending included in the war supplemental was \$2.65 billion for Midwest flood relief. See Supplemental Appropriations Act, 2008, Pub. L. No. 110-252, 122 Stat. 2351. In response to the inclusion of such domestic provisions, the White House noted that it "would have liked to see some of the provisions in the bill considered either on their own or in legislative vehicles not associated with troop funding." OMB STATEMENT OF POLICY, *supra* note 27.

35. 154 CONG. REC. H5612 (daily ed. June 19, 2008).

36. Donna Miles, *Gates Supports Enhanced GI Bill, Cites Retention Issues With Some Proposals*, AMERICAN FORCES PRESS SERVICE, May 21, 2008, <http://www.defenselink.mil/news/newsarticle.aspx?id=49957>. Gates also suggested a compromise whereby enhanced benefits would be available after six years of service in order to mitigate retention challenges anticipated under a benefits structure that made robust benefits available to members who separated without a single reenlistment. *Id.* Gates's proposal did not gain sufficient traction to be incorporated into the final version of the Act. As that became apparent, Pentagon officials noted that "Gates is more pleased that the bill includes transferability than he is disappointed that it could adversely affect retention." John J. Kruzell, *Official*

McCain's opposition had likewise softened when he was notably absent from a key Senate floor vote on the measure.<sup>37</sup> By mid-June, the administration officially deemed the revised defense appropriations bill as a whole "an acceptable bill" and called for swift passage by Congress.<sup>38</sup> When the supplemental defense appropriations bill was ultimately enacted on June 30, 2008, President Bush stated he was "pleased" it included an expansion of GI Bill benefits.<sup>39</sup> He particularly praised inclusion of the transferability provision: "It will help us to meet our responsibilities to those who support our troops every day—America's great military families."<sup>40</sup>

## II. THE ACT GENEROUSLY ENHANCES VETERANS' EDUCATIONAL BENEFITS

The central feature of the new GI Bill is direct tuition payments to universities<sup>41</sup> in conjunction with a stipend for living expenses.<sup>42</sup> Payments to universities cover full tuition and fees, with the caveat that payments are capped at the official tuition and fee rates charged to in-state students at the most expensive public university in each state.<sup>43</sup> Additionally, through the Yellow Ribbon Program, all private universities may choose to enter into an agreement with the government whereby each party would contribute fifty percent of the difference between the maximum costs allowed and full costs.<sup>44</sup> The stipend paid directly to veterans is the

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*Praises Proposed Education Benefits*, AMERICAN FORCES PRESS SERVICE, June 25, 2008, <http://www.defenselink.mil/news/newsarticle.aspx?id=50318>.

37. *See generally McCain Misses Vote on a New GI Bill; Scorns Criticism from Obama*, BOSTON GLOBE, May 23, 2008 (contrasting McCain's notable absence with the Democratic presidential candidates' break from their campaign trips to return to Congress to support the bill).

38. OMB STATEMENT OF POLICY, *supra* note 27.

39. Press Release, Office of the Press Secretary, President Bush Signs H.R. 2642, the Supplemental Appropriations Act, 2008 (June 30, 2008).

40. *Id.* The President had indeed called for precisely such a provision in his State of the Union Address. *See supra* note 25 and accompanying text.

41. *See* 38 U.S.C.A. § 3313(g) (West 2008). The World War II era GI Bill likewise made tuition payments directly to universities. Serviceman's Readjustment Act of 1944, 58 Stat. 289. The Korean War era GI Bill did not. Veterans' Readjustment Assistance Act of 1952, 66 Stat. 668. Additionally, the Montgomery GI Bill paid funds to students rather than universities. Veterans' Educational Assistance Act of 1984, Pub. L. No. 98-525, 98 Stat. 2557 (codified in scattered sections of 38 U.S.C. Chapter 30).

42. Rick Maze, *New GI Bill Answers*, ARMY TIMES, July 28, 2008, [http://www.armytimes.com/news/2008/07/military\\_gibillexplained\\_072008w/](http://www.armytimes.com/news/2008/07/military_gibillexplained_072008w/) [hereinafter *New GI Bill*].

43. 38 U.S.C.A. § 3313(c)(1)(A) (West 2008). As legislators reflected on expanding GI Bill benefits, many were concerned about the propriety of giving too much taxpayer money to elite institutions. *Win-Win Proposition*, *supra* note 6.

44. 38 U.S.C.A. § 3317 (West 2008). For example, imagine a state's most expensive public

equivalent of the housing allowance paid to married midlevel enlisted service members,<sup>45</sup> which is based on the average rental cost of a two bedroom townhouse in the local area<sup>46</sup> and currently averages about \$1200 a month.<sup>47</sup>

Veterans also receive a host of smaller benefits, including: an automatic \$1000 per academic year for books,<sup>48</sup> up to \$1200 for tutoring assistance<sup>49</sup> and potentially \$2000 towards a licensing or certification exam fee.<sup>50</sup> The Act grants the DOD wide discretion in determining under what circumstances benefits can be transferred to spouses and children,<sup>51</sup> and draft rules made available in May 2009 would allow relatively flexible benefit sharing for persons who have completed six years of service and committed to at least four more.<sup>52</sup> The Act's primary benefits are available to eligible veterans beginning August 1, 2009.<sup>53</sup>

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school charges in-state residents \$20,000 in tuition and fees for an academic year of law school. Furthermore, an elite private institution in that state charges \$40,000 per academic year of law school. Under the Yellow Ribbon program, if the latter school agreed to lower the tuition it charged to veterans to \$30,000 per year, then the Department of Veteran's Affairs (VA) would pay the full \$30,000 in benefits rather than be capped at \$20,000.

However, after the Act's passage, the VA questioned the propriety of government funds going to for-profit institutions via this program. In response, Congress proposed excluding for-profit private institutions from participating in the program, potentially impacting approximately 12,000 veterans a year. *See* S. REP. NO. 110-433, at 3, 6; *see also* Rick Maze, *Panel Adjusts Education Benefits in New GI Bill*, AIR FORCE TIMES, Aug. 26, 2008, [http://www.airforcetimes.com/news/2008/08/airforce\\_gibillfix\\_081108w/](http://www.airforcetimes.com/news/2008/08/airforce_gibillfix_081108w/) [hereinafter *Panel Adjusts*].

45. 38 U.S.C.A. § 3313(c)(1)(B)(i) (West 2008).

46. Rod Powers, *Basic Allowance For Housing: How Rates are Determined*, <http://usmilitary.about.com/od/housingallowance/a/bahtype.htm> (last visited July 17, 2009).

47. Michael J. Carden, *New GI Bill Provides Increased Educational Benefits*, AMERICAN FORCES PRESS SERVICE, July 28, 2008, <http://www.defenselink.mil/news/newsarticle.aspx?id=50620> [hereinafter *Increased Benefits*].

48. 38 U.S.C.A. § 3313(c)(1)(B)(ii) (West 2008).

49. 38 U.S.C.A. § 3314 (West 2008).

50. 38 U.S.C.A. § 3315 (West 2008).

51. The text of the legislation notes that "the Secretary of Defense *may* authorize" the transfer of benefits to a veteran's spouse or children. 38 U.S.C.A. § 3319(a) (West 2008) (emphasis added). Some news accounts have accurately stated that the DOD has the complete power under the law to not implement (or rescind) what is arguably "one of the murkiest aspects" of the Act. *See* Rick Maze, *How Benefit Transfers Will Work*, AIR FORCE TIMES, Aug. 4, 2008, [http://www.airforcetimes.com/news/2008/07/military\\_gibillexplained\\_side\\_072008/](http://www.airforcetimes.com/news/2008/07/military_gibillexplained_side_072008/) [hereinafter *Benefit Transfers*]. However, the DOD is likely to consistently offer this benefit, in part because the benefit should ease retention challenges. Many service members would likely choose to reenlist and transfer their benefit to their spouse or child rather than separate from active duty to use the benefit themselves. Such additional reenlistments would thus ease the retention challenges caused by the Act's generous payment rates that were the leading concern of the Act's initial opponents. *See supra* note 24 and accompanying text.

