



ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES

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Stop Preventing Student Veterans From Using Benefits: Amend the 85-15 Rule

Issue:

The 85-15 Rule indirectly forces Student Veterans out of GI Bill eligible programs, taking away their right to use their benefits and stopping their postsecondary persistence.

Background:

38 CFR § 21.4201 and 38 USC § 3680A state that Department of Veterans Affairs (VA) shall not approve the use of education benefits in any course for an eligible Veteran if the percent of Veterans using education benefits in that course exceeds 85 percent. This is commonly referred to as the 85-15 Rule, and it has hurt many Veterans who are pursuing postsecondary degrees with their rightfully earned VA education benefits.

The 85-15 Rule prohibits paying VA education benefits to students enrolling in a program when more than 85 percent of the students enrolled in that program are having any portion of their tuition, fees, or other charges paid for them by the school or VA. This means that VA will not give eligible Veterans their benefits to attend a program or curriculum with a high 85-15 student ratio. Further, at times the 85-15 Rule shuts off Veterans' benefits while they are in the middle of their program because a Non-Supported Student (civilian) dropped out. The Student Veteran is told they are no longer eligible for their GI Bill because of the imbalanced ratio, and must take out loans to stay in school. Consider this testimony from a currently deployed Special Forces operator in Afghanistan,

"I was a recent casualty of [the 85/15 Rule]...About halfway through my graduate program I was told that I could no longer use my VA benefits for tuition due to the 85/15 Rule. I was told by several ranking school officials that they had reached their limit on VA students within my degree program and they could not let me continue receiving my VA benefits under that specific program. They said I could switch degree programs, which I thought was absolutely ridiculous. I wasn't able to complete my degree and just stopped attending because I couldn't afford the tuition without VA tuition assistance.

Why should I have to go to another school or switch degree programs and start all over again after competing several graduate level courses at? Now, I am currently deployed to Afghanistan for my third combat tour with no degree and no hope of completing it while this rule is in effect.

The VA, like many other organizations in America, have lost sight of their principal and fundamental justification for existence which is providing exceptional service to the men and women of this nation that have served faithfully and in many cases have made the ultimate sacrifice."

In effect, the 85-15 Rule forces Student Veterans to be at the mercy of Non-Supported Students. The federal regulations for 85-15 were established in the 1950's during the Korean War Era GI Bill when many fly-by-night programs targeted Veterans, took their benefits, and closed their doors. Seven decades have since passed and there have been no substantial updates to the regulations, and the criteria of appeal for a waiver for institutions are now outdated and rarely obtainable. When institutions cannot appeal for a waiver, Veterans are the ones who pay the price.

Recommendation:

The Enlisted Association of the National Guard of the US respectfully urges the Secretary of the Department of Veterans Affairs to submit for public comment an update to federal regulation that will allow for commonsense waiver pathways for institutions, or else the 85-15 Rule will continue to hurt the Veterans it was intended to protect.

Current interpretation of 38 CFR § 21.4201(h), establishes criteria and guidelines for institutional waivers, requires that institutions meet every single criterion in order to be eligible for a waiver, such waiver being provided by the Secretary of VA under 38 USC § 3680A(d)(1),

“The [Secretary](#) may waive the requirements of this subsection, in whole or in part, if the [Secretary](#) determines, pursuant to regulations which the [Secretary](#) shall prescribe, it to be in the interest of the eligible [veteran](#) and the Federal Government.”

It is clear that the Secretary of VA has the authority to waive 85-15 requirements when presented with a compelling argument “in the interest of the eligible veteran” according to criteria established in federal regulation. In order to better represent the “interest” of Student Veterans, the Enlisted Association of the National Guard recommends an official submission to the federal registrar for public comment to reinterpret 38 CFR 21.4201(h) to:

- Establish Arabic numeral (3) as a prerequisite for waiver eligibility: “Previous compliance history of the school, including such factors as false or deceptive advertising, complaints, [enrollment certification](#) timeliness and accuracy, and [amount](#) of school liability indebtedness to VA.”
- Reinterpret Arabic numeral (4) and establish it as a prerequisite for waiver eligibility, “General effectiveness of the school's program in providing educational and employment opportunities to the particular [veteran](#) population it serves. Factors to be considered should include the percentage of [veteran](#)-students completing the entire course, ratio of educational and general expenditures to full-time equivalency [enrollment](#), etc.”
 - Currently, “veteran-students” completion is only captured if the Student Veteran is using education benefits. Many Student Veterans do not complete their postsecondary programs on education benefits alone, disqualifying them from contributing to institutions’ Student Veteran completion rates.
 - Allow institutions to report all Student Veteran completions regardless of whether they are using benefits when appealing for an institutional waiver.
- Allow institutions to apply for a waiver under either Arabic number (1) or (2).