

**Department of Defense Voluntary Education Partnership
Memorandum of Understanding
Questions & Answers
June 2014 (updated July 2014)**

Under Department of Defense (“DoD”) regulations, a higher education institution must sign a memorandum of understanding (“MOU”) in order to participate in DoD’s tuition assistance program for service members (“TA Program”). In December 2012, DoD promulgated regulations and a MOU related to the TA Program (“2012 MOU”). See 77 Fed. Reg. 72941 (Dec. 7, 2012). ^{1/} On May 15, 2014, DoD promulgated new regulations and a revised MOU (“2014 MOU”). See 79 Fed. Reg. 27732 (May 15, 2014). Many of the changes in the 2014 MOU are based on Executive Order 13607, Establishing Principles of Excellence for Educational Institutions Servicing Service Members, Veterans, Spouses, and Other Family Members, which President Obama signed in April 2012. On July 7, 2014, as described below, DoD revised the 2014 MOU to add a paragraph heading.

This Q&A provides a high-level overview of the 2014 MOU, with a focus on requirements that are not in the 2012 MOU. It also highlights selected notable differences between the 2012 MOU and the 2014 MOU. This Q&A was originally issued in June 2014; we revised it in July 2014 after DoD issued new information related to the 2014 MOU, including changes to the timeframes for compliance. An asterisk appears before each Q&A that was updated or added in July 2014.

The 2014 MOU, and the regulations that accompany it, are effective July 14, 2014. However, as discussed below, the deadline for institutions to execute a new MOU is September 5, 2014. DoD has posted Frequently Asked Questions regarding the MOU, available at <http://dodmou.com/Home/Faq> (“DoD FAQ”).

1. If an institution executed an earlier DoD MOU, and that MOU is still in effect, is the institution required to sign the 2014 MOU?

Yes. The 2014 MOU replaces all earlier DoD MOUs. If an institution wants to continue to participate in the TA Program, it must execute the 2014 MOU.

2. *By what date must an institution sign the 2014 MOU in order to avoid a break in its participation in the TA Program?

According to DoD, an institution with a current MOU must sign the 2014 MOU by September 5, 2014. See DoD FAQ #3, available at <http://www.dodmou.com/Home/Faq>. DoD FAQ #28 appears to recognize that institutions may not be in full compliance with the 2014 MOU requirements by September 5. The FAQ states that “[e]ducational institution[s] acting in good faith to come into compliance may, upon request, be provided up to 90 days.” See DoD FAQ #28, available at <http://dodmou.com/Home/FAQ?PageNo=10&key=False>, for additional information.

^{1/} Although DoD published its first version of the MOU in March 2011, it did not start to require institutions to sign the MOU until the 2012 MOU was published. See 77 Fed. Reg. 72941 (Dec. 7, 2012); DOD Instruction 1322.25 (Mar. 15, 2011).

3. *If an institution signed the 2014 MOU prior to DoD's July 7, 2014 revision of the 2014 MOU, what should it do?

DoD instructs that if an institution signed the 2014 MOU before DoD published the July 7, 2014 revision (discussed below), then the institution must execute a statement certifying that it acknowledges the July 7, 2014 revision. See DoD FAQ #32, available at <http://www.dodmou.com/Home/FAQ?PageNo=11&key=False>. An institution can obtain a copy of a certification statement at http://www.dodmou.com/Documents/Resources/Documents/DOD%20MOU%204_CHANGE%203%20CERTIFICATION_08JUL14_final.pdf.

4. *Which MOU applies with respect to a student who registers for classes before September 5, 2014, but who does not begin classes until after September 5, 2014?

DoD has informed ACE that the MOU that is in place at the time a student is approved for TA Program funds is the MOU that applies to the institution with respect that student, even if the student begins classes when a different MOU is in place.

5. *Does the 2014 MOU require an institution to be approved to participate in other federal student financial assistance programs?

Yes. The 2014 MOU requires an institution to be certified to participate in the student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended ("Title IV Programs"). An institution's Title IV certification may be provisional provided the institution maintains eligibility to participate in the Federal Direct Loan Program. In addition, the 2014 MOU requires an institution to be approved for purposes of Department of Veterans Affairs ("VA") funding through the veterans education benefits programs.

If an institution currently does not participate in the Title IV Programs, it may nevertheless execute the 2014 MOU at this time if it has (1) signed an earlier MOU and (2) initiated its application to participate in the Title IV Programs. Such an institution must obtain certification to participate in the Title IV Programs within 18 months after May 15, 2014; the DoD has indicated that such deadline is January 5, 2016. See DoD FAQ #6, available at <http://www.dodmou.com/Home/FAQ?PageNo=2&key=False>. Although such institutions may continue to support existing TA Program students, they are not authorized to enroll new students who are using TA Program funds. See DoD FAQ #22, available at <http://dodmou.com/Home/FAQ?PageNo=8&key=False>.