52. Rick Maze, *DoD Issues New GI Bill Family Transfer Rules*, AIR FORCE TIMES, May 2, 2009, [http://www.airforcetimes.com/news/2009/04/military\\_gibill\\_transferrights\\_042909w/](http://www.airforcetimes.com/news/2009/04/military_gibill_transferrights_042909w/).

53. *See* Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, 122 Stat. 2375 (to be codified at 38 U.S.C. § 3301). The issue of whether payments would be retroactive for the 2008-09 academic year has been a source of confusion. While it was clear that actual implementation

While the new benefits are comparable in nature to the World War II era GI Bill benefits,<sup>54</sup> a simple comparison illustrates the extent to which the new benefits can be vastly more generous than the Montgomery GI Bill's flat-rate benefits. For example, a typical veteran<sup>55</sup> pursuing a full-time course of study anywhere in the country<sup>56</sup> in 2007–08 would have received approximately \$9875 in Montgomery GI Bill benefits for that year.<sup>57</sup> A typical veteran pursuing an undergraduate degree at New York University in 2009–10<sup>58</sup> will potentially receive<sup>59</sup> approximately \$50,000 under the new GI Bill.<sup>60</sup> While the costs of attending New York University

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of the new benefits was set to take effect August 1, 2009, draft language included a provision for a retroactive lump-sum payment at that time to supplement Montgomery GI Bill benefits disbursed during the 2008–09 school year. Rick Maze, *Misinformation Clouds New GI Bill*, ARMY TIMES, July 9, 2008, [http://www.armytimes.com/news/2008/07/military\\_gibill\\_benefits\\_070708w/](http://www.armytimes.com/news/2008/07/military_gibill_benefits_070708w/). However, key text was deleted from the draft legislation without Senator Webb's staff realizing it. *Id.* News accounts erroneously presented the draft language as law. See, e.g., *Final Approval*, *supra* note 2 (reporting as fact that a retroactive payment would be made for the 2008–09 academic year). In response, VA materials highlighted that the new GI Bill benefits only applied to coursework taken after August 1, 2009. See DEP'T OF VETERANS' AFFAIRS, PAMPHLET 22-09-01: THE POST-9/11 VETERANS EDUCATION ASSISTANCE ACT OF 2008 [hereinafter ACT PAMPHLET]. Senator Webb has subsequently made repeated efforts to amend the adopted legislation to reflect the original intent of retroactively providing generous assistance for the 2008–09 academic year. See *Panel Adjusts*, *supra* note 44; see also S. REP. NO. 110-433 at 8. As of June 12, 2009, no legislative fix has been adopted, so it thus appears all but certain that there will indeed be no retroactive payment for the 2008–09 academic year.

54. See, e.g., Webb Fact Sheet, *supra* note 9. In addition to full tuition payments up to a ceiling of \$500 per year, the original GI Bill provided a subsistence allowance of \$50–75 per month. See Servicemen's Readjustment Act of 1944, 58 Stat. 289.

55. I employ "typical veteran" to mean an individual who qualifies for 100 percent of the baseline Montgomery GI Bill benefits. Such an individual would have paid the full \$1,200 to the Montgomery GI Bill program, served the requisite period to trigger full benefits, and not have been discharged from the service for serious disciplinary issues. See *infra* note 63.

56. Under the Montgomery GI Bill, benefits were paid at a flat rate and did not vary based on zip code or cost of tuition. See MONTGOMERY GI BILL PAMPHLET, *supra* note 17.

57. Benefits would be calculated by multiplying the number of months in the academic year times the flat monthly rate for full-time students, adjusting for the rate increase from \$1,075 to \$1,101 on October 1, 2007. Compare Chapter 30 Rates—October 1, 2006, DEP'T OF VETERANS AFFAIRS, [http://www.gibill.va.gov/GI\\_BILL\\_INFO/rates/CH30/ch30rates100106.htm](http://www.gibill.va.gov/GI_BILL_INFO/rates/CH30/ch30rates100106.htm) with Chapter 30 Rates—October 1, 2006, DEP'T OF VETERANS AFFAIRS, [http://www.gibill.va.gov/GI\\_BILL\\_INFO/rates/CH30/ch30rates100107.htm](http://www.gibill.va.gov/GI_BILL_INFO/rates/CH30/ch30rates100107.htm) (last visited Aug. 1, 2009). I adopt August 21st to May 20th as representative dates of a standard 9-month academic year for the purposes of this calculation. Thus, the total benefits for the 2007–08 academic year are the sum of \$1075 times 1.3, and \$1101 times 7.7.

58. This particular academic year was chosen since the Act's primary benefits take effect on August 1, 2009. See *supra* note 53 and accompanying text.

59. "Receive" is used here loosely, as the Act establishes that tuition payments are made directly to universities. See *supra* note 41 and accompanying text.

60. This calculation is based on an undergraduate College of Arts and Sciences student enrolling in twelve credit hours per term; the credit hours figure was selected to produce a *conservative* estimate. Similarly, this calculation assumes away the possibility that additional funds may be available via the Yellow Ribbon Program, to similarly yield a conservative estimate. The list price for tuition for the year is \$36,586. See New York University, Office of the Bursar, Fall/Spring Tuition Academic Year 2009–2010, <http://www.nyu.edu/bursar/tuition.fees/rates09/ugcas.html> (last visited Aug. 1, 2009).

are abnormally high, the new benefits will often approximately double the value of benefits previously paid to veterans under the Montgomery GI Bill.<sup>61</sup> Significantly, under the new GI Bill, service members do not contribute to its funding by making modest or even token contributions,<sup>62</sup> in contrast to the Montgomery GI Bill.<sup>63</sup> Furthermore, veterans have up to fifteen years following discharge from the service to utilize their new benefits<sup>64</sup>—an increase of five years over the Montgomery GI Bill.<sup>65</sup>

### III. OMISSIONS AND DEFECTS THAT COULD THWART FULL REALIZATION OF THE ACT'S OBJECTIVES

#### A. Indefinite Rewards for "Wartime" Service

Although much of the stated justification for the Act's substantial increase in veterans' benefits was the heightened sacrifice borne by

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Mandatory fees for the twenty-four credit hours are \$2,117. *See id.* (listing mandatory fee rates such as a \$403 fee for the first credit hour in Fall 2009 and \$59 for subsequent credit hours). Due to payment limits based on the most expensive *public* undergraduate program per state (New York University is a *private* institution), the VA would pay \$24,240 of the listed tuition price, and would pay the mandatory fees. *See* 2009–2010 Maximum In-State Tuition and Fees, DEP'T OF VETERANS AFFAIRS, [http://www.gibill.va.gov/gi\\_bill\\_info/ch33/tuition\\_and\\_fees.htm](http://www.gibill.va.gov/gi_bill_info/ch33/tuition_and_fees.htm) (last visited Aug. 1, 2009) (capping New York tuition per credit hour at \$1,010 while permitting fees of \$12,697 per term); *see also* What If I'm Attending A Private Institution, DEP'T OF VETERANS AFFAIRS, [http://www.gibill.va.gov/GI\\_Bill\\_Info/CH33/Documents/Tuition\\_and\\_Fees\\_Private\\_Institution.pdf](http://www.gibill.va.gov/GI_Bill_Info/CH33/Documents/Tuition_and_Fees_Private_Institution.pdf) (last visited Aug. 1, 2009) (providing an example of the steps involved in determining potential payment caps when a veteran attends a private institution). For housing, I entered the area zip code (10012) and selected "E-5" on the official website hosting the rates of payment, and recorded the "with dependents" rate of \$2,744 per month. Department of Defense: Per Diem, Travel and Transportation Allowance Committee, Basic Allowance for Housing, <http://www.defensetravel.dod.mil/perdiem/bah.html> (last visited Aug. 1, 2009). Multiplying that figure times 8.25 to account for NYU's relatively short academic year yields \$22,638. While the housing calculation may decrease in January 2010 due to deflation in many rental markets, I believe the overall estimate remains realistic since I used a conservative number of credit hours in the calculations. Adding the computed housing figure to the tuition and fees figure, and further adding \$1,000 for books yields \$49,995.

