



STATEMENT OF ANNE H. MEEHAN
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BEFORE THE

UNITED STATES HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

FOR THE OVERSIGHT HEARING

“LESS IS MORE: THE IMPACT OF BUREAUCRATIC RED TAPE ON
VETERANS EDUCATION BENEFITS”

SEPTEMBER 20, 2023

Chairman Van Orden, Ranking Member Levin, and Members of the Subcommittee:

Thank you for inviting me to speak at this hearing on ways to remove bureaucratic red tape and streamline the administration of veterans education programs. My name is Anne Meehan, Assistant Vice President of Government Relations at the American Council on Education (ACE). ACE represents approximately 1,700 public and private colleges and universities and related higher education associations.

I would like to highlight for the Subcommittee some of the issues that have arisen with the Department of Veterans Affairs' (VA) recent implementation of a “risk-based survey” compliance tool.

Colleges and universities recognize the important role that Congress and the VA play in the oversight of veterans education benefits. Congress has made a significant investment in these programs, and it is critical that appropriate safeguards are in place to protect against waste, fraud and abuse – both to protect taxpayer dollars and to ensure veterans are receiving a high quality education. At the same time, in our effort to root out problems and identify bad actors, we must be mindful that we do not inadvertently create unnecessary compliance burdens on colleges and universities that are serving veterans well.

We commend the VA for its efforts to develop and implement a risk-based survey model, as required under the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* (“Isakson Roe”). We recognize VA’s commitment to

ensuring oversight of all institutions approved to receive veterans education benefits. At the same time, we believe VA's tool, both in design and practice, reflects a misunderstanding of how a risk-based, or risk-informed, compliance tool is intended to work. Further, while we recognize that portions of the statute could be clearer, we believe that VA's model is inconsistent with the statutory requirements and Congressional intent.

To be clear, the higher education community is not opposed to the concept of risk-based models.¹ To the contrary, we believe that risk-based surveys, when done right, can be a valuable and efficient oversight tool. The goal of a risk-based survey model is to identify a limited number of institutions exhibiting certain "red flags" on readily available public metrics. Based on these flags, the institution is then subject to further scrutiny to determine if there is a risk to students or taxpayer funds and to allow the regulator to take further action as needed. A risk-based model is a way to target finite oversight resources to address the areas of greatest concern.

ACE has heard from a number of institutions who have been subject to VA's risk-based survey over the past year. In general, concerns have fallen into three areas: (1) concerns related to the triggers VA uses to select institutions for a risk-based survey; (2) concerns about the information required once selected for a risk-based review; and (3) specific concerns about the "financial soundness review" required as part of a risk-based survey.

1. Concerns related to the triggers used to select an institution for a risk-based review.

Over the past year, VA has selected more than 1,200 institutions of higher learning -- including more than 600 public and private, degree-granting college and universities -- for a risk-based review. The large number of institutions selected suggests that VA's model is not sufficiently focused on the institutions of greatest concern. We have heard that some State Approving Agencies (SAAs) have been required to conduct risk-based surveys at hundreds of institutions. This raises questions about whether, despite their best efforts, SAAs will be spread too thin, and unable to focus on institutions that pose the greatest risks.

Many campuses report they are unaware of the reason why they were selected for a risk-based review, and we would urge the VA to be more transparent about these triggers. In cases where institutions know what has triggered the review, the purported reason often appears insufficient to suggest a heightened risk of non-compliance.

For example, some campuses were selected on the basis of having a program fail the 85/15 rule during a period when VA had drastically changed its policies around compliance and before Congress overrode these policies through legislation. In one case, the 85/15 "failure"

¹ A risk-informed approach to regulation and oversight is not a new idea in higher education circles. In fact, as part of a 2015 bipartisan task force on regulation, ACE commissioned a white paper examining a risk-informed approach to reduce regulatory burden while maintaining adequate safeguards for federal dollars. See Appendix III of the task force's report at <https://www.acenet.edu/Documents/Higher-Education-Regulations-Task-Force-Report.pdf>.

occurred in a program without a single veteran at an institution that qualified for the 35 percent exemption and had a total veteran population below 5 percent.

Some campuses were selected based on a single complaint on matters unrelated to the quality of the education program. In one case, the complaint was decades old and had never been verified. In another case, the complaint was from a non-student.

Some campuses were selected due to nothing more than a standard tuition increase. Some were selected because of a slight increase in the total number of veterans in a program – which was common in 2021 as we emerged from the pandemic and a positive sign, not a sign of risk.²

We are unaware of any cases where the risk-based survey was triggered by one of the events listed in section 3673(e), even though we believe those situations are ones that should trigger a risk-based survey.

2. Concerns about the information required once selected for a review.

Campuses also have expressed concerns regarding the large amount of information they must provide to their SAA – typically within 10 days or less. One large university was required to produce “tens of thousands of documents” in response to the survey. Coordinating this response is a massive undertaking requiring assistance from campus officials across multiple offices. While most offices are happy to help, many may not understand the immediacy or importance of the response and it is difficult to ask them to drop everything when they are busy assisting students and engaged in other essential tasks. When one campus raised concerns about their ability to gather the necessary documents in time to meet a two-week deadline, the SAA noted that they were only required to give the school two days’ notice.

