

## **Executive Order on Principles of Excellence for Military Tuition Assistance and Veterans Education Benefits Programs**

On April 27 President Obama issued an Executive Order (“EO”) that directs the U.S. Departments of Defense (“DoD”), Veterans Affairs (“VA”), and Education (“ED”) to establish “Principles of Excellence to strengthen oversight, enforcement, and accountability” with respect to the Post-9/11 Veterans Educational Assistance Act of 2008, as amended (“Post-9/11 GI Bill”) and DoD’s military tuition assistance program. 77 Fed. Reg. 25861 (May 2, 2012). The EO requires the Principles to apply to all education institutions—whether non-profit, public, or for-profit—that receive funding from military tuition assistance and veterans education benefits programs. The EO grows out of recent congressional hearings and media attention related to alleged aggressive marketing to and recruitment of service members and veterans. It also aligns with the government’s increased focus on consumer protection matters pertinent to service members and veterans, such as through the Office of Service members Affairs at the Consumer Financial Protection Bureau (“CFPB”). Although certain requirements in the EO relate to existing legal requirements, many will result in new substantive and, in particular, new consumer disclosure obligations, and overall the EO creates another regulatory framework with which institutions must comply. This memorandum describes the Principles and the EO’s directives with respect to implementation steps and enforcement mechanisms.

### **I. The Principles**

The EO directs that, “to the extent permitted by law,” the Principles “should” require institutions that receive funding from military tuition assistance and veterans education benefits programs to comply with a range of consumer disclosure and other requirements. Those requirements generally are as follows:

- (1) Prior to enrollment, provide prospective students who are eligible to receive military tuition assistance and veterans education benefits a personalized standard form (to be developed by ED in consultation with DoD and VA) that discloses total cost of the student’s education program, including tuition and fees; the extent to which federal education benefits will cover that cost; type and amount of financial aid for which the student may qualify; the student’s estimated student loan debt upon graduation; student outcomes; and other information to facilitate comparison of different institutions’ financial aid packages.
- (2) Inform students who are eligible to receive military tuition assistance and veterans education benefits of the availability of federal student financial aid under Title IV of the Higher Education Act (“Title IV”) and have in place policies to alert those students of their potential Title IV eligibility before the institution packages or arranges private student loans or alternative financing.
- (3) End “fraudulent and unduly aggressive” recruiting techniques on and off military installations, misrepresentation, payment of incentive compensation, and failure to meet state authorization requirements, consistent with ED regulations.
- (4) Obtain accreditor approval for new courses or programs before enrolling students in such courses or programs, provided that such approval is appropriate under the accreditor’s substantive change requirements.

---

*This memorandum was prepared by the Washington, DC law firm Hogan Lovells US LLP (May 2012).*

- (5) Allow service members and reservists to be readmitted to a program if they are temporarily unable to attend class or must suspend studies due to service requirements, and take additional steps to accommodate short absences due to service obligations, provided the student is making satisfactory academic progress prior to such suspension.
- (6) Agree to an institutional refund policy that is aligned with ED's Return of Title IV Funds rules.
- (7) Provide education plans to students who use military tuition assistance and veterans education benefits, where such plans detail how those students will fulfill program requirements and the expected timeline of completion.
- (8) Designate a point of contact for academic and financial advising, including disability counseling, to assist service member and veteran students and their families with successful completion of their studies and with their job searches.

## **II. Implementation**

The EO directs DoD, VA, and ED to take certain actions to implement the Principles. Because the EO qualifies some implementation steps as subject to legal permissibility, the mechanisms through which the agencies will impose the Principles on institutions remain to some extent unclear. The implementation steps generally are as follows:

- (1) DoD and VA must reflect the Principles in new agreements with institutions, "to the extent practicable and permitted by law," in connection with the Post-9/11 GI Bill's Yellow Ribbon Program and the military tuition assistance program. VA must notify all institutions that participate in the Post-9/11 GI Bill program that they are "strongly encouraged" to comply with the Principles, and VA must post on its website those institutions that do comply.
- (2) DoD, VA, and ED, in consultation with CFPB and the U.S. Department of Justice ("DOJ"), must take "immediate action" to implement the EO. By 90 days after the date of the EO—or July 26, assuming calendar days—those agencies must report to the President their progress, including, to the extent permitted by law, revisions to regulations, DoD instructions, guidance documents, memoranda of understanding ("MOU"), and other policies related to the Post-9/11 GI Bill and tuition assistance programs. The EO may affect timing and content of the DoD MOU that institutions will be required to sign in order to participate in the military tuition assistance program. Information about the DoD MOU is at <http://www.dodmou.com/>.
- (3) DoD, VA, and ED must develop a "comprehensive strategy for developing service member and veteran student outcomes measures that are comparable, to the maximum extent practicable" across military tuition assistance and veterans education benefits programs. The EO states that, to the extent practicable, the measures should rely on existing administrative data to minimize institutional burden. In addition, ED, in consultation with DoD and VA, must collect, as part of the Integrated Postsecondary Education Data System and other data collection systems, information on the amount of funding an institution received pursuant to the Post-9/11 GI Bill and the military tuition assistance programs, and ED must make such information available on its College Navigator website.
- (4) VA, in consultation with DoD and ED, must provide prospective military and veteran students, before they use their benefits, streamlined tools to compare institutions with respect to "key measures of affordability and value." VA must provide the tools through VA's eBenefits portal, and DoD and VA must provide such information through education counseling.

### **III. Enforcement and compliance mechanisms**

The EO instructs DoD and VA, in consultation with ED, CFPB, and DOJ, to submit to the President within 90 days after the date of the EO a plan to strengthen enforcement and compliance mechanisms with respect to the Principles. The plan must include proposals generally related to the following:

- (1) Centralized complaint system for students who receive military tuition assistance and veterans education benefits through which relevant federal agencies can track and address complaints;
- (2) uniform procedures (a) to receive and process complaints across State Approving Agencies that work with VA to review institutions that participate in veterans education benefits programs and (b) to share such complaints with appropriate state officials, accreditors, and ED;
- (3) uniform procedures to refer matters to DOJ and other relevant agencies for civil or criminal enforcement;
- (4) procedures for targeted risk-based program reviews of institutions to ensure compliance with the Principles;
- (5) uniform rules and procedures for access to military installations by education institutions; and
- (6) steps to ensure that websites and programs are not deceptively and fraudulently marketing education services and benefits to program beneficiaries, including initiation of a process to protect the term “GI Bill” and other military or veterans-related terms as trademarks.