61. *Increased Benefits*, *supra* note 47.

62. *Id.* (explaining that no buy-in is required for the new program).

63. Veteran's Educational Assistance Act of 1984, Pub. L. No. 98-525, 98 Stat. 2555; MONTGOMERY GI BILL PAMPHLET, *supra* note 17. Similar to the new GI Bill, the World War II era GI Bill likewise involved no contributions from service members. *See generally* Servicemen's Readjustment Act of 1944, 58 Stat. 287. The lack of contributions under the new GI Bill should mitigate prior concerns that the GI Bill benefits could be taken away without due process in violation of the Fifth Amendment. *See generally* Philip G. Evans II, *The New G.I. Bill: The Trojan Horse of the 1980's?*, ARMY LAW., Oct. 1989, at 17, 19–21 (articulating that constitutional concerns are raised when informal disciplinary proceedings without constitutional guarantees of due process result in a service member forfeiting his \$1,200 contribution made under the Montgomery GI Bill and all future benefits).

64. 38 U.S.C.A. § 3321(a) (West 2008); ACT PAMPHLET, *supra* note 53.

65. *See* 98 Stat. at 2560; MONTGOMERY GI BILL PAMPHLET, *supra* note 17, at 3.

veterans in a time of war,<sup>66</sup> the Act's language might result in taxpayers providing costly benefits to future generations of peacetime veterans.<sup>67</sup> While veterans who served at least three years since September 11, 2001, are eligible for full benefits,<sup>68</sup> there is neither a provision in the Act that establishes when veterans will cease becoming eligible for the robust benefits, nor a renewable sunset provision triggering at least a mandatory review of the Act's continued appropriateness. This contrasts with prior wartime benefits, as the Servicemen's Adjustment of 1944 defined eligible veterans as "[a]ny person who served in the active military . . . on or after September 16, 1940, and prior to the termination of the present war . . ."<sup>69</sup> By containing a built-in mechanism delineating the termination of eligibility, the World War II era benefits did not run the risk of continuing indefinitely beyond the time period consistent with their stated objectives.

#### *B. Confusion of Parallel Benefit Structures*

The Act creates confusion by intentionally providing veterans with the option of electing to continue to draw benefits through the provisions of the Montgomery GI Bill rather than converting to the new GI Bill.<sup>70</sup> While a small category of veterans may benefit from this dual structuring, this proliferation of benefit structures will increase the confusion experienced by veterans, university officials, and VA personnel in electing benefits and processing claims.

The new GI Bill is indeed more generous in the vast majority of circumstances, but there are a few scenarios in which it would be to a

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66. See *supra* notes 19, 22, 28–30 and accompanying text.

67. The term "peacetime veterans" refers to veterans whose military service is during an era where the U.S. military is not involved in significant armed conflict. While denoting the precise line between a peacetime era and a wartime era may be tricky at the margin, it is clear from the Act's title that its proponents noted a sharp distinction between the years preceding September 11, 2001 and the years since. See *supra* notes 1, 19, 22, 28–30 and accompanying text.

68. 38 U.S.C.A. § 3311(b)(1)(A) (West 2008). Veterans must be honorably discharged from the military to maintain their eligibility for VA educational benefits. Gerard A. Williams, *A Primer on Veterans Administration Benefits for Legal Assistance Attorneys*, 47 A.F. L. REV. 163, 183 (1999). Of the various discharge characterizations, honorably discharged is indeed the highest, and many other veterans' benefits are paid to veterans with lower discharge characterizations. *Id.* However, there is an unusual scenario in which a less-than-honorably-discharged individual may still receive benefits, if he had an additional period of military service in which he received an honorable discharge. *Id.* at 183–84. Nothing in the Act changes the requirements related to discharge characterizations. See generally Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, 122 Stat. 2357 (to be codified in scattered sections of 38 U.S.C.).

69. Servicemen's Readjustment Act of 1944, 58 Stat. 288.

70. 38 U.S.C.A. § 3322(a) (West 2008). The VA is charged with establishing procedures for veterans to elect "under which chapter or provisions to receive educational assistance." *Id.*

veteran's financial advantage to draw benefits through the Montgomery GI Bill. For instance, only the Montgomery GI Bill covers apprenticeships, correspondence courses, and on-the-job training programs.<sup>71</sup> Additionally, for those veterans who already pay no tuition<sup>72</sup> and attend schools in areas with a modest cost-of-living, it would be to their financial advantage to stay under the Montgomery GI Bill benefits structure.<sup>73</sup> However, while the Act's dual-structured approach avoids reducing any individual veteran's authorized benefits, this generosity is not costless.

To ensure veterans have the opportunity to make full use of their established entitlements, all parties involved would need to thoroughly understand the various types of benefits available; however, the finer points of the new benefits, particularly in relation to other benefits, are difficult to grasp. Veterans' benefits are generally difficult to reduce to a simple chart or decision tree,<sup>74</sup> and education benefits in particular have been prone to processing errors.<sup>75</sup> Even prior to the new GI Bill, observers noted the confusion caused by competing sets of education benefits "for members of the regular military [and] Reserve forces, including the National Guard [with] additional benefits for Reserve members who have served at least 90 days in combat after 9/11 [and] vocational training for disabled veterans and tuition waivers offered by some states."<sup>76</sup> Especially since some veterans qualify for multiple programs, deciphering precisely

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71. *New GI Bill*, *supra* note 42; *Increased Benefits*, *supra* note 47.

72. Included among such veterans would be those receiving generous state benefits. *New GI Bill*, *supra* note 42. Additionally, veterans who receive full scholarships would also be in this category.

73. *Id.* The Act also raised the baseline Montgomery GI Bill monthly rates from \$1101 to \$1321. See 38 U.S.C.A. § 3015(a)(1)(A) (West 2008). Thus, assuming a full academic year of nine months, the basic rate of Montgomery GI Bill payments equates to \$11,889. As the Act's alternative benefits structure would pay the tuition directly to universities, *see supra* note 41 and accompanying text, veterans themselves would just receive the \$1000 book allowance, *see supra* note 48 and accompanying text, and the housing allowance, *see supra* notes 45–46 and accompanying text. Since the average housing allowance is approximately \$1200 per month, *see supra* note 47 and accompanying text, typical direct benefits per academic year under the Act's new structure would be \$11,800. As these calculations confirm, veterans who already receive free tuition and do not live in an above-average housing area would not typically gain by converting to the new benefits structure.

74. See Williams, *supra* note 68, at 186 ("VA benefits explanations do not always lend themselves to a chart or to a quick question.")

75. See, e.g., Press Release, Thurbert E. Baker, Attorney General of Georgia, Military Veterans May Have Lost Out on Educational Benefits Due to Defense Department Error (May 24, 2007) (joining forty-two other Attorneys General in rebuking the denial of Chapter 1606 educational benefits to guardsmen and reservists in direct contradiction of federal law).

