July 19, 2021

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 Takano 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 Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 ("Isakson Roe Act"). We thank the Committee for scheduling an oversight hearing July 20 with the Department of Veterans Affairs (VA) to examine implementation of this important law.

We strongly support the goals of this legislation and believe it provides many important protections for student veterans. At the same time, we wish to call to your attention several provisions set to take effect August 1 that have the potential to create unintended consequences for veterans and the colleges and universities that serve them. We hope the hearing will provide greater clarity regarding the VA's implementation plans and whether additional technical corrections to the statute may be needed.

Section 1010 – Dual Certification

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. In essence, this provision would require institutions to use a "dual certification" process whereby the institution first certifies enrollment with tuition and fees reported as "$0.00 dollars," in order to start the student's housing payments, and then must amend the certification with the correct tuition and fees amount after the add-drop period ends, when course schedules are unlikely to change.

Although dual certification is not currently required by the VA, it is strongly encouraged, and many colleges and universities already use this process and find it a helpful tool to limit the number of tuition and fees overpayments, and the effort required to remit these overpayments to the VA. However, requiring dual certification does more harm than good at institutions with a flat tuition and fee structure, where tuition and fee charges are unlikely to change as a result of the add/drop period. At these institutions, which include large public university systems, the dual certification process would dramatically increase the amount of time needed to certify students for VA benefits. Moreover, it could delay the disbursement of additional institutional or state financial aid funding to veterans.

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 a dual certification 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 for institutions with flat tuition and fee structures.

Section 1018 – Consumer Information Requirements

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 veterans education benefits available 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.[1] As written, institutions would 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 would 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.

[1] 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.

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 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 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.

On July 13, the VA issued guidance on the process to apply for a 1-year waiver of these requirements, including a requirement that an institution submit a justification explaining why they are "unable" to meet various requirements and a plan to come into full compliance within a year's time. Institutions must apply for this waiver by August 1, 2021, with VA notifying institutions whether a waiver has been granted within 60-90 days.

We have serious concerns with the anticipated timeline for notifying institutions of whether a waiver has been granted. Although institutions must apply by August 1, they will not know whether a waiver has been granted for two to three months. Should an institution fail to receive a waiver, the institution will have been out of compliance for that entire time. Failure to receive a waiver will also trigger a notification of the SAA and a possible flag on the VA Comparison Tool. For colleges and universities that take their VA compliance obligations seriously, this is untenable.

In addition, we have concerns about whether institutions will be able to satisfy the VA's waiver application requirements, particularly because they have only two weeks to prepare their submission. We also note uncertainty about what will be sufficient basis to

be granted a waiver. For example, Justification #2 says that the institution is "unable to provide availability of federal financial aid not administered by VA, offered by the institution or to alert the individual of the potential eligibility for other federal financial aid before packaging or arranging student loans or alternative financing." Because it is not possible to accurately estimate a student's eligibility for federal financial aid in future award years, we believe that most schools would be able to request a waiver on that basis. We would appreciate confirmation of whether our understanding is correct.

Given the concerns with section 1018 requirements, and the uncertainty around if and when a waiver might 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 the College Financing Plan as an alternative to the information required in section 1018. We also respectfully ask that Congress consider a delay of the effective date of this provision, to allow the VA more time to implement this provision and to provide additional clarity regarding the waiver requirements.

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 (HEA) 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 review the necessity of this new requirement. In addition, given that VA guidance about the waiver process was made available to institutions today, we ask the committee to consider delaying the effective date of this provision to allow time for institutions to apply for a waiver, and for VA to consider these applications.

Section 1018 – Incentive Compensation

In June, Congress passed the THRIVE Act (H.R. 2523), which further amends Section 1018 of the Isakson Roe Act to add a new prohibition on the payment of incentive compensation by an education institution in section 3679(f)(2).

The VA already has authority under 38 USC §3696 to enforce incentive compensation restrictions when determining institutional eligibility. Prior to the passage of the Isakson-Roe Act in January, the incentive compensation language in section 3696(d) was quite clear in its relationship to the existing provision in the HEA. To ensure alignment, it required the VA's provision to be interpreted in "a manner consistent with"

the Secretary of Education's interpretation of section 487(a)(20) of the HEA.[2] However, when Isakson-Roe was passed in January, it deleted and replaced section 3696(d) with section 3696(c), removing this important cross reference to HEA in the process.

In addition, while the incentive compensation language currently in sections 3696(c) and 3679(f)(2) are similar to the HEA's prohibition, they omit language explicitly permitting institutions to use incentive compensation when recruiting foreign students. Based on basic statutory construction rules, this omission suggests that education institutions that use incentive compensation to recruit foreign students—a practice clearly permitted under Title IV—risk being disapproved for GI Bill benefits.[3]

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 incentive compensation ban language lacks 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 sub-regulatory construct.

We believe that the THRIVE Act amendment to section 3679 is unnecessary and fails to provide any additional protections for veterans attending colleges and universities participating in Title IV. However, in order to address concerns regarding inconsistent interpretation across agencies, we ask the committee to make two technical changes to sections 3679(f)(2) and 3696(c): (1) insert the HEA language regarding foreign students so the incentive compensation language is parallel and (2) specify that the interpretation of the incentive compensation language will be consistent with the Department of Education's regulations, interpretations, and guidance under section 487(a)(20) of the HEA (20 USC 1094(20)).

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 continue to use their GI Bill benefits to pursue a high-quality college degree.

Sincerely,

Ted Mitchell
President

[2] See 38 U.S.C. 3696(d)(2).
[3] It is worth noting that a third incentive compensation provision (section 3676(f)) includes the same exception for recruitment of foreign students as the HEA.

On behalf of:

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