6. Does the 2014 MOU require an institution to comply with state law regarding authorization to offer distance education to residents of a state?

The MOU is unclear as to whether it requires institutions to comply with state authorization requirements only to the extent the U.S. Department of Education ("ED") requires compliance with state authorization requirements, or whether it requires institutions to comply with state authorization requirements regardless of ED requirements. DoD FAQ #29 seems to suggest that the DoD requirement with respect to state authorization is coterminous with ED's requirement. See DoD FAQ #29, available at <http://dodmou.com/Home/FAQ?PageNo=10&key=False>.

7. Does the 2014 MOU require an institution to provide information regarding any consumer oriented "tools"?

Yes. Before an institution enrolls a service member, it must explain the following ED and Consumer Financial Protection Bureau ("CFPB") tools to the service member, and it must provide information to the service member on how to locate and use properly such tools:

- “The College Scorecard which is a consumer planning tool and resource to assist prospective students and their families as they evaluate options in selecting a school and is located at: <http://collegecost.ed.gov/scorecard/>.”
- “The College Navigator which is a consumer tool that provides school information to include tuition and fees, retention and graduation rates, use of financial aid, student loan default rates and features a cost calculator and school comparison tool. The College Navigator is located at: <http://nces.ed.gov/collegenavigator/>.”
- “The Financial Aid Shopping Sheet which is a model aid award letter designed to simplify the information that prospective students receive about costs and financial aid so they can easily compare institutions and make informed decisions about where to attend school. The shopping sheet can be accessed at: <http://www2.ed.gov/policy/highered/guid/aid-offer/index.html>.”
- “The ‘Paying for College’ Web page which can be used by prospective students to enter the names of up to three schools and receive detailed financial information on each one and to enter actual financial aid award information. The tool can be accessed at: <http://www.consumerfinance.gov/paying-for-college/>.”

8. Does the 2014 MOU, like the 2012 MOU, require an institution to have a designated point of contact for service members who seek information about academic counseling, financial aid, and student support services?

Yes. The 2014 MOU adds the following matters to the contact’s responsibilities:

- Serve as point of contact for access to disability counseling;
- Serve as point of contact to assist service members with completion of their studies and with job search activities; and
- Have a basic understanding of the Title IV Programs.

The 2014 MOU does not require the contact to be dedicated exclusively to providing the above services; the contact may refer a service member to other individuals, on or off campus, who can provide the services.

9. Does the 2014 MOU impose requirements related to private education loans?

Yes. Before “offering, recommending, arranging, signing-up, dispersing, or enrolling Service members for private student loans”, the institution must provide access to an institutional financial aid advisor who will make available certain counseling, including the following:

- Provide clear and complete explanations of available financial aid, including Title IV Program aid;
- Describe the differences between private and federal student loans (including terms, conditions, repayment, and forgiveness options);
- Disclose the institution’s cohort default rate;
- Disclose the percentage of students who borrow in order to attend the institution;
- Disclose how the institution’s cohort default rate compares to the national average and, if the institution’s cohort default rate is higher than the national average, disclose such information as well as loan repayment data; and
- Explain that students may refuse all student loans or borrow less than the maximum student loan amount offered.

10. Does the 2014 MOU require certain readmission policies for service members?

Yes. Unlike the 2012 MOU, the 2014 MOU imposes certain requirements related to readmission policies for service members. Institutions must readmit service members to their educational programs if they are temporarily unable to attend classes or suspend their studies due to service requirements. An institution also must comply with 34 C.F.R. § 668.18, which is ED's regulation regarding readmission requirements for returning service members who seek readmission to a program that was interrupted due to military service obligations. Furthermore, although ED's regulation applies only when a service member is unable to attend classes for more than 30 consecutive days, the 2014 MOU requires an institution to apply the regulation to any service member who is unable to attend classes for less than 30 days within an enrollment period due to service obligations and such an absence results in a withdrawal under the institution's policy.

11. Does the 2014 MOU impose ED's "program integrity" regulations on institutions that participate in the TA Program?

Yes. The 2014 MOU modified the 2012 MOU to add requirements related to ED's program integrity regulations. In particular, an institution must have policies in place that comply with "program integrity requirements consistent with the regulations issued by ED (34 C.F.R. §§ 668.71-668.75 and 668.14) related to restrictions on misrepresentation, recruitment, and payment of incentive compensation." The 2014 MOU specifies that those requirements apply to the institution as well as its agents, including any third-party lead generators, marketing firms, or companies that own or operate the institution.