76. Mary Beth Marklein, *Complex GI Bill Makes for a Rocky Road from Combat to College*, USA TODAY, Dec. 27 2007, at D1 [hereinafter *Rocky Road*]. Chuck Goranson, who has thirty-five years of experience assisting University of Wisconsin in Madison veterans with their claims, contrasted the current system with the Vietnam era, in which "there was essentially just one kind of GI Bill, and you signed up for it and you got it." *Id.*

what level of benefits one is eligible for is “perplexing” for veterans and the university clerical workers that play a vital role in benefits processing.<sup>77</sup> A military news publication noted that the addition of the new GI Bill benefits alongside the Montgomery GI Bill benefits was “a situation certain to cause confusion,”<sup>78</sup> and a prominent veterans’ group testified to Congress that the concurrent schemes seemed unworkable.<sup>79</sup>

The VA could potentially play a vital role in sufficiently educating veterans on their various options, but it is unclear how effective it will be in doing so. Just as thorough procedures were developed to administer the Montgomery GI Bill,<sup>80</sup> counterparts for those procedures must be developed as guidance for the new benefits.<sup>81</sup> The paucity of VA material explaining the new benefits<sup>82</sup> as of June 2009 demonstrates that basic implementation mechanisms are likely still undetermined. The ultimate quality and timeliness of more in-depth materials thoroughly explaining the new benefits remains an open question, as the VA has come under recent Congressional scrutiny for failing to consistently publicize its benefits.<sup>83</sup>

#### IV. UNINTENDED IMPACT ON TUITION RATES

The new GI Bill’s vast increase in federal funding and paradigm shift back towards paying schools directly<sup>84</sup> creates incentives for universities

77. *Id.*

78. *New GI Bill*, *supra* note 42.

79. *See Subcomm. Hearing*, *supra* note 23 (statement of Col. Robert F. Norton, United States Army (ret.), Deputy Director, Government Relations, Military Officers Association of America) (testifying to “concerns over establishing a new GI Bill program that directly competes, if you will, with the Montgomery GI Bill in Chapter 30 . . . we do not see how the proposed post 9/11 GI Bill . . . and the Montgomery GI Bill can coexist side by side.”).

80. *See, e.g.*, DEP’T VETERANS AFFAIRS, MANUAL M22-4: EDUCATION PROCEDURES, Parts 3–5, available at [http://www.warms.vba.va.gov/m22\\_4.html](http://www.warms.vba.va.gov/m22_4.html).

81. Indeed, the Act charges the VA to develop administrative procedures. 38 U.S.C.A. § 3323 (West 2008).

82. *Compare* ACT PAMPHLET, *supra* note 64 (providing a two-page general overview of the new benefits) *with* MONTGOMERY GI BILL PAMPHLET, *supra* note 17 (providing a detailed, thirty-five-page description of virtually all provisions of the Montgomery GI Bill). Furthermore, a veterans’ group launched a comprehensive website exclusively devoted to explaining the new GI Bill benefits, demonstrating a perceived need to avoid relying on the VA to develop adequate materials. *See* Rick Maze, *Vets’ Group Launches New GI Bill Web Site*, NAVY TIMES, Aug. 26, 2008, [http://www.navytimes.com/news/2008/08/military\\_gibill\\_081908w/](http://www.navytimes.com/news/2008/08/military_gibill_081908w/).

83. *VA’s Response to the Needs of Returning Guard and Reserve Members: Hearing Before the S. Comm. on Veterans Affairs*, 110th Cong. (2008) (statement of Chairman Daniel Akaka) (unpublished hearing, available at [http://veterans.senate.gov/hearings.cfm?action=release.display&release\\_id=686faffb-1491-4514-b9b2-6010e2d25ab8](http://veterans.senate.gov/hearings.cfm?action=release.display&release_id=686faffb-1491-4514-b9b2-6010e2d25ab8)); *VA Error Cost Iraq Veterans Outreach*, CHARLESTON GAZETTE, July 24, 2008.

84. *See supra* note 41 and accompanying text.

to alter tuition practices to maximize payments from the government. Specifically, universities will face incentives to simultaneously increase their listed tuition prices while expanding their current practice of selectively discounting tuition in a manner that maximizes revenue. While basic insights from economics can explain why this is theoretically likely to occur, historical precedent likewise signals caution, as a special congressional investigative committee documented numerous instances of universities overcharging tuition rates under the World War II era GI Bill.<sup>85</sup> The magnitude of the federal dollars available makes this a matter of serious concern. Although the new GI Bill is projected to increase spending by \$61 billion over its first ten years,<sup>86</sup> it is an entitlement without a spending cap, and the total funds expended will thus depend on the aggregate actions of students and universities.

One prominent economist<sup>87</sup> has explained that the federal funding of higher education in general enables universities to price discriminate like monopolies,<sup>88</sup> and skews market factors so that universities have “no incentive to keep tuition affordable and every incentive to make it unaffordable.”<sup>89</sup> Financial aid forms provide colleges with detailed financial information about applicants and their families, thereby facilitating price discrimination as colleges “set an unrealistically high list price and then offer varying discounts. In academia, this list price is called tuition and the discount is called ‘financial aid’ . . . . [T]he net price actually charged is adjusted to the most that can be extracted from each applicant’s family”<sup>90</sup> and the government.<sup>91</sup> Indeed, tuition has

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85. ADM’R OF VETERANS’ AFFAIRS, 81ST CONG., REPORT ON EDUCATION AND TRAINING UNDER THE SERVICEMEN’S READJUSTMENT ACT, AS AMENDED 3, at 9 (1950).

86. CONG. BUDGET OFFICE, THE BUDGET AND ECONOMIC OUTLOOK: AN UPDATE 56 (2008), available at <http://www.cbo.gov/ftpdocs/97xx/doc9706/09-08-Update.pdf>. The preliminary ten-year direct spending estimate of the Act was a significantly lower \$52 billion, as it was calculated from the bill introduced by Sen. Webb. See Letter from Peter R. Orszag, Director, Congressional Budget Office, to Senator Judd Gregg, Ranking Member, Senate Budget Committee 1 (May 8, 2008), available at <http://www.cbo.gov/ftpdocs/92xx/doc9212/s22.pdf> (last visited July 17, 2009) [hereinafter Initial CBO Estimate]; see also *Brief History*, *supra* note 3.

87. Currently holding an appointment as the Hoover Institution’s Rose and Milton Friedman Senior Fellow on Public Policy, Thomas Sowell has written over forty books on economics, social decision making, and ethnicity. He has advanced degrees in economics from Columbia University and the University of Chicago. Hoover Institution: Thomas Sowell Biography, <http://www.hoover.org/bios/sowell.html> (last visited July 17, 2009).

88. SOWELL, *supra* note 7, at 120.

89. *Id.* at 263.

90. *Id.* at 120–21.

91. *Id.* at 262.

skyrocketed since the federal government initiated substantial funding of higher education through the Higher Education Act of 1965.<sup>92</sup>

A simple hypothetical scenario illustrates how the new GI Bill creates incentives to exacerbate the practices described above: imagine a private university in a state where the maximum public tuition is currently \$30,000 per year (inflation is assumed away to simplify this illustration). The university has a nominal tuition of \$20,000 per year, with net tuition of an average of \$15,000 per year due to scholarships. Facing an influx of veterans eligible for the new GI Bill, the university has incentives to raise nominal tuition to \$30,000 per year, keep the net tuition near \$15,000 for non-veterans, while not awarding scholarships to veterans.<sup>93</sup> Veterans are unlikely to recoil at the high list tuition since it has no impact on their personal costs; nonveteran students will likewise not be personally impacted by the increased list tuition, but the federal government is responsible for an additional \$10,000 of tuition per year.

Indeed, Congress appeared to display belated sensitivity to the possibility of inflated tuition to extort more federal dollars as it proposed modifications<sup>94</sup> to the Act. In the weeks after the Act's passage, the Senate Committee on Veterans' Affairs recommended exclusion of for-profit private institutions from the Yellow Ribbon program, acting after the VA expressed concern regarding the propriety of for-profit institutions receiving government funds via this program.<sup>95</sup> However, if adopted, this restriction would not discourage for-profit, private universities from artificially raising tuition up to the level of the most expensive public university in the state, since the Yellow Ribbon program is not applicable until that point. Furthermore, the argument to selectively restrict for-profit institutions ignores the economic principle that nominally nonprofit organizations care about profits just like for-profit firms.<sup>96</sup> Thus, nonprofit,

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92. Ryan G. Milligan, *Financial Band-Aid: Reactionary Fixes to Federal Family Education Loan Program Inducement Guidelines Solve Some Problems, Raise Others*, 34 J.C. & U.L. 717, 717-18 (2008).

