

March 15, 2022

U.S. Representative Mark Takano, Chair  
House Veterans' Affairs Committee  
364 Cannon House Office Building  
Washington, DC 20515

U.S. Representative Mike Bost, Ranking Member  
House Veterans Affairs' Committee  
364 Cannon House Office Building  
Washington, DC 20515

U.S. Representative Mike Levin, Chair  
Subcommittee on Economic Opportunity  
House Veterans' Affairs Committee  
364 Cannon House Office Building  
Washington DC 20515

U.S. Representative Barry Moore, Ranking Member  
Subcommittee on Economic Opportunity  
House Veterans Affairs' Committee  
364 Cannon House Office Building  
Washington DC 20515

Dear Chair Takano, Ranking Member Bost, Chair Levin, and Ranking Member Moore:

On behalf of the associations below, representing two- and four-year public and private colleges and universities, thank you for holding a legislative hearing to examine proposals designed to strengthen veterans' education benefits and to improve the program approval process. We write to share our concerns regarding the Department of Veterans Affairs' (VA) recent 85-15 policy reset and specifically, changes in the requirements for a 35 percent exemption. We would appreciate the Committee's assistance in clarifying congressional intent regarding the 85-15 rule and the 35 percent exemption, as well as minimizing any unintended consequences for veterans that may result from this policy reset.

Under the 85-15 rule, when the number of students receiving VA assistance makes up less than 35 percent of the total campus population, institutions are eligible for the 35 percent exemption, which makes them exempt from computing and reporting 85-15 ratios to the VA. Most of our institutions have student veteran populations that are less, and sometimes significantly less, than 35 percent of the total student populations.

As part of the 85-15 reset, in October 2020 and again in October 2021, VA rescinded all 35 percent exemptions currently in effect and required institutions to reapply for the exemption. However, as part the new application, VA now requires campuses to provide 85-15 ratios for every program at the institution and to resubmit these calculations every two years. We have heard from many campuses and senior veterans' program administrators who are confused by the VA's new requirements, which appear directly at odds with both the regulations and legislative intent.

Section 21.4201 of Title 38 of the Code of Federal Regulations states that institutions that satisfy the 35 percent exemption are "in general" exempt from computing and reporting 85-15 program ratios to the VA. To this general rule, the regulations provide one exception: when the VA has "reason to believe" that the enrollment of veterans exceeds 85 percent of the total student enrollment "in a specific course." While the regulation specifies that an institution applying for the exemption must provide information necessary to demonstrate that veteran beneficiaries make up less than 35 percent of the total campus population, the regulation is silent as to any other application requirements.

When passing the GI Bill Improvement Act of 1977, Congress specifically considered, and rejected, prior VA attempts to require institutions with a 35 percent exemption to submit 85-15 ratios on a program-by-program basis:

"The Committee, however, believes that, ***in educational institutions where 35 percent or less of the total enrollment are veterans in receipt of educational assistance allowance under title 38, the imposition of the requirement of computation on a course-by-course basis can result in burdensome and costly recordkeeping requirements with little tangible demonstration that accountability has been assured or abuse has been curbed.*** The Committee has thus acted to codify in law this current regulatory waiver, thus eliminating the Veterans' Administration discretion in this regard. . . . The Committee points out, however, an important distinction between the current [VA policy] and the amendment being made by the Committee bill. Under the bill, there is no need for an educational institution to certify that no course has an enrollment of greater than 85 percent veterans. As a result of the current [VA] regulatory requirement, ***many educational institutions find themselves in a "Catch 22" position,*** where, as a result of having fewer than 35 percent enrollment of veterans, such institutions are supposedly exempt from the obligation of making course-by-course computations. At the same time, however, these institutions are required to certify that no course-for which they have been waived from making a computation, had an enrollment of greater than 85 percent veterans. The Committee bill does not require such institutions to certify that no course has greater than 85 percent enrollment of veterans. ***Rather, if an institution is waived from having to make the computations as a result of having an enrollment of veterans totaling 35 percent or less of total enrollment, then such institution will not be required to make such computations,*** unless the Administrator has reason to believe that a specific course has greater than 85 percent enrollment of assisted veterans."

123 Cong. Rec. 23254 (1977) (emphasis added).

As the Senate Report language makes clear, to require institutions to submit course-by-course 85-15 computations in order to receive a waiver from course-by-course computations would be nonsensical, placing institutions in a Catch-22. Consistent with the regulations, the report language notes that the only time institutions may be required to submit 85-15 computations is when the VA has "reason to believe" that a "specific course" has greater than 85 percent enrollment of assisted veterans.