To some, the risk-based review appears to be “a large fishing expedition” resulting in a massive information dump that would be impossible for the SAA to review in any meaningful way.

Among the requirements, campuses must provide:

- complaints received over a three-year window on virtually any topic (e.g., complaints about the dining hall or complaints to information technology that a server was down);

² Some of the reasons given sound similar to items listed in section 3673A, which defines the “scope” of the risk-based surveys. While parts of this section could be clarified, it is clear that the items listed were not intended as a second list of mandatory triggers. Rather, these appear to be items that considered together or in conjunction with other information might form the basis for the SAA to conclude, in its discretion, that a risk-based survey is warranted at a particular institution. Further clarification to distinguish the specific purposes and goals of sections 3673(e) and section 3673A may be instructive.

- all advertising for the prior 24 months including digital, print and video aids, student handouts and brochures, a list of entities paid for advertising or marketing, and websites created or used by third party contractors for purposes of advertising, marketing or recruiting; and
- detailed student information for selected students including admissions documents, test scores, attendance records, student transcripts, and student financial records.

In addition, institutions must permit the SAA to monitor a class in order to “determine the educational quality of the instruction.” As one campus put it:

“This is another item which, while well-intentioned, severely misses the mark when put into practice at a major research institution. It is insulting to both the faculty and the [SAA] to put them in a position to determine the suitability of the instruction.”

This level of intrusion into institutional academic and curricula matters is highly inappropriate, which is why federal statute specifically prohibits the U.S. Department of Education (ED) from engaging in this type of interference.

3. Concerns about VA’s “financial soundness review.”

Campuses also raised concerns about the information required under the “financial soundness review.” The balance sheet and income statement categories requested on this form oversimplify financial information on audited financial statements. It also fails to comport with definitions in U.S. GAAP promulgated by the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) used for nonprofit and public higher education institutions, respectively. The requested financial information appears to confuse what business entities, such as for-profit institutions, report in their audited financial statement as compared to what nonprofit and public institutions are required to report. In short, the financial information requested appears to parallel for-profit financial reporting but does not work for nonprofit and public institutions. We question the need for public institutions to complete this survey, given that they are backed by the full faith and credit of their respective states, and they do not receive a financial composite score from ED.

By requiring institutions to provide additional financial information from audited statements directly to the VA, the financial soundness review runs contrary to the intention behind the Single Audit Act. Nonprofit and public institutions are subject to the Act, and annual federal audits are conducted using a regularly updated Office of Management and Budget (OMB) Compliance Supplement, with related audited financial statements submitted through the clearinghouse to OMB. Such financial statements are available upon request. Duplicating audited information already submitted to the federal government creates an additional and unnecessary burden for nonprofits and public institutions.

If the current risk-based survey remains in place, VA runs the risk that some colleges and universities will begin to question their continued participation in VA's education programs, particularly at institutions where veterans make up a small percentage of the student population. We hope that Congress will encourage the VA to narrow its risk-based survey to focus on institutions that pose a serious risk of non-compliance, while shielding other institutions from an unnecessary compliance burden. We stand ready to work with the Subcommittee and with the VA to help VA improve its current risk-based survey protocol.

Other Issues:

In addition to our concerns around risk-based surveys, I would like to mention three other issues for the Subcommittee's consideration:

1. A dedicated webpage for all VA's Education Service policies, guidance, and training:

We have long recommended that VA create a website that provides links to all policy guidance, email notices, electronic announcements, webinars, and training modules related to the administration of veteran education benefits. We believe that the Department of Education, Office of Federal Student Aid's "Knowledge Center" provides a useful model in this regard. See <https://fsapartners.ed.gov/home>.

2. 85/15 Reporting:

Despite passage of the Ensuring the Best Schools for Veterans Act, we continue to hear concerns about VA's oversight of 85/15 rules at traditional college and universities. 85/15 reporting continues to be tedious, as it is calculated by program and academic term. It is also required even when there are no VA students enrolled in a given program and term. Further, schools with a 35 percent exemption are still required to maintain calculations, despite having a waiver in place. Finally, the definition of a supported student includes students utilizing a payment plan, unless that payment plan is offered to all students. Some schools within an institution may not allow payment plans, which brings the payment plan into the calculation as support.

3. School Catalogs:

When administering veterans' benefits, one of the most significant roadblocks schools encounter is the annual catalog process. There is no standard catalog checklist to help school certifying officials compile their catalog and often, the SAA and VA disagree on the requirements for program approval. These issues, in addition to the volume of catalogs the VA must review, can cause delays (often years) in catalogs and new programs being approved, which has negative financial implications on veterans and eligible dependents.

For accredited schools with Title IV eligible programs, it would be prudent for the VA to mirror the ED's requirements, removing the cumbersome program approval process if a

program is listed on the Program Participation Agreement and the school has a valid Eligibility and Certification Approval Record, allowing standard degree programs to be deemed approved as laid out in 38 U.S. Code 3672(b)(2). For non-accredited programs, the VA should focus on a clear and consistent catalog approval process.

Conclusion

Thank you for the opportunity to testify before the Subcommittee, and for your efforts on behalf of our nation's veterans. I would be pleased to answer any questions.