

July 1, 2021

Docket ID: ED-2021-OPE-0077

Vanessa Gomez
U.S. Department of Education
400 Maryland Ave., SW
Room 2C179
Washington, DC 20202

Dear Ms. Gomez,

On behalf of Veterans Education Success, I write to submit comments on the May 26, 2021, *Federal Register* notice of the Department's intent to establish negotiated rulemaking committees. In that notice, the Department indicates that it plans to develop proposed regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended. The notice additionally solicits comments from organizations that represent groups whose interests are significantly affected by the subject matter of any proposed regulations.

Veterans Education Success is a nonprofit research, policy, and student veteran advocacy organization that works on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill® and other federal postsecondary education programs. Veterans Education Success is committed to the educational advancement of America's veterans, service members, and their families. In addition to our policy expertise on Title IV, the GI Bill®, and the Department of Defense Tuition Assistance program, we provide consumer advocacy services to individual veterans and military-connected students by assisting them in navigating serious problems with the federal student aid system that all too often point to gaps and shortcomings in Title IV regulations.

The constituency we represent is significantly affected by the proposed regulations that the Department intends to publish. Affordability, quality, and accountability are critical features of the higher education sector for all students, but they affect America's student veterans and military-connected students in unique ways. The availability of non-Title IV funding for these students, for example, has created distinctive and at times problematic institutional incentives for their recruitment by providers. We have helped thousands of veterans who were directly hurt by inadequate accountability measures and gatekeeping for participation in federal educational assistance programs. In addition, our constituents frequently face financial and administrative challenges due to lack of proper coordination

between the terms and conditions of the GI Bill® and DoD educational programs with the regulations governing federal student aid. It is also important to note that despite their access to VA and DoD funding, many veterans and military-connected students still rely on federal student aid, including student loan programs, and the veterans and military students we serve have unique needs in the administration of those programs. In view of their service to the nation, their numbers, and their unique needs, we believe that it is essential that every negotiating committee convened by the Department include legitimate and qualified representatives of our community.

Before addressing the substance of the topics listed and offering additional issues for the Department to consider, we would like to address the process itself. We urge the Department to ensure that every negotiating committee it convenes includes at least as many representatives of public interest, consumer, and student groups as representatives of institutions. Ever since it was mandated for all Title IV rulemaking in the 1992 Amendments, negotiated rulemaking has granted a disproportionate voice to institutional interests by seating multiple negotiators representing various providers and vendor subgroups while offering only a handful of seats to groups representing the intended beneficiaries of federal student aid programs. Indeed, we are disappointed that many of the veterans we work with who requested an opportunity to address these hearings were turned down. Students and consumers are no more of a monolith than institutional interests, and the diversity of distinct student populations deserves at least as much representation as that afforded to institutional interests in all future negotiations. Furthermore, public interest groups and organizations representing student and consumer groups bring enormous expertise and detailed knowledge of prevailing industry practices that would assist the Department as it confronts the understandable demands of institutional representatives for lax and convenient regulations.

Also, while the Department pursues policy changes that can be dealt with only through rulemaking, we urge you to simultaneously consider strengthening compliance with current law through administrative action or by subregulatory guidance. Better enforcement of current regulations on topics ranging from accreditation to misrepresentation can provide stronger protections for students and taxpayers.

We realize that, regardless of what may be possible to accomplish outside the regulatory process, the task ahead will be arduous. Just two of the topics listed among the 14 items in the notice--gainful employment and borrower defense--were each the sole subject of multiple previous negotiations. Two other topics--standards of administrative capability and financial responsibility--are critical linchpins for program participation and both are woefully outdated and demonstrably inadequate to their respective tasks. The Department, facing a similarly ambitious challenge in the last round of negotiated rulemaking in 2019,

opted to address subcategories of related policy issues through the *a priori* formation of subcommittees in violation of negotiated rulemaking protocols, which empower the committee, once seated, to create subcommittees. We would strongly object to a repeat of that flawed process as it deprived consumer and public interest groups from the opportunity for meaningful participation.