93. Two potential objections to this analysis warrant presentation and consideration: nonveteran applicants would likely avoid applying to the first school that dramatically raised list tuition if not confident that real tuition prices would remain constant, and veterans that do not have four academic years' worth of benefits would avoid such schools to avoid paying exorbitant out-of-pocket tuition in their final semesters. While these objections have some merit, there is, nonetheless, the serious incentive for abuse here since, respectively, schools will likely make their adjustments in small increments that will be hardly noticeable by students, and the number of veterans with full terms of benefits will more than outweigh the few lacking them.

94. *See supra* note 44.

95. *See supra* note 44 and accompanying text.

96. Anup Malani and Albert Choi, *Are Non-Profit Firms Simply For-Profits in Disguise? Evidence from Executive Compensation in the Nursing Home Industry 2* (Aug. 3, 2004) (unpublished

private universities (and perhaps public universities to a lesser extent)<sup>97</sup> would remain incentivized to artificially extract federal funds through raising nominal tuition and increasing selective discounting.

#### V. LIKELY TRANSFORMATION OF CIVIL-MILITARY RELATIONS

The rapid influx of veterans—many with recent combat experience—will force society to confront an alarming trend of widening civil-military disconnectedness and is likely to profoundly transform<sup>98</sup> civil-military relations. The generous benefits offered by the new GI Bill, coupled with reduced economic opportunities in the private sector, will lead large numbers of young veterans to enroll in universities, including the elite institutions where the civil-military gulf is currently most pronounced. This resulting interaction of groups with widely divergent attitudes about the role of the military in society will include an initial clash of values and viewpoints. Whether this initial clash ultimately results in renewed understanding or an entrenchment of mutual mistrust<sup>99</sup> will be influenced by whether America's engagements in Iraq and Afghanistan become more or less politically charged on the national level. Additionally, whether civil-military relations are ultimately enhanced or exacerbated by the new GI Bill will also be shaped by whether veterans adapt to campus life and the extent to which veterans collectively develop diplomatic skills to relate their viewpoints.

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article, available at <http://law.bepress.com/uvalwps/olin/art12/>).

97. Cf. SOWELL, *supra* note 7, at 262 (stating that public universities face political pressures to keep tuition rates reasonable).

98. A leading expert on the World War II era GI Bill has argued that the new GI Bill will not have a profound societal impact. See *No Match for Original*, *supra* note 3 (“The GI Bill of Rights for the 21st Century is not transformative in a cultural or educational sense, and certainly not revolutionary.”). However, that commentator has failed to acknowledge the current civil-military disconnectedness, of which there was no parallel in the 1940s. See *infra* notes 101–02 and accompanying text. While the new GI Bill indeed will not achieve precisely the same effects as the World War II-era GI Bill in the same magnitude, it is up to the reader to assess my analysis throughout this section that the Act is likely to trigger other profound effects.

99. I view the analysis that follows as “game-changer” analysis. In this case, the “game-changer” is the new GI Bill, which will cause a sizeable influx of veterans into universities, thereby forcing a critical segment of society to confront the trend of civil-military disconnectedness. The range of possible outcomes is best thought of as a spectrum, with renewed understanding occurring if all the positive factors dominate, the entrenchment of mutual mistrust occurring if all the negative factors dominate, and a more neutral outcome occurring if the competing factors largely cancel each other out.

A. *Current Civil-Military Disconnectedness and its Threat to Democracy*

The concept of the citizen-soldier has been a critical part of our nation's history since its founding,<sup>100</sup> and thus “the concept of a ‘gap’ between the military and society, even elite society, would have been nonsensical to most people in this nation’s history.”<sup>101</sup> During World War II, for example, the widespread participation of all classes in the war effort—including prominent politicians, entertainers, and professional athletes—“gave the military a close connectedness to the life of the average American.”<sup>102</sup> Although vast swaths of society have historically mobilized to fight our nation’s wars, less than one percent of the population currently serves in any branch of the military,<sup>103</sup> and military base consolidations have placed remaining military members out of sight of many ordinary Americans.<sup>104</sup> Since civilians in many segments of society “can go about their lives without ever crossing paths with someone on active duty”<sup>105</sup> and because of a “political polarization . . . [that] helps reinforce the upper-middle-class sense that those who serve are the ‘other’”<sup>106</sup> civilians and soldiers “are frequently seen as different beasts.”<sup>107</sup>

Proponents of expanded GI Bill benefits recognized the current civil-military disconnectedness in justifying the Act, yet apparently failed to foresee that the Act might transform civil-military relations. Senator Webb explicitly recognized the small segment of society bearing the primary human costs of America’s current global conflicts in advocating for the Act.<sup>108</sup> In floor debates, congressmen even more explicitly addressed current civil-military disconnectedness, noting “we have had no sense of self-sacrifice in this country except on the part of military families. They’ve been asked to sacrifice again and again and again while the rest of

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100. FRANK SCHAEFFER & KATHY ROTH-DOUQUET, AWOL: THE UNEXCUSED ABSENCE OF AMERICA’S UPPER CLASSES FROM MILITARY SERVICE—AND HOW IT HURTS OUR COUNTRY 105 (2006); Kristin Henderson, *Their War*, WASH. POST, July 22, 2007, (Magazine), at W10, W22 [hereinafter *Their War*].

101. SCHAEFFER, *supra* note 100, at 97.

102. Donald N. Zillman, *Where Have All the Soldiers Gone II: Military Veterans in Congress and the State of Civil-Military Relations*, 58 ME. L. REV. 135, 141 (2006) [hereinafter *Soldiers Gone*].

103. *Their War*, *supra* note 100, at W10.

104. *Soldiers Gone*, *supra* note 102, at 156 n.53; *Their War*, *supra* note 100, at W22.

105. *Their War*, *supra* note 100, at W22; *see also Soldiers Gone*, *supra* note 102, at 156.

106. SCHAEFFER, *supra* note 100, at 152.

107. *Id.* at 98; *see also Their War*, *supra* note 100, at W12 (noting the creation of “an American warrior class” for the first time in our nation’s history, and discussing long-standing national fears of the dangers of such a development).

108. *See supra* note 19 and accompanying text.

us have been asked to go shopping or swallow a tax cut.”<sup>109</sup> These explicit recognitions of the current civil-military disconnectedness are presented as a reason why veterans deserve heightened benefits and are in no instance accompanied by predictions that the Act might transform civil-military relations.

While the current civil-military disconnectedness spans society as a whole, universities are a critical microcosm of the issue. Whereas roughly half of the graduates from Harvard and Princeton joined the military in the 1950s, that figure is now less than one percent.<sup>110</sup> Reserve Officer Training Corps programs—the counterpart to famously isolated service academies—were systematically edged off many top universities beginning in the Vietnam era.<sup>111</sup> Once ubiquitous, the sight of a student in a military uniform at an Ivy League institution now shocks students and generates “double take[s].”<sup>112</sup> Taking particular aim at elite institutions, one commentator critically notes that “an anti-military college culture that may once have had political roots in the Vietnam era has now deteriorated into plain elitism and a set of fossilized, unchallenged anti-military assumptions.”<sup>113</sup> While reflective of the larger society, the disconnectedness of university students from the military has a particularly substantial impact, as the university plays a vital role in forging the views of America’s future leaders.

