Congress of the United States
Washington, DC 20515

November 30, 2018

The Honorable Robert Wilkie
Secretary
U. S. Department of Veterans Affairs
810 Vermont Avenue N.W.
Washington, DC 20420

Dear Secretary Wilkie:

The Harry W. Colmery Veterans Education Assistance Act of 2017 (Forever GI Bill) made significant improvements to veteran education benefits, including changes to the monthly housing allowance that GI Bill beneficiaries receive. These changes, made in Sections 107 and 501 of the bill, were due to be implemented on August 1, 2018, but as a result of persistent information technology failures, the Department of Veterans Affairs (VA) has yet to comply with the law.

On November 28, 2018, VA announced that in order to restart the flawed implementation process, it will delay Section 107 and 501 implementation until December 1, 2019.[1] In the announcement, VA also stated that "[d]uring this [delay in implementation], VBA will pay monthly housing allowance rates for the Post-9/11 GI Bill at the current academic year uncapped Department of Defense (DoD) Basic Housing Allowance (BAH) rates. . . . VBA will also correct retroactively any underpayments resulting from section 107 and 501 implementation problems." As you know, there are currently students who are being paid less each month in housing allowance than they would be if VA had implemented Section 107 by August 1, 2018 as dictated by the law. For these students who are currently being underpaid and will continue to be underpaid until VA finally implements Section 107, VA must keep its promise to retroactively make them whole and pay them the amount they are owed as a result of VA's delay in Section 107 implementation. In fact, to not do so would put VA in violation of current law.

On the same day VA announced its new implementation plans, however, VA held a call with Congressional staff during which VA stated that it will be overly burdensome to ask schools to recalculate retroactive Section 107 payments for students, and therefore, VA does not plan on retroactively correcting any underpayments resulting from Section 107 implementation delays. This is not only in direct conflict with VA's own written announcement from earlier that very same day, but it is also in conflict with what Dr. Paul Lawrence, the VA Under Secretary for

[1] *News Release: Post-9/11 GI Bill Housing Payment Rates Update*, VA Office of Public and Intergovernmental Affairs, November 28, 2018 (https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5151)

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Benefits, said in sworn testimony at an Economic Opportunity Subcommittee hearing on November 15, 2018. In that testimony, Dr. Lawrence stated, "VA would like to emphasize that upon implementing the IT solution for these sections, students affected by underpayments will be fully compensated, and VA will not establish a debt against students who were overpaid."[2]

In addition, on November 29, 2018, VA issued another news release in response to Members of Congress questioning Dr. Lawrence again on this matter during a hearing that day. That news release states, "Each and every Veteran on the post-9/11 GI Bill will be made 100 percent whole -- retroactively if need be -- for their housing benefits for this academic year based on the current uncapped DoD rates, and, beginning in spring 2020, we will be in a position to provide Veterans with the new rates where applicable to meet the law known as the Forever GI Bill."[3] As you must be aware, this unequivocal statement regarding uncapped DoD rates only relates to Section 501 of the Forever GI Bill, and delayed Section 501 implementation is not expected to result in any underpayments. Both Dr. Lawrence's testimony on November 29, 2018 and this news release avoids addressing making beneficiaries whole under Section 107; it is for Section 107 that VA informed Congressional staff it would not be conducting retroactive calculations.

This level of obfuscation from VA is unacceptable. Student veterans were made a promise when we passed the Forever GI Bill and VA is legally obligated to follow through on that promise. We therefore request that you provide clear answers to the following questions by December 14, 2018:

1. Will VA calculate the difference between what GI Bill beneficiaries would have received from August 1, 2018 if Section 107 had been implemented on August 1, 2018 until the time that Section 107 is finally implemented and what they did receive in fact during that same time frame?

2. For the students who received less than they would have received from August 1, 2018 if Section 107 had been implemented on August 1, 2018 until the time that Section 107 is finally implemented, will VA retroactively repay the difference to them?

    a. If the answer is no: Please provide a detailed legal justification for VA's decision to ignore the August 1, 2018 effective date for Section 107 as dictated by the Forever GI Bill.
    b. If the answer is yes: Please provide the most precise timeline available for when VA will process these retroactive payments and a detailed description of any steps VA will be taking between now and then to ensure that the retroactive payments are processed in a timely manner.

Thank you for your prompt attention to this important matter.

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[2] *Hearing: "A Continued Review of GI Bill Payment Delays"*, Subcommittee on Economic Opportunity, House Committee on Veterans' Affairs, November 15, 2018

[3] News Release: VA Benefits Chief: "Every Single Veteran Will Be Made Whole", VA Office of Public and Intergovernmental Affairs, November 29, 2018 (https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5153)

Sincerely,

Mark Takano
Vice Ranking Member
House Committee on Veterans' Affairs

Tim Walz
Ranking Member
House Committee on Veterans' Affairs

Julia Brownley
Ranking Member
Subcommittee on Health

J. Luis Correa
Member of Congress

Elizabeth Esty
Ranking Member
Subcommittee on DAMA

Ann McLane Kuster
Ranking Member
Subcommittee on Oversight and Investigations

Conor Lamb
Ranking Member
Subcommittee on Technology Modernization

Beto O'Rourke
Ranking Member
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Scott H. Peters
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Kathleen M. Rice
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Lisa Blunt Rochester
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Suzanne Bonamici
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