



January 22, 2009

Director
Regulations Management (02REG)
Department of Veterans Affairs
810 Vermont Avenue, NW Room 1068
Washington, DC 20420

Re: RIN 2900-AN10-Post-9/11 GI Bill

Dear Sir or Madam:

I am writing on behalf of the National Association of College and University Business Officers (NACUBO), the National Association of Student Financial Aid Administrators (NASFAA), and the Association of American Universities (AAU) to provide comments on the notice of proposed rulemaking published on December 23, 2008, implementing the Post 9/11 Veterans Educational Assistance Act. Together, the three associations represent more than 3,000 colleges and universities of all sizes and types.

We strongly support the new GI Bill and appreciate the opportunity to provide comments on these proposed regulations. We also appreciate the openness with which the Department of Veterans Affairs has approached the daunting task of getting this program ready to go by August 1. The regional meetings sponsored by the American Council on Education and the VA in January provided a useful forum for dialog between stakeholders and the agency. We would like to bring to your attention a few issues with the proposed regulations. We have kept our comments on specific items brief, but would be happy to discuss any issues further.

§21.9505 Definitions

Academic year. The proposed definition references only terms. How is academic year defined for programs that are nonterm based? We see that under §21.4200, which is cross-referenced by the proposed definition of academic year, an "ordinary school year" has a minimum 30-week requirement. For clock-hour programs, most of which are nonterm, Title IV rules allow an academic year to end after 26 weeks (if a minimum of 900 clock hours has also been achieved). Although the subsection of §21.4200 that defines "ordinary school year" is not incorporated into the proposed definition of academic year, we wanted to point out the Title IV parameter in case subsequent changes to the proposed rules are made. [The phrase "quarter, semester, or term" is also used in the definitions of enrollment period and lump sum payment, and in a

number of other places throughout the proposed regulations; the same question applies.]

The proposed definition of academic year would require the period to which the \$1,000 book stipend applies to cover fall, winter, spring, **and** summer terms. Normally, institutions consider their traditional academic year to include periods of required, not optional, attendance. For example, at a semester-based school, the academic year (or academic calendar) would cover fall and spring terms, but not necessarily summer. Because the book stipend must be distributed across all terms in the academic year, a student who does not attend summer will not receive the full amount of the book stipend allowable for an academic year. In the Title IV loan programs (FFELP and DL), a school has the option of considering the period to which a loan limit applies as either a "scheduled academic year" (which would include summer) or a "borrower-based academic year" (which consists of the number of terms contained in the academic calendar, for example, two terms for a typical semester-based program). Under the borrower-based academic year, a student who attended fall and spring would begin a new academic year (with access to a new annual loan limit) if he or she attends summer; the second academic year would then consist of summer and fall terms, and the third borrower-based academic year would comprise the spring and summer terms. Some students use summer terms to accelerate their studies, while others attend summer to catch up; either way, the borrower-based academic year ensures that students receive maximum aid for every term of attendance under the loan programs. Such a scheme could also maximize the book stipend for students whether or not they attend summer term.

For the Yellow Ribbon program, the school could be given the option of assigning the summer to either the preceding or the upcoming academic calendar, as is the case for the Pell Grant Program.

Distance learning. We commend the VA for utilizing the existing definition of "distance education" found in the Higher Education Act.

Fees. In order to be included in the definition of "fees," a charge must be "universally applied by the institution of higher learning to each and every student enrolled in an undergraduate program for that quarter, semester, or term." This sets a quite restrictive standard and would leave a number of legitimate educational fees, such as laboratory fees or other course-specific fees uncovered. We believe fees should be included if they are charged to all students (**unless waived**) enrolled in **the same** program **or course** as the VA benefit recipient. Fees may vary by academic program; fees may be waived for certain students under extenuating circumstances or, in the case of health fees, if the student already has coverage through their parents' policy; fees may be charged to all students in a course, such as lab fees for certain science courses. As you are aware from the regional meetings, questions have also been raised about the inclusion of mandatory fees, such as health insurance, when some students are eligible for a waiver of the fee.

The definition also restricts “fees” to those charged undergraduate students, even though graduate programs are eligible and often have different fee structures. Indeed, some institutions have no undergraduate programs. We recommend that the word “undergraduate” be deleted.

