



**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**  
**Education Service**  
**Washington, D.C. 20420**

Todd Nelson  
President and CEO, Perdoceo Education Corporation  
231 Martingale Road  
Schaumburg, IL 60173

May 7, 2020

Dear Mr. Nelson:

We recently notified you that a 30-day extension of the time period for the remediation of deficiencies through corrective action has been granted due to COVID-19. Since a number of questions have been posed regarding corrective action, we are providing additional information and answers in an enclosure to this letter. Please submit any additional information relevant to this matter referenced above to the St. Louis Regional Processing Office ([DIR.VBASTL@va.gov](mailto:DIR.VBASTL@va.gov) and [EDU.VBASTL@va.gov](mailto:EDU.VBASTL@va.gov)), the Muskogee Regional Processing Office ([DIR.VBAMUS@va.gov](mailto:DIR.VBAMUS@va.gov) and [EDU.VBAMUS@va.gov](mailto:EDU.VBAMUS@va.gov)).

We look forward to continuing to work with you to ensure that our nation's Servicemembers and Veterans receive their earned education benefits.

Sincerely,

Mitzi A. Marsh  
Director, St Louis Regional Office

Jason McClellan  
Director, Muskogee Regional Office

Enclosure

## **Enclosure: Additional Information on Corrective Actions**

**Purpose:** To provide additional clarity regarding the adjudicative decision before the Regional Processing Office Director(s) pursuant to the notice of intent to suspend enrollment of new students dated March 9, 2009.

**Issue:** In accordance with 38 U.S.C. § 3696 the Secretary shall disapprove the enrollment of all GI Bill beneficiaries in any school which “utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.”

In accordance with 38 C.F.R. §§ 21.4210(d) and 21.4211(a)(6), the Director(s) of the Regional Processing Office(s) of jurisdiction have been designated by the Secretary to act on his behalf in adjudicating the facts of the case.

Therefore, the adjudicative decision at issue is:

- Did this school utilize erroneous, deceptive, or misleading advertising (by actual statement, omission, or intimation)?
- Did this school utilize erroneous, deceptive, or misleading sales (by actual statement, omission, or intimation)?
- Did this school utilize erroneous, deceptive, or misleading enrollment practices (by actual statement, omission, or intimation)?

### **Process and Decisional Outline**

An initial determination has already been made in these cases. It has been determined that there is sufficient evidence that the school engaged in prohibited practices to warrant the contemplation of a disapproval of new enrollments and a referral of the matter to the Committee on Educational Allowances. In accordance with statute as well as VA regulations, the contemplation of a disapproval action required that notification be sent to the school of the alleged violation, which was sent on March 9, 2020. In accordance with statutes and VA regulations, schools are provided 60 days from the date of notification (which was extended to 90 days, as allowed by VA regulations, because it was justified by the current COVID-19 pandemic), to take corrective action. If the school refuses to take corrective action or does not take sufficient corrective action within that timeframe, the appropriate next step is to suspend the approval of enrollment of new students and refer the matter to the Committee(s) on Educational Allowances. Therefore, unless the school establishes that it did not engage in prohibited actions, the next adjudicative decision for VA is whether the school has taken sufficient corrective action to cure the alleged bad conduct.

At this point in the process, only an initial determination has been made that the school has engaged in prohibited actions, based on the evidence of record, without the school being able to provide input. The purpose of the 60-day period, and the “notice of intent” letter, is to provide the school with the opportunity to present evidence that the advertising, sales, or recruiting practices were true in nature, and therefore, not erroneous, deceptive, or misleading, or that sufficient corrective action has been taken in regard to the alleged bad conduct. We note that, if the school is found to have engaged in the prohibited actions, it can never fully correct the actions because it

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cannot erase from history the fact that it did engage in such actions (it cannot “un-ring the bell”). Practically, the school cannot reinstate GI Bill beneficiaries’ entitlement that was used by students impacted by the prohibited actions. Therefore, corrective action should include actions on the school’s part to cure any negative impacts of prohibited practices (e.g., forfeit any ill-gotten gains acquired through the utilization of the prohibited actions; refund money expended as a result of deceptively induced enrollments) and to institute appropriate safeguards to ensure that prohibited practices are not utilized again in the future. The following factors will be considered when determining whether sufficient corrective action has been taken:

- Has the school presented convincing evidence that a prohibited action never occurred?
  - For example, evidence that statements made in advertising campaigns were true and accurate without being misleading through actual statement, omission, or intimation.
- Or, in the alternative, has that the school shown that it has accomplished all of the following?
  1. Ceased utilization of prohibited actions.
    - When and how?
  2. Taken appropriate steps to prevent future prohibited actions. Such actions include-
    - Changes in staff associated with advertising, sales and enrollment.
    - Changes in company practices and training regarding the recruiting of new students.
    - Hiring of an independent, respected third-party auditor, mutually agreed upon by the school and VA, to routinely review advertising material and recruiting practices to ensure continued compliance with 38 U.S.C. § 3696, and having the report delivered directly to VA for consideration (expense of auditors shall be borne by the institution).
  3. Taken appropriate action to cure the negative impacts of the prohibited practice(s), especially with regard to GI Bill beneficiaries.
    - Refund payments made to VA for students recruited during the use of prohibited practice
      - Tuition and fees
      - Monthly housing allowance
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Unless it is determined that the school did not engage in prohibited practices or it is determined that the school has adequately corrected negative impacts of the prohibited practices, the approval of enrollment of new students will be suspended and the case will be referred to the Committee(s) on Educational Allowances in accordance with 38 C.F.R. § 21.4210(g). If, however, it is determined that the school did not engage in prohibited practices or has taken adequate corrective action, you will be notified of the decision and the matter will be considered resolved.

## Enclosure: Additional Information on Corrective Actions

### Questions and Answers

- 1) **Question:** What criteria or standard is being used to determine that “corrective action” is sufficient? What would corrective action look like since a school may believe that a prior settlement, such as with a state Attorney General (AG) or the Federal Trade Commission (FTC), already includes such action?

**Answer:** “Corrective action” is an adjudicative determination made on a case-by-case basis on facts found. However, generally speaking, it is more than the school merely ceasing its participation in the offending action (cessation of the offending action being the absolute minimum required). It should also be focused on how the school has “made right” any negative impacts on VA and the GI Bill program. For example, a misleading advertising or recruiting process would have led GI Bill beneficiaries to enroll under false pretenses resulting in VA making payments and the student being charged and losing entitlement. It is the burden of the school to demonstrate that it also has sufficiently rectified any such losses.

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**Answer:** VA will review the institutions' responses prior to moving forward with any adverse action.



**DEPARTMENT OF VETERANS AFFAIRS**  
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**Education Service**  
**Washington, D.C. 20420**

Peter Cohen  
President, University of Phoenix  
4025 S. Riverpoint Parkway  
Phoenix, AZ 85040

May 7, 2020

Dear Mr. Cohen:

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Jason McClellan  
Director, Muskogee Regional Office

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- 1) **Question:** What criteria or standard is being used to determine that “corrective action” is sufficient? What would corrective action look like since a school may believe that a prior settlement, such as with a state Attorney General (AG) or the Federal Trade Commission (FTC), already includes such action?

**Answer:** “Corrective action” is an adjudicative determination made on a case-by-case basis on facts found. However, generally speaking, it is more than the school merely ceasing its participation in the offending action (cessation of the offending action being the absolute minimum required). It should also be focused on how the school has “made right” any negative impacts on VA and the GI Bill program. For example, a misleading advertising or recruiting process would have led GI Bill beneficiaries to enroll under false pretenses resulting in VA making payments and the student being charged and losing entitlement. It is the burden of the school to demonstrate that it also has sufficiently rectified any such losses.

