

September 22, 2021

U.S. Senator Jon Tester  
Chairman  
Senate Committee on Veterans' Affairs  
SR-412 Russell Senate Office Building  
Washington, DC 20510

U.S. Senator Jerry Moran  
Ranking Member  
Senate Committee on Veterans' Affairs  
SR-412 Russell Senate Office Building  
Washington, DC 20510

U.S. Representative Mark Takano  
Chairman  
House Committee on Veterans' Affairs  
B-234 Longworth House Office Building  
Washington, DC 20515

U.S. Representative Mike Bost  
Ranking Member  
House Committee on Veterans' Affairs  
B-234 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Tester, Chairman Takano, Ranking Member Moran, and Ranking Member Bost:

On behalf of the associations listed below, representing two- and four-year, public and private colleges and universities, I write to you regarding Public Law 116-315, the Johny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 ("Isakson Roe Act") and Public Law 117-16, the Training in High-demand Roles to Improve Veteran Employment Act (THRIVE Act). While we support the goals of these important pieces of legislation, we are concerned that in several instances, they create unintended consequences for veterans and the colleges and universities that serve them. To address these concerns, we respectfully ask you and your committees to craft a package of technical corrections to address these concerns and work to move this legislation quickly through to passage.

We have previously shared these concerns with your committee staff, including in July in advance of a House Veterans Affairs Committee oversight hearing on implementation of the law. Now that these provisions have taken effect August 1, we write again to urge you to quickly move forward on technical amendments that will address these concerns while maintaining the safeguards for veterans and taxpayer investment that Congress intended in the underlying legislation. We would be happy to discuss any of these issues in further detail with you or your staff.

### **Section 1018 – Consumer Information Requirements**

We appreciate the efforts of the Department of Veterans Affairs (VA) to provide guidance to colleges regarding section 1018's consumer information requirements. In mid-July, VA helpfully announced a process for institutions to apply for a one-year waiver from these requirements. By the end of August, more than 2,700 colleges and universities had applied for this waiver – an indication, of some of the implementation

challenges facing colleges under this section.<sup>1</sup> At this time, many of these institutions are still waiting to learn if their waiver has been granted.

We strongly support ensuring that student veterans have the information they need to make informed decisions about how best to use their GI Bill benefits, but we believe that the bill's requirement to provide estimates of costs and aid for the duration of the student's program, while well-intentioned, is likely to result in information that is highly inaccurate, confusing, and misleading to veterans. Understanding that getting notifications of cost and aid eligibility on an annual basis is not ideal, the Title IV student aid system is only designed to make annual awards. Even for students who submit a FAFSA, the institution can only guess at costs and aid beyond the first year – by, for example, fixed percentage for each year or simply multiplying the first year's costs and aid times the number of years needed to complete the program.

Personalized “estimates” of non-VA federal aid and the total amount of borrowing over the course of a degree program are dependent on many variables that could change significantly from year to year and would be difficult to estimate with any accuracy prior to enrollment, particularly before a student veteran has submitted a FAFSA for a particular year. In addition, it is unclear how institutions would know an accurate amount of veteran education benefits available to offset the cost of the program until the student indicates that they intend to use these benefits and the VA confirms the student's eligibility.

We also are concerned by the requirement in section (f)(1)(C) for institutions to have policies to inform students of federal aid eligibility prior to packaging loans.<sup>2</sup> As written, institutions could be forced to delay making complete financial aid offers to students because federal loans are typically awarded at the same time as federal grants.

Under section 1018, students could potentially receive three separate notifications of their student aid eligibility, each containing different information: (1) a financial aid offer listing only federal, state, and institutional grants; (2) a subsequent financial aid offer adding loans to the grants offer; and (3) the new form proposed in (f)(1)(A) estimating the student's aid for the duration of their course. This will undoubtedly add to, not detract from, students' confusion about their financial aid eligibility. This will be in addition to other consumer information that colleges and universities already provide to all their students, and which typically reflects annual costs and aid, as opposed to total program cost.