The 2014 MOU also forbids an institution to make any "commission, bonus, or other incentive payment based directly or indirectly on securing enrollments or federal financial aid (including TA funds) to any persons or entities engaged in any student recruiting, admission activities, or making decisions regarding the award of student financial assistance." Such language is generally consistent with the language in ED's incentive payment regulation, except the 2014 MOU broadens ED's language with the reference to "TA funds".

Consistent with the 2012 MOU, the 2014 MOU also bans "inducements" to secure service member enrollments or to access TA Program funds. The 2014 MOU clarifies to whom such inducements may not be given: Any individual, entity, or such entity's agents, including third-party lead generators or marketing firms.

12. The 2012 MOU prohibited multiple unsolicited contacts with students. Does the 2014 MOU clarify what constitutes "multiple" unsolicited contacts?

Yes. The 2014 MOU states that three or more unsolicited contacts -- including by phone, e-mail, or in person -- constitute a high-pressure recruitment tactic. In addition, the 2014 MOU explains that same-day recruitment and registration constitutes a high-pressure recruitment tactic. The 2014 MOU prohibits such tactics.

13. Does the 2014 MOU permit automatic program renewals or course bundling?

No. Before the start date of a class, an institution must obtain approval from both the student and his or her military service in order for an institution to receive TA Program funds for the service member's enrollment in the class.

14. Does the 2014 MOU address accreditation matters?

Yes. First, like the 2012 MOU, under the 2014 MOU an institution must be accredited by a national or regional accreditor that ED has recognized. Second, the 2014 MOU contains a requirement that was not in the 2012 MOU: An institution must obtain its accreditor's approval for any new course or program, if such approval is required under the accreditor's substantive change requirements. Any required approval must be obtained before an institution enrolls a service member in the course or program.

15. Does the 2014 MOU contain new requirements pertinent to transfer of credit?

Yes. In addition to a requirement that the institution disclose its transfer of credit policies, which was in the 2012 MOU as well, an institution that is not a member of Servicemembers Opportunity Colleges ("SOC") must disclose "articulated credit transfer agreements", if any, before a service member enrolls. Furthermore, the 2014 MOU includes a new requirement that the credit-transfer disclosures (a) must explain that acceptance of transfer credits is determined by the institution to which the student wishes to transfer and (b) must not make unsubstantiated representations to students about acceptance of transfer credits by another institution.

16. Does the 2014 MOU address "evaluated educational plans"?

Yes. The 2014 MOU maintains the 2012 MOU's requirements regarding evaluated educational plans and clarifies deadlines for provision of such plans to service members. The 2014 MOU explains that an institution must provide an evaluated educational plan within 60 days after admission to the institution; the 2014 MOU appears to assume that at that point, the service member will have selected a degree program and the institution will have received all required official transcripts. The 2014 MOU also clarifies that if a service member changes his or her educational goal or major, then the institution will generate a new evaluated educational plan within 60 days after the relevant military service's education advisor approves such change. The regulations that accompany the 2014 MOU define "evaluated educational plan" and explain that in effect such a plan is a degree audit.

The 2014 MOU also includes a requirement regarding degree requirements and evaluated educational plans that was not in the 2012 MOU. Specifically, under the 2014 MOU, degree requirements and evaluated educational plans must meet educational requirements for credentialing in stated career fields and graduates of a program must be eligible for relevant professional licensure or certification. An institution must disclose any conditions, such as state limitations, or additional requirements, such as training, experience, or exams, that are required to obtain relevant credentials.

17. May an institution receive TA Program funds for institutional fees?

No. The regulations that accompany the 2014 MOU provide that TA Program funds may be used only for a service member's tuition, not for institutional fees. DoD considers "fees" to include "any charge not directly related to course instruction including but not limited to costs associated with room, board, distance learning, equipment, supplies, books/materials, exams, insurance, parking, transportation, admissions, registration, or fines." An institution that bundles tuition, fees, or books into a consolidated cost must detail the charges for fees and books separately with respect to TA Program recipients. The regulations forbid use of TA Program funds for purchase of books, including textbooks, ebooks, CDs/DVDs, or reference or instructional materials. An institution's TA Program revenue cannot be used to support textbook grants or scholarships.

18. Does the 2014 MOU forbid institutions to provide scholarships to service members?

No. The 2014 MOU states that institutions may sponsor scholarships or grants, or offer tuition reductions, to service members.

19. If a student fails to begin attendance at an institution, must the institution return TA Program funds that it received for the student?

Yes. If a student fails to begin attendance at an institution, the institution must return to the relevant military service 100 percent of the TA Program funds that it received for the student.

20. If a student fails to start a particular course but starts other courses, must the institution return TA Program funds that it received for such course?