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**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**  
**Education Service**  
**Washington, D.C. 20420**

Dr. Mary B. Hawkins  
President, Bellevue University  
1000 Galvin Road South  
Bellevue, NE 68005

May 7, 2020

Dear Dr. Hawkins:

I recently notified you that a 30-day extension of the time period for the remediation of deficiencies through corrective action has been granted due to COVID-19. Since a number of questions have been posed regarding corrective action, we are providing additional information and answers in an enclosure to this letter. Please submit any additional information relevant to this matter referenced above to the St. Louis Regional Processing Office ([DIR.VBASTL@va.gov](mailto:DIR.VBASTL@va.gov) and [EDU.VBASTL@va.gov](mailto:EDU.VBASTL@va.gov)).

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Sincerely,

Mitzi A. Marsh  
Director, St Louis Regional Office

Enclosure

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**DEPARTMENT OF VETERANS AFFAIRS**  
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**Education Service**  
**Washington, D.C. 20420**

Richard M. Englert  
President, Temple University  
Second Floor, Sullivan Hall  
1330 Polett Walk  
Philadelphia, PA 19122

May 8, 2020

Dear Mr. Englert:

I recently notified you that a 30-day extension of the time period for the remediation of deficiencies through corrective action has been granted due to COVID-19. Since a number of questions have been posed regarding corrective action, I am providing additional information and answers in an enclosure to this letter. Please submit any additional information relevant to this matter referenced above to the Buffalo Regional Processing Office ([vavbabuf/ro/dir@va.gov](mailto:vavbabuf/ro/dir@va.gov) and [vavbabuf/ro/edu@va.gov](mailto:vavbabuf/ro/edu@va.gov)).

I look forward to continuing to work with you to ensure that our nation's Servicemembers and Veterans receive their earned education benefits.

Sincerely,

Donna P. Mallia  
Director, Buffalo Regional Office

Enclosure



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### Questions and Answers

- 1) **Question:** What criteria or standard is being used to determine that “corrective action” is sufficient? What would corrective action look like since a school may believe that a prior settlement, such as with a state Attorney General (AG) or the Federal Trade Commission (FTC), already includes such action?

**Answer:** “Corrective action” is an adjudicative determination made on a case-by-case basis on facts found. However, generally speaking, it is more than the school merely ceasing its participation in the offending action (cessation of the offending action being the absolute minimum required). It should also be focused on how the school has “made right” any negative impacts on VA and the GI Bill program. For example, a misleading advertising or recruiting process would have led GI Bill beneficiaries to enroll under false pretenses resulting in VA making payments and the student being charged and losing entitlement. It is the burden of the school to demonstrate that it also has sufficiently rectified any such losses.

Previous settlements with an AG or FTC were made in response to allegations of violating various state laws (such as consumer protection laws) and Federal laws (such as the Federal Trade Commission Act) which are separate and distinct from 38 U.S.C. § 3696. Section 3696 requires the Secretary of Veterans Affairs (and through regulations, the Director of the Regional Processing Office) to take his or her own action for violations of the statutory prohibition. Therefore, while certainly a factor that VA will consider in making any determination, the existence and content of those settlements cannot be assumed to settle the matter with respect to section 3696. To the extent terms of a previous settlement may have included provisions to redress negative impacts on VA and the GI Bill program, the school can and should explain those settlement terms, the resulting actions taken by the school, and the impact of those actions with respect to VA and the GI Bill program, in its response to VA.

- 2) **Question:** Is the review process focused on current compliance / corrective action or does VA have authority to impose a sanction based on previous issues?

**Answer:** Section 3696 is applicable to any instances of erroneous, deceptive, or misleading advertising, sales or enrollment practices which includes past violations for which the Secretary only now has obtained evidence of such violations. As noted above, it may be impossible to wholly cure past harm. VA will weigh the seriousness of the prior conduct and the severity of the harm, including uncured and incurable harm, together with the extent and effectiveness of any corrective action taken.

- 3) **Question:** Will VA ensure no suspension will move forward if institutions respond in a timely fashion, i.e., within the 60 (or 90) days to provide information

**Enclosure: Additional Information on Corrective Actions**

regarding corrective actions, until after VA has completed its review of the information submitted?

**Answer:** VA will review the institutions' responses prior to moving forward with any adverse action.