The well-documented and growing gulf between the military and civil society is not merely a benign societal trend, but rather constitutes a serious threat to the American polity. Studies commissioned to explore the nature of the civil-military gap document serious misunderstandings and mutual mistrust.<sup>114</sup> The specific dangers of civil-military disconnectedness include the risk of more frequent warfare that is likewise poorly prosecuted, the weakening of the military’s long-standing role as an essentially apolitical institution, and the threat that our nation could no longer maintain an all-volunteer military.<sup>115</sup> In sum: “Our country is better served by a military that is *part of* the democratic experiment in law and spirit, rather than standing apart from it.”<sup>116</sup>

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109. 154 CONG. REC. H5667 (daily ed. June 19, 2008) (statement of Rep. Obey).

110. SCHAEFFER, *supra* note 100, at 10.

111. *Their War*, *supra* note 100, at W22–23.

112. *Id.* at W22.

113. SCHAEFFER, *supra* note 100, at 45.

114. *Their War*, *supra* note 100, at W13 (citing research by the Triangle Institute for Security Studies).

115. *See infra* notes 117–23 and accompanying text.

116. SCHAEFFER, *supra* note 100, at 208.

Scholars who have conducted extensive studies<sup>117</sup> on the gap between the military and civil society have empirically established that “[a]t least since 1816, the greater the presence of veterans in [the national political] elite, the less likely the United States has been to initiate the use of force in the international arena.”<sup>118</sup> A potential causal explanation for this phenomenon is that political leaders who have experienced the hardships and horrors of war themselves apply more scrutiny before extending their support to military forays.<sup>119</sup> Impacting the prosecution of wars, when the military members fighting in the chosen conflicts are a largely separate class from the rest of society, political leaders have less incentive to be responsive to defects in strategy or even equipment shortages.<sup>120</sup> On a higher level, mutual trust and understanding between civilian and military leadership is a critical prerequisite to the successful implementation of a war strategy.<sup>121</sup> The military’s longstanding role as an essentially apolitical institution is likewise threatened by a gulf between the military and civil society. “[A]s the military’s belief that the larger society understands and values the military has decreased . . . the military’s need to advocate on their own behalf has grown. This puts the military in the position of becoming just one more special-interest group lobbying a bitterly divided Washington for attention.”<sup>122</sup> Finally, broad societal understanding of (and support for) the military eases recruiting and retention challenges, thus allowing for the maintenance of an all-volunteer force.<sup>123</sup>

117. PETER D. FEAVER & RICHARD H. KOHN, *The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding*, in AMERICAN DEFENSE POLICY 338 (Paul Bolt et al. eds., 2005).

118. *Id.* at 341.

119. *Their War*, *supra* note 100, at W25 (“We are disconnecting from our society . . . [Military engagements inherently entail] a number of casualties, and the suffering, and the separation from the families, and the sacrifices. If you have a congressman who’s experienced this, you would see the Congress be far more careful and more cautious, if for no other reason than they know what this is about.”) (quote from Senator Hagel).

120. *See Soldiers Gone*, *supra* note 102, at 150.

A military in Vietnam that was representative of all social classes might also have forced a faster resolution of America’s uncertainties about the war. Were enough members of the Vietnam era Congresses receiving input from their sons and daughters serving at the front? Were they getting the ‘have to be answered’ phone calls from bank presidents, state party chairmen, and newspaper editors recounting the experiences of their children in Vietnam?

*Id.*

121. *See generally* Mackubin Thomas Owens, Op-Ed., *Our Generals Almost Cost Us Iraq*, WALL ST. J., Sept. 24, 2008, at A29 (arguing that the most significant breakdown in civil-military relations since 1862 almost foreclosed the possibility of rescuing success in Iraq).

122. SCHAEFFER, *supra* note 100, at 154.

123. FEAVER, *supra* note 117, at 342.

### B. Surge in University Enrollment by Combat Veterans

Many categories of veterans will likely avail themselves of the generous benefits offered by the new GI Bill, resulting in significantly larger numbers of veterans on America's campuses.<sup>124</sup> First, as the military's repeated and strident warnings about retention<sup>125</sup> have suggested, many members may leave the services to pursue higher education. Additionally, the current slowdown in the private sector<sup>126</sup> makes the returns from private employment compared to the returns from academia relatively lower than they otherwise would be, undoubtedly spurring additional veterans to use the GI Bill. Furthermore, active duty personnel are also eligible to use the GI Bill,<sup>127</sup> although many units' demanding operational tempo would likely preclude many members from attending full-time programs of study. The variable tuition awarded by the new GI Bill<sup>128</sup> will place even the nation's elite institutions within the financial reach of many veterans. Finally, the sheer number of military members who have deployed to Iraq and Afghanistan since 2001<sup>129</sup> means that many GI Bill claimants will have recent experience serving in a combat zone.

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124. See generally Jeremy Hay, *Colleges' Surge of Veterans*, PRESS DEMOCRAT, Oct. 2, 2008 [hereinafter *Surge of Veterans*] (documenting an explosive growth in veterans' enrollment across California colleges and noting VA predictions of further surges in enrollment). It is worth noting that much of the increase in enrollment of veterans in the 2008–09 academic year can logically be attributed to the Act—despite most of its provisions not taking effect until August 1, 2009—for three reasons. First, the Act increased the flat-rate payments of the Montgomery Bill benefits structure by a significant twenty percent. See *supra* note 73. Secondly, there was, and remains, significant confusion surrounding whether a generous retroactive payment would be made on August 1, 2009, to additionally compensate veterans who studied during the 2008–09 academic year. See *supra* note 53 and accompanying text. Finally, veterans without exceptional job prospects might have been lured to begin a program of higher education by the prospect of generous benefits for their second through fourth years, and decided it would not be advantageous to spend a year treading water in temporary employment just to maximize their benefits across all four years.

125. See *supra* note 24 and accompanying text; but see Initial CBO Estimate, *supra* note 86, at 2–3 (forecasting that the services may be able to keep reenlistments at their traditional levels through the transfer of several billion dollars in recruiting funds to enhanced reenlistment bonuses). Even if this CBO estimate proves entirely correct, the combination of substantially more generous benefits and the current economic slowdown will mean that for those veterans who would have separated from the military regardless, pursuing higher education will have a sharply lower opportunity cost. See *infra* note 126 and accompanying text.

126. See, e.g., Mark Trumball, *Biggest Hit as GDP Falls: American Exports*, CHRISTIAN SCIENCE MONITOR, Feb. 2, 2009, at 2.

127. 38 U.S.C.A. § 3313(e)(1) (West 2008).

128. See *supra* notes 43–44 and accompanying text.

129. See *Rocky Road*, *supra* note 76 (noting more than 1.6 million veterans have deployed to those combat zones).

As a population, veteran students are different from their civilian peers in a variety of ways. Veterans are focused on graduating, often in contrast to “the 18- or 19-year old who is on the five year plan.”<sup>130</sup> California State University Chancellor Charles Reed deems veterans to be “the exact profile of the students we want[] on our campuses: smart, serious but balanced, committed, contributing, and diverse.”<sup>131</sup> However, veterans (particularly combat veterans) also face physical<sup>132</sup> and mental health challenges such as Post-Traumatic Stress Disorder<sup>133</sup> in greater numbers than their civilian peers. Veterans have to navigate complex bureaucracies to secure their educational entitlements,<sup>134</sup> encounter difficulties in getting appropriate credit for advanced technical and leadership development training,<sup>135</sup> and can have difficulty fitting in<sup>136</sup> amongst often slightly younger students.

### *C. Heightened Interactions May Transform Civil-Military Relations*

As significant numbers of young veterans with recent combat experience matriculate to universities across America with the aid of the new GI Bill, the resulting interaction of groups that have grown increasingly disconnected will generate clashes of culture and ideas. The health of the national political discourse on America’s military engagements, and the extent to which veterans adapt to their new campus environment will determine whether this mixture of military<sup>137</sup> and civilian

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130. *Surge of Veterans*, *supra* note 124 (providing an illuminating, if at times hyperbolic, contrast between veteran students and their civilian peers).