We are also concerned by the requirement in section (f)(1)(B) that the institution provide an updated form within 15 days of the determination of tuition rates and fees. This is an unrealistic timeframe for providing updated forms to all students, particularly

---

<sup>1</sup> While section 1018 reflects an effort to “codify” the “Principles of Excellence” executive order, moving executive order language into statute has removed important administrative flexibilities afforded to colleges by VA and the Department of Education in meeting these requirements.

<sup>2</sup> We assume that the term “federal aid eligibility” is referring to federal grant aid available under Title IV, although that is not clear, since the term typically encompasses both federal loans and federal grants at the Department of Education.

given that most institutions will not have automated systems in place to collect and generate the form required under section 1018, given the departure from the way information on educational costs and Title IV aid are typically collected by institutions and provided to students.

All Principles of Excellence schools are required to use the Department of Education's (ED) College Financing Plan (CFP), a template that has been in use for nearly a decade. The CFP was developed with stakeholder input, and has been consumer-tested to ensure that the financial aid information it provides is helpful to and easily understood by students. Adding a new, untested, and non-standardized form will undermine the progress the CFP has made toward making financial aid offers easier for students to compare between schools.

The CFP is already advancing the goal of providing student veterans with clear information on costs and aid, just as the new requirements in Section 1018 aim to do. Although the CFP provides cost/aid information on an annual basis, rather than for the full duration of a program, we believe this form already provides student veterans with the most reliable information possible given that actual costs and aid eligibility are determined year by year

As currently written, the requirements included in Section 1018, while well-intentioned, will force institutions to provide student veterans with unreliable estimates of future costs and aid eligibility that cannot be accurately predicted years in advance, under the guise of good consumer information.

Given the concerns with section 1018 requirements and the uncertainty around if and when waivers may be granted, we urge Congress to provide relief for colleges and universities through limited technical corrections to the statute.

We strongly encourage Congress to amend the statute to permit institutions to provide ED's College Financing Plan as an alternative means of satisfying the information requirements of section 1018. We also respectfully ask that Congress delay of the effective date of this provision, to allow the VA more time for implementation.

In addition, we understand many foreign colleges and universities will soon be forced to stop participating in VA programs because of the requirements of Section 1018 as well as a new DVA interpretation that requires foreign institutions to open all their student records for inspection by VA staff in violation of national privacy laws. We also encourage you to act quickly to address these concerns so that veterans can continue to have the opportunity to study abroad.

### **Section 1018 – Incentive Compensation**

Prior to the passage of Isakson Roe, 38 U.S.C. section 3696(d)(1) prohibited institutions from the payment of incentive compensation as a condition of GI bill eligibility. Section

3696(d)(2) further clarified that the ban on incentive compensation was to be carried out “in a manner consistent with the Secretary of Education’s enforcement of section 487(a)(20) of the Higher Education Act of 1965.”<sup>3</sup> However, when Isakson-Roe was enacted in January, section 3696(d) was replaced with section 3696(c), removing this important cross reference to HEA in the process.

In June 2021, enactment of the THRIVE Act added a second prohibition on the payment of incentive compensation – this time, to be enforced by the state approving agencies – to section 3679(f)(2). Unfortunately, this new provision similarly lacks any requirement that it be interpreted consistently with ED’s interpretation of the HEA provision.

In addition, both incentive compensation provisions fail to mirror the statutory language of the HEA incentive compensation ban. Specifically, these provisions truncate the HEA’s provision, and in the process, remove language explicitly stating that the ban “shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.”<sup>4</sup> Based on basic statutory construction rules, this omission, coupled with the failure to require an interpretation “consistent with” the HEA’s provision, could suggest that Congress intended to prohibit the use of incentive compensation to recruit foreign students – even though that practice is clearly permitted under the HEA. In fact, we understand that on Sept. 15, the VA issued internal policy guidance that appears to confirm this interpretation, which has brought a new urgency to the need for technical corrections.

The HEA’s incentive compensation ban has been in statute for decades and has been the subject of regulatory interpretations by the Department of Education agency that provides detailed guidance to institutions regarding when certain complex contracting and recruiting arrangements are permissible and when they are not. The VA statutory provisions lack this body of regulatory and subregulatory guidance. It seems unwise to ask both the VA and state approving agencies to become experts on the nuances of these longstanding restrictions or to create some new regulatory or subregulatory construct.