§21.9560 Duration

The proposed rule provides that there is to be no charge to entitlement if a student had to discontinue training due to service-related circumstances, such as an order to active duty, a change in duty location, or increased work. What would be the treatment in the case of a student whose changed circumstances are temporary enough to allow the school to place him or her on a leave of absence (LOA)? In such cases, the student would be able to return to the school and resume training with no additional charges.

§21.9640 Educational Assistance: Amount; Payment

For a student attending more than one institution, VA proposes to use the institution from which the degree will be granted to determine the in-state maximum for established charges and the monthly housing allowance. We periodically encounter cases where a student is pursuing degrees from two institutions simultaneously. What is the limitation on the student’s tuition benefit when the student is attending more than one school: is the total payable amount still limited to maximum in-state tuition charges and fees? How is the student’s entitlement distributed between the institutions attended?

It is also not clear to us whether the student needs to be in pursuit of a credential at all to receive benefits; the proposed definition of “program of education” does not seem to require a credential. Is this correct?

§21.9695 Overpayments

We are confused by the wording in §21.9695(b)(3) regarding the determination of the amount of an overpayment. Paragraph (i) and (ii) address the case of “an individual who does not complete *all* courses in the certified period of enrollment” (emphasis added), indicating that the overpayment would equal the amount of all educational assistance paid. We wonder if you mean “*any* courses” rather than “*all* courses.” As written, we take this to mean, for instance, that a student who was enrolled in 15 credit hours (five 3-credit courses) who withdraws or does not complete one course would lose her benefits for the semester, even if the remaining four courses still comprise a full-time course load at the institution. Other provisions in §21.9560(b)(ii) and §21.9635(d) address changes to rate of pursuit and withdrawal from courses without dropping all classes in a more appropriate manner. We are also unsure about the treatment of an “incomplete” where the student is given additional time to finish coursework.

§21.9700 Yellow Ribbon Program

We have several concerns about the administration of the Yellow Ribbon program and the proposed regulations as follows.

- Paragraph (c)(2) specifies that institutions must make their contributions in the form of a "waiver." We are not sure what you mean by this term or why you would so stipulate. We prefer the language used in the statute, "direct grant, scholarship, or otherwise." Waiver is an ambiguous term, used differently by various institutions. Depending on institutional practice, an institution might prefer to call its contribution an internal scholarship, a tuition discount, a waiver, or something else. Institutions may treat their share as a reduction to tuition or may seek charitable contributions to fund it.
- In the interests of equity, VA has also stipulated that eligible individuals would be selected on a first-come, first-serve basis for participation in the Yellow Ribbon program. Most institutions have limited funds for student aid and might prefer to take into account a veteran's level of unmet need or grants available from other sources. We gather that the VA would not allow any criteria to be used in selecting students other than order of application. Is this correct?
- Many questions have been raised about whether an institution can commit to varying levels of support for veterans under the Yellow Ribbon program based on level of instruction (undergraduate, graduate) or specific program or school. Established charges at most institutions vary for different programs, making it very difficult for an institution to quantify its commitment and make accurate budget assumptions if it cannot control for these variables. In addition, different programs or schools within a university not only have varying academic programs and tuition and fee structures, they often have different admissions timelines and disparate resources. We are concerned that if institutions are unable to distinguish between schools and programs in making their commitment to the Yellow Ribbon program, they will be inclined to be conservative in their commitments, and participation in the program may suffer
- The VA has proposed to require institutions to commit to provide support to veterans under the Yellow Ribbon program for the entire academic year. The letter that the VA sent to presidents and chancellors last week went further, however, suggesting that institutions would need to commit to multi-year funding for each veteran receiving Yellow Ribbon benefits for as many years as the veteran remains eligible. This is a much more difficult commitment for institutions to make, especially given the lack of experience with this new program.

We are eager to continue working with the VA to prepare institutions to be full partners in delivering these vital new benefits to our nation's veterans. Please feel free to contact me at 202.861.2544 or anne.gross@nacubo.org, or Joan Berkes, director of legislative and regulatory analysis at NASFAA, at 202.785.6970 or berkesj@nasfaa.org if you have any questions or we can be of further assistance.

Sincerely,

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Vice President, Regulatory Affairs
NACUBO