131. Charles B. Reed, *An Assignment for All Institutions*, PRESIDENCY, Spring 2008, at 18, 19 [hereinafter *Assignment for Institutions*].

132. More than 30,000 U.S. military personnel have been wounded in the Iraq conflict alone. Icasualties.org, Iraq Coalition Casualty Count, <http://icasualties.org/Iraq/index.aspx> (last visited July 18, 2009). A particularly stark example of how war injuries can impact veterans’ higher education decisions was brought into focus as Dartmouth University President Wright met with recovering veterans. Several marines who had lost one or both legs asked whether there were elevators in university buildings to render class attendance practical. *Served Their Country*, *supra* note 3, at 16.

133. *Surge of Veterans*, *supra* note 124.

134. See *Rocky Road*, *supra* note 76.

135. See *Assignment for Institutions*, *supra* note 131, at 18.

136. See *Rocky Road*, *supra* note 76 (documenting several veterans’ difficult transitions from the military to college, including one who “hadn’t a clue how a Marine becomes a college student”); see also *Their War*, *supra* note 100, at W13–14 (conveying how merely the experience of basic training leads many military members to view civilians very differently “after only 13 weeks on the other side of the fence”).

137. Many veterans utilizing the GI Bill will be separated from active duty service, but they could still play a role in bridging civil-military relations because their military perspectives would still be fresh and would likely permeate conversations about world affairs. Furthermore, separated veterans would likely continue to maintain friendships with currently serving veterans, thus passing along

values ultimately helps bridge the gulf in civil-military relations, or whether feelings will instead devolve from tentative mistrust to open hostility.

The level of national political disagreement over the conflicts in Iraq and Afghanistan will overlay and color the heightened interactions between veterans and civilian students.<sup>138</sup> Just as the Vietnam War became “a symbol of a deep divide in American political life” that changed “how military service is perceived today by whole swaths of our population,”<sup>139</sup> similarly resented conflicts could poison the well of discourse and make it nearly impossible to move towards a consensus on the role of the military in society. In contrast, “good short wars” lead to a temporary high regard of the military, which—even if “at arm’s length”<sup>140</sup>—is a helpful prerequisite to renewed civil-military connectedness. In 2006-07, the conflict in Iraq was an extremely politically polarizing issue.<sup>141</sup> Yet, an objective analysis reveals that through significant military gains, Iraq had largely receded as a divisive political issue by the fall of 2008.<sup>142</sup> Military reversals could rapidly reestablish Iraq as a flashpoint in American politics (raising tensions in the university setting as well), as could competing views of the conflict in Afghanistan as it gains renewed attention via the surge<sup>143</sup> of forces in 2009 and beyond. While war-related political polarization has the greatest potential to derail a restoration of civil-military connectedness, strong red-state/blue-state polarization in general “helps reinforce the upper-middle-class sense that those who serve are the

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feedback about their experiences reintegrating to civil society. Additionally, a significant proportion of veterans who separate from active duty transition into a Reserve or National Guard component and would thus continue to directly influence other military members.

138. The analysis that follows is not uniquely applicable to an academic setting, and would indeed be applicable in broader societal settings as well. However, as political expression is such a core feature of academia, an overlay of national political disagreement would likely cause greater discord in an academic setting experiencing a surge in its veteran population than in, for example, a workplace or community setting experiencing a similar increase.

139. SCHAEFFER, *supra* note 100, at 120.

140. *Id.* at 125.

141. See, e.g., Adam Nagourney and Megan Thee, *With Iraq Driving Election, Voters Want New Approach*, N.Y. TIMES, Nov. 2, 2006, at A1; Donald Kagan, *Today’s Defeatists*, NATIONAL REVIEW, Sept. 10, 2007, <http://nationalreview.com> (follow “Search” hyperlink; then follow “National Review Online” hyperlink; then search for “defeatists”) (analyzing the “fierce partisan conflict” over Iraq throughout mid-2007, including an unwillingness by congressional Democrats to acknowledge recent gains or view such developments as positive).

142. Cf. Julian E. Barnes, *Gates on Board with Obama’s Iraq Plan*, L.A. TIMES, Dec. 3, 2008, at A6 (noting the public’s support for the Defense Secretary who had overseen the surge under the Bush administration to remain at his post to oversee the drawdown in the Obama administration).

143. See generally Helene Cooper, *Obama’s War: Fearing Another Quagmire*, N.Y. TIMES, Jan. 25, 2009, at WK 1 (detailing President Obama’s ordering of additional forces to Afghanistan, and relating competing views on the conflict in Afghanistan).

‘other’<sup>144</sup> and thus, the overall level of division in American politics will likewise shape this issue.

Two additional factors will likely influence whether increased interaction leads to renewed connectedness. The first is the extent to which veterans are able to overcome the frequent administrative potholes<sup>145</sup> on “the rocky road from combat to college.”<sup>146</sup> If veterans are able to efficiently enroll and obtain their entitled benefits, they will be able to apply their energies to achieving academic success and adapting to campus life. The second factor is the extent to which veterans wisely pick their battles when confronted with a clash of cultures.<sup>147</sup> Were student-veterans to forge positive relationships with each other, more mature and well-adjusted veterans could help other veterans develop a balanced perspective on what issues are worth attempting to influence, and veterans would be afforded the chance to safely vent about those features of campus culture most jarring to them.<sup>148</sup> Veterans will still constitute a small minority of the student population at virtually all institutions, and should be aware that

144. SCHAEFFER, *supra* note 100, at 152.

145. *See supra* notes 134–35 and accompanying text.

146. The quote refers to the title of a particularly astute source. *See Rocky Road, supra* note 76.

147. The current prohibition of open homosexuality in the military is an example of an issue that will almost certainly involve an initial clash of ideas, but that could ultimately result in either a positive or negative outcome. A negative scenario is fairly straightforward to envision, as military-civilian tension on this issue is well-documented:

[T]here’s a definite undercurrent of anti-military sentiment among some members of the student body. It’s most clear with the Solomon Amendment issue/don’t-ask-don’t-tell [gays in the military] policy. The fliers that go up and the demonstrations that happen make it clear that they blame members of the military for the policy. It is obvious (or should be obvious) to them that your average private, sergeant, lieutenant, or colonel does not set the policy, and at most is bound to enforce it.

SCHAEFFER, *supra* note 100, at 167. With this backdrop, the negative scenario is that veterans and civilian-students become truly frustrated with each other over diverging viewpoints regarding “don’t ask, don’t tell,” and lines of communication break down.

A positive scenario is perhaps slightly more difficult to articulate, but envisions that a rough consensus could develop as civilian students receive updated facts on this issue and as a new generation of veterans is directly confronted with the strong civilian opinion on this issue. This could happen roughly as follows: veterans could inform college students that the source of “don’t ask, don’t tell” is public law and not military regulation, while civilian students could persuade younger veterans that it is time to support a change in policy. With a rough consensus, the next generation of influential civilians could direct their energy on the subject where it has a chance to make an impact—to Congress, rather than towards primarily challenging military recruiters, *see id.* at 45–46, which can only very indirectly produce any effect, and additionally serves as an affront to those in (and recently out of) uniform.

148. Recall that veteran students frequently have difficulty fitting in on campus. *See supra* note 136 and accompanying text. This is not surprising considering “the gap” between civil society and the military identified in this Section.

their values will likely adjust as much or more than the values of the civilian students with whom they interact.

#### VI. RECOMMENDATIONS TO ENSURE REALIZATION OF THE ACT'S OBJECTIVES

While it is clear that the Act in its present form will significantly enhance veterans' educational opportunities, modest actions by Congress and university officials would more effectively realize the Act's objectives and enhance civil-military relations. Specifically, Congress should strive to ensure these generous benefits are indeed limited to wartime veterans or eliminate the parallel Montgomery GI Bill benefits structure. Furthermore, utilizing an existing federal oversight agency to monitor universities' pricing practices could ensure the federal government is not gouged. Finally, university officials should recognize and attempt to meet the needs of their growing veteran populations, and take basic steps to support veterans' student groups.

