

STATEMENT OF ANNE H. MEEHAN
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BEFORE THE
UNITED STATES SENATE COMMITTEE ON VETERANS' AFFAIRS
HEARING ON PENDING LEGISLATION

July 13, 2022

Chairman Tester, Ranking Member Moran, and members of the Committee, thank you for inviting me to speak at this hearing on pending legislation. My name is Anne Meehan, and I am the Assistant Vice President of Government Relations at the American Council on Education (ACE). ACE represents approximately 1,800 public and private, two-year and four-year colleges and universities and related higher education associations. I submit this testimony on behalf of ACE and the higher education associations listed at the end.

I have been asked to speak about S. 4458, the “Ensuring the Best Schools for Veterans Act of 2022,” legislation to address the unintended consequences stemming from the Department of Veterans Affairs’ (VA) recent 85-15 policy reset. We strongly support this legislation, which clarifies the 35 percent exemption to the 85-15 rule and ensures that veterans can continue to enroll in quality programs of their choosing. We thank Chairman Tester and Ranking Member Moran for introducing this bipartisan legislation, which would address the concerns raised by college and university leaders and other campus officials regarding this policy reset.

The 85-15 rule provides important safeguards for veterans and their GI bill benefits against waste, fraud, and abuse. At its core, the law seeks to ensure that at least 15 percent of students in any education program are not using GI bill benefits to pay for the program. The rationale for the rule was that the presence of non-veterans in a given program provides important evidence of value and quality, because these non-veterans are willing to pay out of their own pockets to attend. By requiring the presence of non-veteran students, the rule also protects against the creation of programs designed exclusively to target and exploit veterans and the generous benefits they have earned through their service.

Under the 85-15 rule, institutions with less than 35 percent total veteran enrollment are, in general, exempt from providing 85-15 ratios on a program-by-program basis.¹ As the legislative history of the 35 percent exemption makes clear, requiring 85-15 ratios from institutions with a low percentage of enrolled veterans would “result in burdensome and

¹ 38 U.S.C. 3680A(d)(1)

costly recordkeeping requirements with little tangible demonstration that accountability has been assured or abuse has been curbed.”²

Unfortunately, as part of the 85-15 reset, the VA has required institutions to “reapply” for their 35 percent exemption, submitting 85-15 ratios for every program. In addition to being contrary to the statute and legislative history, this interpretation has placed institutions in a Catch 22—unable to receive an exemption from computing 85-15 ratios without first computing these ratios.³ For institutions with a low percentage of veterans, the reset has resulted in campuses spending multiple days computing 85-15 ratios for hundreds of programs, most of which do not have a single veteran enrolled.

Further compounding these challenges, VA’s policy reset also significantly expanded the definition of when a non-veteran student would be considered “supported” for 85-15 purposes. These changes have resulted in a number of programs exceeding 85-15 ratios—not because of the presence of a large number of veterans, but because of confusing and misguided rules about when non-veteran students must be considered “supported.” In many cases, programs exceeded the 85-15 ratio and lost GI bill eligibility *even though there was a not a single veteran enrolled in the program*—a result that turns the purported rationale of the 85-15 rule on its head.

² 123 Cong. Rec. 23254 (1977).

³ When passing the GI Bill Improvement Act of 1977, Congress specifically considered, and rejected, prior VA attempts to require institutions with a 35 percent exemption to submit 85-15 ratios on a program-by-program basis. As the Senate report language explains:

"The Committee, however, believes that, in educational institutions where 35 percent or less of the total enrollment are veterans in receipt of educational assistance allowance under title 38, the imposition of the requirement of computation on a course-by-course basis can result in burdensome and costly recordkeeping requirements with little tangible demonstration that accountability has been assured or abuse has been curbed. The Committee has thus acted to codify in law this current regulatory waiver, thus eliminating the Veterans' Administration discretion in this regard. . . . The Committee points out, however, an important distinction between the current [VA policy] and the amendment being made by the Committee bill. Under the bill, there is no need for an educational institution to certify that no course has an enrollment of greater than 85 percent veterans. As a result of the current [VA] regulatory requirement, many educational institutions find themselves in a "Catch 22" position, where, as a result of having fewer than 35 percent enrollment of veterans, such institutions are supposedly exempt from the obligation of making course-by-course computations. At the same time, however, these institutions are required to certify that no course—for which they have been waived from making a computation, had an enrollment of greater than 85 percent veterans. The Committee bill does not require such institutions to certify that no course has greater than 85 percent enrollment of veterans. Rather, if an institution is waived from having to make the computations as a result of having an enrollment of veterans totaling 35 percent or less of total enrollment, then such institution will not be required to make such computations, unless the Administrator has reason to believe that a specific course has greater than 85 percent enrollment of assisted veterans."

123 Cong. Rec. 23254 (1977) (emphasis added).

Based on available Department of Education and other data, it appears that only a small number of nonprofit and public institutions have veteran enrollments above 35 percent. For most of these institutions, the percentage of veterans hovers in the low single digits.

According to a recent survey of private nonprofit colleges, more than 20 percent of survey respondents had already been informed by VA that certain programs would be ineligible for future veteran enrollments. These include programs popular with student veterans, such as programs in computer science, information systems, cybersecurity, criminal justice, liberal arts, teaching, healthcare, nursing, and master's programs in leadership and business administration, to name a few. We expect more institutions to learn that they have programs that are no longer eligible for GI bill benefits as VA continues to process applications for the 35 percent exemption.

By clarifying the 35 percent exemption, S. 4458 would undo the negative impacts of VA's recent policy change on institutions with low total veteran populations and the veterans they serve. It will also ensure that veterans who attend these institutions will be able to enroll in their program of choice. For many institutions, registration for the fall term begins in August. We appreciate that S. 4458 would become effective upon enactment and hope that the legislation might be cleared before the August recess. This would help eliminate any disruptions for student veterans this fall. Without this critical fix, institutions will be forced to deny veterans from enrolling in certain programs, and in some cases, may have to turn them away entirely.

Colleges and universities greatly appreciate Congress' efforts to address the unintended consequences brought on by these recent policy changes. We thank Chairman Tester and Ranking Member Moran and their staff for their efforts in crafting legislation that reflects a balanced approach and restores the original intent of the law. The legislation has our full support, and we look forward to working with you to help move the bill swiftly to final passage.

We thank the Committee for its efforts on behalf of our nation's veterans. I would be pleased to answer any questions.

American Council on Education
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
National Association of Independent Colleges and Universities