



December 12, 2022

Cheryl Amita  
Chief of Policy & Regulations  
Education Service  
Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20420

RE: RIN 2900-AR56(P)

Dear Ms. Amita,

On behalf of the associations below, representing two-year and four-year, public and private, non-profit colleges and universities, I write in response to the Department of Veterans Affairs (VA) notice of proposed rulemaking, Amendments to 85/15 Rule Calculations, Waiver Criteria, and Reports, RIN 2900-AR56(P) (“NPRM” or “proposed rule”). We appreciate the opportunity to submit comments on behalf of the higher education community in response to VA’s proposed rule.

In August of this year, Public Law 117-174, the Ensuring the Best Schools for Veterans Act was passed by Congress and signed into law. This law clarifies Congress’ legislative intent regarding the statutory requirements of the 35 percent exemption to the 85/15 rule. As the law makes clear, an institution that (1) has a veteran population that is less than 35 percent of its total student enrollment and (2) has a majority of its programs approved under section 3672 or 3675 of Chapter 38, is statutorily exempt from all 85/15 requirements including reporting, computing, monitoring, and complying with 85/15 ratios. As a point of reference, virtually all public and non-profit colleges and universities qualify for this exemption: they have veteran populations below 35 percent—typically well below that threshold and often in the single digits—and the majority of their programs are typically approved under section 3672 or 3675.

Unfortunately, the NPRM fails to include, in either its preamble or proposed regulatory text, any reference to the 35 percent exemption. Given Congress’ recent passage of this law, we do not believe that VA intends for its proposed rule to apply to institutions with a 35 percent exemption. However, without further clarity on this point, officials at traditional colleges and universities may mistakenly believe the proposed rule applies to their institution when, in fact, it does not.

Under the VA’s proposed rule, the term “supported student” would be redefined for purposes of the 85/15 rule to include any student who receives any institutional financial aid. Because many non-profit and public institutions generously provide institutional aid to their students, the proposed definition would be extremely problematic if it were applied to these institutions.

Thankfully, however, for colleges and universities with a 35 percent exemption, the new supported student definition would not apply and therefore, would have no impact.

Given the potential for confusion, we respectfully ask that the final rule clarifies that its requirements, including the new definition of a “supported student,” do not apply to institutions that qualify for the 35 percent exemption. Highlighting and reiterating the 35 percent exemption’s requirements in preamble and regulatory text of VA’s final rule would provide important clarity for school certifying officials, as well as Education Liaison Representatives, about the requirements of the law. We strongly encourage the VA to make this modification to the proposed rule before it becomes final.

In making this change, VA could consider adding language to 38 CFR section 21.4201 similar to the following:

“(i) *35 percent exemption.* An institution of higher learning that meets the requirements for the 35 percent exemption, as provided under 3680A(d)(4) of title 38, is exempt from reporting, monitoring, computing or complying with 85/15 ratios and is exempt from the requirements of this section [section 21.4201].”

We thank you for considering our comments. We look forward to working with you to help support student veterans in their efforts to obtain a high-quality, college degree and helping to protect veterans and the important benefits they have earned through their service.

Sincerely,



Ted Mitchell

On behalf of:

American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Council on Education  
Association of American Universities  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
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