First, to avoid overbreadth in the Act's coverage, Congress should rapidly pass a renewable sunset provision so these benefits can be appropriately reserved for wartime veterans. The necessary complement of the idea that wartime veterans have earned heightened benefits<sup>149</sup> is that peacetime veterans should receive relatively *fewer* benefits; however, that complement is unlikely to be realized under the Act's current structure. If our nation does not achieve a state of peace for, perhaps, another decade or longer, these generous benefits will have likely achieved administrative and political inertia. Such inertia would likely cause the Act to remain in force permanently without another thoughtful reflection on its continuing appropriateness.<sup>150</sup> The nature of the current conflict heightens this concern, since unlike the highly visible surrender of the Japanese following World War II,<sup>151</sup> the current war against Al Qaeda and its affiliates is likely to end "not with a bang, but a whimper."<sup>152</sup> A renewable sunset provision with language about the bill's original purpose would

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149. See *supra* notes 19–20, 22, 28–30 and accompanying text.

150. Cf. *Predictability and Control: Twin Reasons for Restoring Budget Disciplines: Hearing Before the H. Comm. on the Budget*, 107th Cong. 24 (2002) (statement of Bill Frenzel, Co-Chairman, Committee for a Responsible Federal Budget) (encapsulating the strong inertia surrounding federal entitlements with the quote, "entitlements are forever.").

151. See Donna Miles, *60 Years Later, V-J Day and End of World War II Remembered*, AMERICAN FORCES PRESS SERVICE, Aug. 15, 2005, <http://www.defenselink.mil/news/newsarticle.aspx?id=16891>.

152. Neil Steinberg, *Terror War to End Not with Bang, but with Whimper*, CHI. SUN-TIMES, Sept. 11, 2006, at 20.

cost little political capital to push through now while memories of the Act's objectives are still fresh, and would provide the necessary political cover for future elected leaders to return to a more traditional level of benefits at an appropriate time.

Alternatively,<sup>153</sup> to mitigate the confusion caused by the proliferation of veterans' educational benefits, Congress should adopt a timeline for eliminating the parallel Montgomery GI Bill benefits structure. As having multiple programs creates confusion amongst the VA, campus officials, and veterans,<sup>154</sup> the eventual streamlining into a single set of benefits would enhance the efficiency with which GI Bill benefits are administered. Since many service members paid into the Montgomery GI Bill,<sup>155</sup> and there are a few scenarios in which eliminating the Montgomery GI Bill would result in lesser payments to individuals,<sup>156</sup> immediately terminating the Montgomery GI Bill would be unfair to veterans counting on using that benefit structure. However, with sufficient notice, the relatively small number of veterans planning to use Montgomery GI Bill benefits would have adequate time to either pursue their planned studies prior to the expiration, or position themselves to effectively utilize benefits under the new GI Bill benefits structure. Thus, provided that several years' notice were given of a planned termination of the Montgomery GI Bill,<sup>157</sup> the gains to all veterans from streamlined benefits processing would far outweigh the costs to a small fraction of veterans facing reduced payments.

To ensure that gouging of the government through manipulative tuition practices does not recur,<sup>158</sup> the government should utilize either the Government Accountability Office or the Congressional Budget Office to study the impact of the new GI Bill on universities' pricing practices across the medium term. If the federal government is indeed being gouged

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153. My recommendations to pass a renewable sunset provision and eliminate the Montgomery Bill benefits structure could theoretically *both* be adopted; however, they are clearly at cross-purposes. To illustrate, were the Act's practice of awarding generous variable tuition payments to be curtailed upon entering an era of peacetime, it would be suboptimal to have to renew a defunct Montgomery GI Bill benefits structure.

154. *See supra* notes 77–79 and accompanying text.

155. *See supra* note 63 and accompanying text.

156. *See supra* notes 71–73 and accompanying text.

157. The contrasting option of waiting until everyone who had made payments under the Montgomery GI Bill has had a full n opportunity to use up their benefits before shutting down the program is impractical. Imagine a warrant officer who enrolled in the Montgomery GI Bill upon enlisting in February 2009: since he can stay in the service for at least forty years—and has ten years to use the benefits after that, *see supra* notes 64–65 and accompanying text, the dual benefits structure would continue through 2059.

158. *See supra* note 85 and accompanying text.

through skyrocketing tuition list prices and increased selective discounting,<sup>159</sup> Congress should consider modifying the tuition benefit. For example, Congress could redefine the tuition benefit as 100 percent of an institution's average net tuition, payable directly to students, thus curtailing universities' ability to artificially raise their receipts through manipulative pricing practices.<sup>160</sup>

Further, to ensure administrative challenges do not complicate veterans' transition to the university environment,<sup>161</sup> university administrators should apply modest, but focused, efforts to ensure their evolving population of students is adequately serviced. Recognizing the challenges faced by veterans, Dartmouth University President Wright has undertaken model efforts to ensure his institution effectively addresses veterans' unique needs.<sup>162</sup> Rather than creating an additional office for veteran-students, Wright directed existing offices to tweak their policies and services, which he framed as "customized support with our current system. . . ."<sup>163</sup> A few state university systems, particularly California and Minnesota, are taking the lead in expanding veterans' advisory or outreach services,<sup>164</sup> serving as additional examples of how universities can take basic steps to properly service their expanding veteran populations.

Finally, to facilitate veterans' efforts to connect with students who have had minimal exposure to the military, administrators should support efforts of veterans to form or expand veterans' student organizations. Since well-adapted veterans can use their practical experience to help teach others how to overcome bureaucratic stumbling blocks and model how to fit in with civilian peers, these organizations can play a critical role in enhancing civil-military relations. At several institutions, veterans have already formed such groups,<sup>165</sup> but could still benefit from expressions of support by university officials. In the case of schools that have faculty

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159. See generally *supra* Part IV.

160. Recalling the hypothetical scenario central to the premise advanced in Part IV, average net tuition is nominal tuition less the average amount of scholarships awarded by a university. Re-defining the benefit as payable directly to students at the level of average net tuition would incentivize veterans to attempt to attain the best scholarships possible from universities—an incentive that is largely lacking under the current payment structure. Furthermore, by not paying universities directly, it would be vastly more difficult for universities to gouge the government through manipulative pricing practices. Nonetheless, even this method has some disadvantages—namely, that students who do attain generous scholarships could essentially profit from going to school—and thus, any alternative payment methodology warrants thoughtful consideration by economists prior to implementation.

161. See *supra* notes 132–36, 145–46 and accompanying text.

162. See generally *Served Their Country*, *supra* note 3.

163. *Id.* at 18.

164. *Rocky Road*, *supra* note 76.

165. *Served Their Country*, *supra* note 3, at 18–19; see also *Rocky Road*, *supra* note 76.

advisors for student organizations, administrators should recruit professors with reputations for bridge-building to help potential leaders of tomorrow make a successful transition from the battlefields of Iraq and Afghanistan to the halls of America's universities.

#### VII. CONCLUSION

The new GI Bill represents a generous recognition of the heightened sacrifices borne by members of the military who serve in a time of war. With modest adjustments by Congress and basic efforts by university administrators to welcome veterans, the Act is likely to efficiently fulfill its stated objectives. More pivotally, the new GI Bill may have the unintended consequence of helping bridge the current unhealthy civil-military disconnectedness. While the potential for renewed understanding between previously isolated groups is real, history is yet to be written. Both the level of national political division surrounding the conflicts in Iraq and Afghanistan and the various on-campus factors will affect whether the initial conflict caused by mixing different groups ultimately yields a more unified citizenry.

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