In conversations with VA officials regarding their interpretation, VA has indicated that because they do not know whether a program has greater than 85 percent enrollment of assisted veterans, they are permitted to require this computation across all programs and across all institutions to provide a "baseline." However, this is contrary to both the legislative intent and the regulations which set out both the general rule (that computations may not be required) and an exception to that rule (for only those cases where VA has an affirmative "reason to believe"—a higher standard than the absence of information one way or another).

Based on the legislative history and the plain language of the statute and regulations, we believe that the VA has exceeded its statutory authority by requiring institutions that qualify for the 35

percent exemption to submit these ratios. Should the Committee reach a different conclusion, we wish to call to your attention several other challenges resulting from VA's 85-15 reset.

First, VA policy requires institutions to perform 85-15 computations at the major, minor and concentration level. At many traditional colleges and universities, this results in hundreds of separate programs, many with only a single student or a handful of students. As a result of this small "n" size, programs may fail 85-15 based on a single student. For example, a program may become ineligible for benefits because a non-veteran student has failed to pay off the balance on a payment plan from the prior semester. Although VA makes an exception for a program that enrolls a single veteran, that same program could not enroll a second veteran and remain eligible for benefits. A number of institutions inform us that they anticipate that dozens of their programs will fail 85-15 due the enrollment of a single supported student under VA's new definition of a supported student. Other institutions tell us they have PhD programs with two or three students that are now precluded from enrolling veterans going forward. For institutions with a low percentage of veterans on campus, the reset means that campuses are spending multiple days performing computations for hundreds of programs, most of which do not have a single veteran enrolled.<sup>1</sup>

Second, as part of the reset, the VA has created new rules regarding students on payment plans. Under VA's policy, a student on a payment plan must be counted as "supported" if (1) the student has a balance that has not been paid in full by the end of the term or (2) the institution allows the student to reenroll in the subsequent term despite having a balance. While in most cases, students do pay off their balance in full, there are situations where a student may be unable to make the last payment in their plan, for example, due to a sick family member or a job loss. In these cases, many institutions will allow a student to enroll for the next term despite carrying a small balance to help the student successfully continue on their academic path. Unfortunately, VA's policy forces institutions to choose between allowing a student to continue with their studies and maintaining program eligibility for future veterans.<sup>2</sup>

Finally, there is significant confusion regarding VA's rules about when the receipt of institutional aid makes a student "supported" and when institutional aid is considered equally available to veteran and non-veteran students. Institutions have received conflicting information from various VA officials about these requirements and the VA's "85/15 Frequently Asked Questions" document raises additional questions. Without greater clarity about these requirements, institutions that generously provide institutional aid to both veteran and non-veteran students risk being unable to enroll veterans in the program of their choosing.

We understand that this week, VA plans to announce that it will be extending the deadline for applying for the 35 percent exemption until July 1. Over the next several months, VA will be reviewing its guidance for consistency and providing additional clarifications and training materials. Also, VA will work to improve the functionality of their current PDF application form to make it less cumbersome and will permit institutions to submit 85-15 ratios using an institutionally generated excel spreadsheet. While we appreciate the VA's efforts to address some of our concerns, we continue to believe that the reset exceeds VA's statutory authority.

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<sup>1</sup> In one example, an IHE with an enrollment of just over 10,000 students has a veteran population of under two percent, which required calculations for nearly 400 separate programs.

<sup>2</sup> We note that VA's policy stance is contrary to discussions in the higher education community to encourage institutions to allow students to remain enrolled even if they have a small balance due.

Colleges and universities take their compliance obligations under the law seriously, and they strongly support all appropriate efforts to protect both veterans and taxpayer dollars against waste, fraud and abuse. We urge the Committee to carefully examine VA's policies to protect against any unintended consequences and to ensure that VA's reset is consistent with congressional intent. We would be happy to work with you and your staff to develop legislative proposals to help address these concerns.

Thank you for your consideration of our request and for your commitment to our nation's veterans.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell". The signature is written in a cursive, slightly slanted style.

Ted Mitchell  
President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
Council of Graduate Schools  
National Association of College and University Business Officers  
National Association of Independent Colleges and Universities  
National Association of Student Financial Aid Administrators  
National Association of Veterans' Program Administrators  
State Higher Education Executive Officers Association