



February 23, 2024

The Honorable Miguel Cardona  
Secretary of Education  
400 Maryland Avenue SW  
Washington, D.C. 20202

***RE: Arbitrary and Dilatory Appointments to Negotiated Rulemaking Committees***

Dear Secretary Cardona:

***Summary***

The U.S. Department of Education's repeated appointment of Barmak Nassirian, Vice President for Higher Education at Veterans Education Success, to the Department's negotiated rulemaking committees for higher education regulations gives disproportionate and imbalanced negotiating power to Veterans Education Success and has led to the type of special interest "hijacking" against which the Administrative Conference of the United States warned of in its numerous reports regarding negotiated rulemaking, most recently in their 2017 Final Report.<sup>1</sup>

Just because Mr. Nassirian has extensive general experience in higher education policy does not make him qualified to serve as the military or veterans' representative for the Department's negotiated rulemaking committees, regardless of the name of his employing organization. Yet, Mr. Nassirian has participated on no fewer than four negotiated rulemaking committees,<sup>2</sup> despite well-documented ideological biases and a U.S. Department of Veteran's Affairs (VA) Office of Inspector General report charging his employer with engaging in unethical behavior with the VA on higher education benefit issues. His appointments point to a pattern of cronyism that threatens to call into question the Department's commitment to abiding by the requirements of the *Negotiated Rulemaking Act* and the *Administrative Procedures Act*, the regulatory processes arising from those Acts and Executive Order 12866, and compromise veterans' access to higher education options that meet their needs.

***Background on the National Defense Committee***

The National Defense Committee (NDC) was founded in 2003 to advocate for legislative, regulatory, and public policy reforms to protect the civil and legal rights of military personnel, veterans, and their families. Today, the NDC and its sister organization, the National Defense Foundation, continue to defend the rights of men and women in uniform, past and present, across a range of issues, including ensuring freedom and choice in the use of earned education benefits.

---

<sup>1</sup> Blake, Charyl and Reeve T. Bull. June 5, 2017. *Negotiated Rulemaking: Final Report*. Washington, DC: Administrative Conference of the United States. 31.  
[https://www.acus.gov/sites/default/files/documents/Negotiated%20Rulemaking\\_Final%20Report\\_June%205%202017.pdf](https://www.acus.gov/sites/default/files/documents/Negotiated%20Rulemaking_Final%20Report_June%205%202017.pdf).

<sup>2</sup> [2024 Negotiated Rulemaking, Program Integrity and Institutional Quality Committee](#), U.S. Department of Education, Office of Postsecondary Education, January 2, 2024; [2022 Negotiated Rulemaking, Institutional and Programmatic Eligibility Committee](#), U.S. Department of Education, January 18, 2022; [2017 Negotiated Rulemaking, Borrower Defenses and Financial Responsibility](#), Meeting Summary, U.S. Department of Education; and Federal Register, Vol. 79 No. 57, [Program Integrity: Gainful Employment](#), U.S. Department of Education, March 25, 2014.

To ensure veterans' interests are adequately represented in negotiated rulemaking, the rulemaking committees must be comprised of participants who bring a diversity of views and opinions. No one person or organization can or should speak for veterans on all, or even most, issues all or most of the time. For that reason, it is imperative that negotiated rulemaking committees be filled with a deep and diverse bench of qualified participants. The Department's well-established committee selection policy—which is intended to provide “adequate representation for the affected parties”—supports this principle,<sup>3</sup> but has not been practiced by the Department in the case of Mr. Nassirian.

Military personnel and veterans are fully capable of choosing the best higher education choices at which to use their earned educational benefits. To use these educational benefits, they are or were required to continue military service for a minimum period. Given that exchange of service for benefits, these must be viewed as earned benefits for military and veteran students, just their biweekly paycheck is theirs to use as they see fit, not something the government can or should direct them how to use. To that end, NDC recently issued a comprehensive report on such restrictions on military and veteran educational benefits entitled, [\*Condescending Paternalism: The Department of Education's Unwarranted Limits on Veterans' EARNED Education Benefits\*](#).<sup>4</sup>

### ***Consensus in the Negotiated Rulemaking Committees***

The objective of negotiated rulemaking is for representatives, or negotiators, to “come to consensus on the Department's proposed regulations,”<sup>5</sup> which the *Negotiated Rulemaking Act* defines as “unanimous concurrence among the interests represented.”<sup>6</sup> However, the merit of such consensus is predicated on the condition that negotiators truly represent and present the spectrum of interests of those stakeholder categories for which they were selected to represent, and not simply their own organizational and personal beliefs and policy positions. This becomes even more important when there are only one or two Committee members selected for huge stakeholder community categories, in most cases with a single primary and a single alternate Committee member. Otherwise, the negotiated rulemaking process becomes little more than a committee of Departmental allies willing to rubberstamp the Department's predetermined regulatory agenda.

