



## National Defense Committee

December 22, 2022

The Honorable Jon Tester  
Chair, Senate Committee on  
Veterans Affairs

The Honorable Jerry Moran  
Ranking Member, Senate Committee on Veterans Affairs

The Honorable Mark Takano  
Chair, House Committee on  
Veterans Affairs

The Honorable Mike Bost  
Ranking Member, House Committee on Veterans Affairs

The Honorable Tom Carper  
Chair, Senate Committee on  
Environment and Public Works

The Honorable Kyrsten Sinema  
Chair, Senate Homeland Security Subcommittee on  
Government Operations & Border Management

The Honorable Bill Cassidy  
Ranking Member, House Finance  
Subcommittee on Fiscal  
Responsibility and Economic  
Growth

The Honorable James Lankford  
Ranking Member, Senate Homeland Security  
Subcommittee on Government Operations & Border  
Management

The Honorable Bobby Scott  
Chair, House Committee on  
Education and Labor

The Honorable Virginia Foxx  
Ranking Member, House Committee on Education and  
Labor

Dear Chairs Tester, Takano, Carper, Sinema and Scott, Senators Moran and Lankford, and  
Representatives Bost and Foxx:

As a GI Bill eligible veteran and as the chief of the veteran serving organization, the National Defense Committee, I am deeply concerned with how the Department of Education is implementing the changes to the 90/10 Rule (RINs 1840-AD54, -AD66, and -AD69) you developed as part of the *American Rescue Plan Act*.

As you know, the Department took the opportunity of your legislative direction to overstep that apparent Congressional intent, and instead further restrict military service members' and veterans' access to the educational programs of their choice. Each of you played a vital role in that Rule negotiation process, and your continued oversight of the implementation of that Rule will have an immense opportunity to impact the lives of tens of thousands of service members and veterans that rely on their earned education benefits.

The National Defense Committee believes, as do many other veteran and military serving organizations, that the educational benefits service members and veterans earn through their service should not be altered, nor the decisions by those individuals as to how they want to use those earned benefits be questioned, by the government. But the Department of Education apparently believes those hard-earned benefits are instead the government's to dole out as it sees fit, not as the individual who earned them desires. The National Defense Committee has a fundamental problem with that paternalistic attitude of the government.

20 F St., NW, Suite 703  
Washington, DC 20001  
202-779-1598

Because these benefits should be treated as the property of the military service member or veteran to be used as they see fit, and not the property of the government, such earned educational benefits revenue should not be accounted for against a school's 90/10 balance. But that is exactly what the Department of Education did with its most recent Final Rule, despite Congressional intent clearly to the contrary. For example, the Final Rule's preambulatory reference to exclude all revenue from distance education programs 90/10 calculations, as well as revenue from Income-Sharing Agreements (ISAs), is an unjust action by the Department extending their powers far beyond what Congress intended. Furthermore, the Department's decision to delay publication of the Final Rule until just six weeks ago, but with an effective date of January 1, 2023, jeopardizes the very educational programs upon which service members and veterans are planning to use their earned benefits, but which will now need to be hastily revised by the educational institutions to comply with the Department of Education's arbitrary and capricious expansion of its regulatory regime, far beyond that directed by Congress' recent legislative directives.

Nevertheless, Congress made the change and the National Defense Committee, as well as tens of thousands of military personnel and veterans we serve, are counting on you to protect service members' and veterans' interests. Therefore, we ask for your oversight and intervention on two issues.


First, the calculation of the new 90/10 Rule is based on an algorithm not yet published by the Department of Education. The Department's needless delay – they published a final rule over six weeks ago – puts undue pressure on institutions to quickly comply and negatively impacts service members and veterans who have little opportunity to adapt or find alternatively compliant educational programs.

Second, the preamble of the Final Rule goes well beyond the original consensus negotiations of either Congress in the legislation passed, or from the Negotiated Rulemaking Committee. Excluding revenue from all distance education programs unfairly jeopardizes many of the institutions popular with service members and veterans.

Upon passing the legislative amendment, Senators Carper and Moran both provided nearly verbatim statements on how the Department should implement this change: Senator Carper said, "we need to make sure we get this right," while Senator Moran said, "we need to make sure we do it in the right way."

Doing it "the right way" is exactly what is needed. Therefore, we ask you work with the Department of Education, and provide rigorous oversight of their regulatory processes, to ensure its regulations fully comply with the Congressional intent of your legislation, including sufficient notice and clarification for service members, veterans, the organizations that advocate on their behalf, and the educational institutions that serve them.

Very Respectfully,



Bob "Shoebob" Carey  
Captain, US Navy (Retired)  
Chief Bottle Washer  
National Defense Committee