We strongly encourage the Committee to make the following technical changes to both 3679(f)(2) and 3696(c): (1) insert the HEA statutory language regarding foreign students so the incentive compensation statutory language is parallel and (2) require that these provisions be interpreted consistent with the Department of Education’s regulations and guidance under section 487(a)(20) of the HEA (20 USC 1094(20)).

## **Section 1010 – Dual Certification**

---

<sup>3</sup> Section 487(a)(20) of the Higher Education Act contains an express exemption to the incentive compensation ban for HEA purposes, providing that the ban “shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.” Based on these statutory provisions, the VA had concluded that an institution was not prohibited from using incentive compensation to recruit foreign students, to the extent it is permissible under the HEA.

<sup>4</sup> It is worth noting that a third incentive compensation provision (section 3676(f)) is completely parallel to the HEA’s incentive compensation ban, and includes the same exception for recruitment of foreign students as the HEA.

Section 1010 of the Isakson Roe Act requires the VA to develop policies for institutions to submit verification of enrollment of students receiving Post-9/11 GI Bill benefits at two specified times, as determined by the Secretary. The VA has recently issued guidance making clear that while the statute required institutions to certify at two separate times, it does not require institutions to use the “dual certification” process, currently encouraged but not required by the VA. Under “dual certification” an institution first certifies enrollment with tuition and fees reported as “\$0.00 dollars,” in order to start the student’s housing payments, and then goes back and amends the certification with the correct tuition and fees amount *after* the add-drop period ends, when course schedules (and accompanying tuition charges) are unlikely to change. Many of our colleges and universities already use the dual certification and find it a helpful tool to limit the number of tuition and fees overpayments and the number of overpayments that must be remitted to VA.

At the same time, institutions with flat tuition and fees structures, which includes large public university systems, have declined to use dual certification for several reasons including that it would:

- (1) make additional work for school certifying officials, taking time away from providing other services and supports to student veterans;
- (2) not result in a decrease in overpayments, since tuition and fee charges are unlikely to change after add drop at these schools; and
- (3) delay the disbursement of additional institutional and state grant monies to veterans until later in the term.

We are grateful for VA’s clarification and believe it addresses the third concern. However, we encourage Congress to include a technical correction to provide additional relief for institutions with flat tuition and fee structures.

Given that section 1019 of the Isakson Roe Act makes institutions responsible for paying back to the VA any debts incurred by a veteran as a result of changes in class schedules or program, it is unclear what benefit is gained by imposing this “certify twice” mandate across all institutions. For these reasons, we recommend this part of section 1010 be stricken. Alternatively, at a minimum, we recommend you create an exception to this requirement, or permit VA to waive this requirement for institutions with flat tuition and fee structures.

### **Section 1015 – Requiring HEA Title IV Participation as a Condition of Eligibility**

Section 1015 of the Isakson Roe Act requires that an institution must be approved and participating in a student financial aid program under Title IV of the Higher Education Act in order to participate in the GI Bill program. Although most institutions of higher education can easily meet this new requirement, there are a handful of schools that are eligible to participate in Title IV but have chosen not to do so.

These institutions are accredited by agencies or associations recognized by the Secretary of Education as reliable authorities on the quality of the education or training programs offered by an institution. They are interested in continuing to offer quality programs serving the needs of their student veterans. In view of the limited number of situations in which this provision would apply, we would ask the committee to consider a technical correction that would permit these institutions to apply to the Secretary of VA for a permanent waiver of this requirement, provided they are, and remain, accredited by a U.S. Department of Education-recognized accreditor.

## **Conclusion**

Thank you for your continued work on behalf our nation's veterans. We look forward to working with you to address these issues and to ensure that veterans can continue to use their GI Bill benefits to pursue a high-quality degree at our colleges and universities.

Sincerely,



Ted Mitchell  
President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers  
American Association of Community Colleges  
American Council on Education  
American Indian Higher Education Consortium  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
Council for Christian Colleges & Universities  
Council of Graduate Schools  
International Education Council  
NAFSA: Association of International Educators  
NASPA - Student Affairs Administrators in Higher Education  
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