The importance of objective, unbiased, comprehensive, and diverse representation is underscored by the Department's own policy, which prohibits “negotiators and those persons and entities whom they represent” from commenting negatively on “consensus-based regulatory language.”<sup>7</sup> This effective gag order makes it even more imperative that appointees demonstrate the ability to put their constituents' interest ahead of their own predispositions and that the Department actively seek negotiators who will challenge, strengthen, and, when appropriate, refute its regulatory proposals.

---

<sup>3</sup> U.S. Department of Education. May 25, 2021. [The Negotiated Rulemaking Process for Title IV Regulations – Frequently Asked Questions](#). May 25, 2021, Accessed February 8, 2024.

<sup>4</sup> Bob Carey, 2023. [Condescending Paternalism: The Department of Education's Unwarranted Limits on Veterans' EARNED Education Benefits](#). Washington, DC: National Defense Committee.

<sup>5</sup> U.S. Department of Education, [FAQs](#), supra Note 3.

<sup>6</sup> 5 U.S.C. §562(2).

<sup>7</sup> U.S. Department of Education, [FAQs](#), supra Note 3.

### **Mr. Nassirian’s Overrepresentation on Negotiated Rulemaking Committees**

Unfortunately, the Department’s recurring appointment of Mr. Nassirian suggests your agency does not have its priorities right. Mr. Nassirian has served on at least four negotiated rulemaking bodies, including as the exclusive representative for “military service members, veterans, or groups representing them” in two concurrent negotiated rulemaking sessions (Institutional and Programmatic Eligibility Committee, 2021 – 2022<sup>8</sup>; and Program Integrity and Institutional Quality Committee, 2024<sup>9</sup>).

While Mr. Nassirian’s lack of military service (his biography highlights experience in “institutional finance, academic policy, accreditation, and federal student aid”<sup>10</sup>) should not necessarily preclude him from serving as negotiator, perhaps even as a veterans’ representative, his multiple appointments as the sole veterans’ representative do raise suspicion. In the NDC’s analysis of these Committee transcripts, Mr. Nassirian mentions policies’ impacts on veterans fewer than five times across sixteen different Committee sessions.

### **Mr. Nassirian Is a Biased Participant Whose Organization Has History of Ethical Misconduct**

Mr. Nassirian’s own comments indicate that he is less an inclusive representative of military veteran students, and more a biased partisan activist for a limited set of interests and policy objectives for his employer, Veterans Education Success.

Mr. Nassirian has been an outspoken opponent of career colleges, which he compared to door-to-door Bible salesmen,<sup>11</sup> accused of “raping and pillaging” students,<sup>12</sup> and whose education model he has claimed “is simply a matter of getting cohort after cohort of fresh, warm bodies through the door.”<sup>13</sup> His statements belittle the tens of thousands of veterans who have chosen career colleges to advance their educations and careers and ignore that many veterans either decide not to go, or cannot gain admission to, traditional higher-ed schools. Again, the NDC study on military and veteran higher education details why military and veteran students choose higher education paths other than traditional public and private nonprofit schools – because these non-traditional colleges and universities are often a better fit for military and veteran students. Their choice to pursue a higher education at these schools is rational, advantageous, and should be respected.<sup>14</sup>

More alarming, only last month Mr. Nassirian proposed in a memo to fellow negotiators on the Program Integrity and Institutional Quality Committee that current or former school employees be prohibited from serving on a “public” advisory board.<sup>15</sup> Never mind the implication that distant bureaucratic regulators

---

<sup>8</sup> Office of Postsecondary Education. January 18, 2022. [2022 Negotiated Rulemaking Institutional and Programmatic Eligibility Committee](#). Washington, DC: U.S. Department of Education.