Yes. If a student fails to start a particular course, the institution must return to the relevant military service 100 percent of the TA Program funds that it received for the student to attend that course, even when the student has started other courses.

21. If an institution cancels a course for which a student has received TA Program funds, must the institution return TA Program funds that it received for such course?

Yes. If an institution cancels a course for which a student received TA Program funds, the institution must return to the relevant military service the TA Program funds that the institution received for such course.

22. Must an institution return TA Program funds if a student ceases to attend the institution?

Yes. The 2014 MOU includes a new requirement that an institution must have a policy that returns to the relevant military service “unearned TA funds” on a proportional basis through at least 60 percent of the period for which the funds were provided. The 2014 MOU explains that “TA [Program] funds are earned proportionally during an enrollment period, with unearned funds returned based upon when a student stops attending.” Such approach reflects a change to the approach that DoD had proposed to take. DoD had proposed to require institutions to align institutional refund policies with Title IV regulations regarding return of unearned Title IV Program aid. In the preamble to the regulations that accompany the 2014 MOU, DoD acknowledges that such approach would have entailed complexities that it had not fully understood and that the 2014 MOU therefore reflects an alternative approach that focuses on proportionality.

In instances when a service member stops attendance due to a military obligation, an institution must work with the service member to identify solutions that will not result in a student debt for the returned portion of TA Program funds.

23. If a service member’s grade point average drops below what DoD considers acceptable, what are the consequences?

As specified in the regulations that accompany the 2014 MOU, an institution may not receive TA Program funds for students with grade point averages that are less than 2.0 after completing 15 semester hours (or the equivalent) in their undergraduate studies, or less than 3.0 after completing 6 semester hours (or the equivalent) in their graduate studies. In such situation, a student must fund courses at the institution with personal funds or other forms of financial aid, such as Title IV Program funds.

24. Does the 2014 MOU address DoD procedures related to complaints regarding institutions?

Although the 2014 MOU does not address DoD procedures related to complaints regarding institutions, the regulations that accompany the 2014 MOU do. The regulations provide that DoD will implement a centralized online complaint system for service members, spouses, and adult family members that will register, track and respond to student complaints. DoD or the military service will work with institutions to resolve complaints. The regulations indicate that if an institution has recurring, substantive complaints or demonstrates an unwillingness to resolve complaints, the institution may face a range of penalties “from a directed Third Party Education Assessment to revocation of the DoD Voluntary Education Partnership MOU and removal from participation in the DoD TA Program.” Furthermore, “[a]s appropriate,” DoD will refer student complaints to other government regulators, including the Federal Trade Commission (“FTC”), the U.S. Department of Justice (“DOJ”), CFPB, VA, and ED.

25. Will DoD conduct reviews to assess compliance with DoD requirements, including those in the 2014 MOU?

Yes. The 2014 MOU requires an institution to participate in the Third Party Education Assessment process, which DoD will use to assess compliance. DoD may select an institution for such review based on various factors, including the nature of the institution’s program offerings (e.g., on-installation, off-installation, or distance learning), the volume of TA Program funds the institution received, reports of non-compliance with the MOU, complaints, negative information received from other government agencies or regulators, and “an observed promising practice.” An institution will generally have six months to resolve any findings; if the institution cannot complete resolution action within the six month timeframe, it must submit status reports every three months. “As appropriate,” DoD will share findings with other government agencies, including CFPB, VA, ED, DOJ, and FTC. Institutions that demonstrate “unwillingness to resolve findings” may be subject to a range of penalties “from a written warning to revocation” of a MOU and removal from participation in the TA Program.

26. Does DoD have authority to suspend or terminate an institution’s MOU?

Yes. The Assistant Secretary of Defense for Readiness and Force Management (“ASD(R&FM)”) has authority to terminate or suspend a MOU in certain circumstances, including for failure to comply with any element of the MOU. The ASD(R&FM) must give the institution notice and an opportunity to be heard. An institution may appeal the ASD(R&FM) decision to the Under Secretary of Defense for Personnel and Readiness; the Under Secretary’s decision constitutes final agency action.

The 2014 MOU also explains that an institution that fails to comply with the 2014 MOU may suffer a range of penalties: letter of warning, denial of opportunity to establish new programs, termination of MOU, removal from a DoD installation, and withdrawal of TA Program participation. DoD FAQ #22, available at <http://dodmou.com/Home/FAQ?PageNo=8&key=False>, describes various statuses, including “probation”, “suspended”, and “terminated”.

27. *On July 7, 2014, how did DoD revise the 2014 MOU?

The only change that DOD made was the addition of a paragraph header; the revision was nonsubstantive. See DoD FAQ #34, available at <http://www.dodmou.com/Home/FAQ?PageNo=12&key=False>, for more information.