<sup>9</sup> Office of Postsecondary Education. January 18, 2022. [2024 Negotiated Rulemaking Program Integrity and Institutional Quality Committee](#). Washington, DC: U.S. Department of Education.

<sup>10</sup> Veterans Education Success. n.d. [“Who We Are: Barmak Nassirian.”](#) Washington DC: Veterans Education Success.

<sup>11</sup> Barry Yeoman, 2011. “The High Price of For-Profit Colleges.” [Academe](#) 96, No. 3.

<sup>12</sup> PBS Frontline, [Interview: Barmak Nassirian](#), May 4, 2010.

<sup>13</sup> Carolyn Fast and Barmak Nassirian. January 18, 2024. [“Revised and Expanded Proposals on State Authorization Reciprocity Agreements.”](#) Letter to the Department of Education and Negotiation Committee Members. Washington, DC: US Department of Education.

<sup>14</sup> Carey, *Condescending Paternalism*, supra note 4.

<sup>15</sup> Fast and Nassirian, 2024. Supra note 13: 3.

are thereby claiming they know how colleges and universities should govern themselves better than the institutions; Mr. Nassirian's proposal risks excommunicating industry experts whose experience can and should help inform the Department's rulemaking.

Finally, I call your attention to the charges against Mr. Nassirian's organization, Veterans Education Success (VES). In the spring of 2022, the Office of the Inspector General (OIG) of the U.S. Department of Veteran's Affairs (VA) substantiated allegations that the executive director of the Veterans Benefits Administration's (VBA) Education Service office violated laws governing conflicts of interests in dealings with VES, for whom the VA office director's spouse worked. As the OIG report notes, VES had business before the agency, yet employed the government office director's husband to influence that very office on the issues on which VES was advocating. Among the findings, the report notes that VES endorsed the director for presidential nominee positions. Most alarmingly, the report details how the VA OIG was not able to fully pursue concerns over what it considered would be unethical and possibly illegal activity, because the president of VES and the VA office director's husband both refused to participate in interviews with investigators.<sup>16</sup>

Such violations should preclude any organization's members from participating in the Department's negotiated rulemaking process, especially considering the VA OIG investigation was not resolved because of the refusal of the VES employees and contractors to meet with the VA OIG investigators. However, as you are aware, Mr. Nassirian was appointed to the Department's Program Integrity and Institutional Quality Committee fewer than 18 months later. While Mr. Nassirian may not be named directly by the VA OIG, he is still an employee of the organization headed by those implicated in the VA OIG report. It exceeds any reasonable credulity to believe that he could be insulated from pursuing his employer's objectives, or that he could be considered a reasonable Committee member who would provide objective, unbiased, comprehensive, and diverse representation of any stakeholder category, let alone those of military and veteran students.

***Conclusion: The Integrity of the Department's Negotiated Rulemaking Process is Threatened by the Lack of Diversify of Military and Veteran Stakeholders Representation on Negotiated Rulemaking Committees***

The Department's negotiated rulemaking has immense, and I would say capricious, bearing on military and veteran students' access to higher education. It is crucial they be equitably and comprehensively represented. It defies credulity to imagine veterans are adequately represented by any one individual repeatedly serving as their representative, much less an individual whose qualifications, experience, and policy objective positions appear misaligned with the constituency. Mr. Nassirian's apparent standing opportunity to serve on any and all negotiated rulemaking committees on which he desires not only calls into question the integrity of the Department's negotiated rulemaking process, but risks sidelining the interests of huge sectors of military and veteran students who may not share his specific and targeted positions.

I urge you to direct your staff to conduct a full investigation into the negotiated rulemaking appointment process and to take corrective action as necessary. NDC will request the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs to also investigate this process and whether

---

<sup>16</sup> Department of Veterans Affairs, Office of Inspector General. March 24, 2022. [\*Former Education Service Executive Violated Ethics Rules and Her Duty to Cooperate Fully with the OIG\*](#). Report #21-02076-119: ii.

Mr. Nassirian's repeated appointments irreparably contaminate the results emanating from these Committee proceedings.

Thank you for your time and consideration. I welcome the opportunity to discuss this matter with you in greater detail.

Sincerely,

/s/

Bob Carey  
CAPT, USN (Ret)  
Executive Director  
National Defense Committee