With regard to the selection of topics, we commend the Department for identifying important regulatory topics related to accountability. Proper regulation of issues 1, 2, 3, 11, 12, and 13 (change in ownership and control; certification procedures for participation in Title IV; standards of administrative capability; mandatory arbitration clauses; financial responsibility; and gainful employment) would have remedial and salutary consequences for documented gaps in institutional accountability under current law. Too many veterans have come to us describing significant harm from predatory practices that the current regulatory structure fails to prevent. In addition, issues 4, 5, and 8 (ability to benefit; borrower defense; and false certification), while primarily addressing terms of alternative access and relief for defrauded students, would certainly provide secondary accountability benefits under well-configured regulations. The veterans we serve describe unique and important frauds that the current regulatory structure has failed to address, including predatory schools that sign veterans up for loans against the veterans' repeated and clear requests for no loans in light of their generous GI Bill, and homeless veterans who are signed up for online classes even though they lack access to the internet or even a mobile phone. One veteran, Travis Craig, explained:

“The admissions process was very rushed. We signed everything on electrical notepads, so us, as students, we didn't actually know what we were signing for. The Admissions person would be seeing the screen and we would just be signing our name on the notepad.”¹

Worse yet, some for-profit schools electronically sign for loans and create an email account in the veteran's name; when FSA sends confirmations about the loan, the school officer receives the email and the veteran has no idea. One whistleblower told us, “Well, we think of it as just an electronic signature, not really forgery.” Another whistleblower explained that students were often pulled out of class to take on extra loans. He had one student veteran who had all costs covered with VA education benefits, but, each semester, was *still* pulled out during exams and forced to take out an extra \$6,000+. The whistleblower wonders where all that money went--because it must have been double the actual tuition--and the student didn't see a dime. We believe the Department should, through regulations,

¹ Veterans Education Success. Student Success Story Featuring Travis Craig (U.S. Army), (2019). <https://youtu.be/2tMxkPxmtBw> (last visited June 21, 2021).

add specific protections against unauthorized borrowing for veterans and military-connected students.

We strongly urge the Department to add accreditation and state authorization to the list of items to be reviewed and re-regulated, as these are two of the three legs of the triad that governs institutional accountability. Particularly in light of new developments that range from acquisition of participating for-profit institutions by non-profits, outsourcing of critical institutional services to ineligible third-parties, and conversions that enable creditors to effectively control institutions while shielded from the reach of the Department's regulations, accreditation and state authorization represent important tools if deployed correctly. Furthermore, accreditation provides the only regulatory instrument for accomplishing the Department's stated goal of addressing race, ethnicity, and gender disparities in postsecondary outcomes such as retention, completion, loan repayment, and default.

We are pleased to see the inclusion of 34 CFR subpart L (financial responsibility) on the proposed agenda. Precipitous closures of multiple for-profit schools over the past few years, most notably the collapse of Corinthian Colleges and ITT Tech have made it abundantly clear that the current financial responsibility framework for private institutions, particularly the for-profits, is inadequate to the task of protecting students and taxpayers. These regulations allow grossly undercapitalized providers to put enormous sums of federal aid and students' tuition payments at risk, with no recourse or path to recovery when they go out of business and leave thousands of veterans and military students in the lurch. We urge the Department to revisit its entire regulatory approach to financial responsibility in order to require adequate capitalization for providers, establish capitalization ratios below which it would prevent stock buybacks and the payment of bonuses and dividends by for-profit corporations, and prevent financially unsustainable providers from leveraging massive amounts of federal aid even as they face inevitable collapse and bankruptcy. We would also propose that 34 CFR 668.15 (factors of financial responsibility) be added to the list of items for review, primarily to more clearly define public institutions and address the emergence of new business arrangements where for-profit providers are disguised as extensions of public institutions.

We are likewise pleased to see the standards of administrative capability on the list of topics for this rulemaking. Several important improvements to these standards can significantly reduce waste, fraud, and abuse in Title IV. Just as current regulations separate financial functions to ensure that authorization and disbursement of payments are not placed in one office, they should be amended to better separate curricular and academic functions from business operations of institutions. In addition, front-line counselors and recruiters, on whose representations students and families rely in their decisions about

enrollment, should be required to act as fiduciaries with a duty of care and loyalty to prospective students. This would end the familiar pattern of gross misrepresentation and high-pressure sales by recruiters and significantly reduce predatory sales tactics and mass victimization of students, including many veterans. Sadly, VES has firsthand experience with too many cases of institutional misconduct and abusive practices, through the eyes of the veterans and military-connected students we have helped.

As previously mentioned, veterans and military-connected students do rely on the student loan programs, and are significantly affected by every feature of the loan system. Improving the various repayment options including the Public Service Loan Forgiveness (PSLF) program, better servicing, and more equitable discharge policies, particularly for borrowers with disabilities and for victims of unscrupulous providers, are important priorities for us. We commend the Department's most recent actions on borrower defense and disability discharge claims and urge the Department's attention to the unconscionable delay in providing relief to all qualified borrowers, which is ample proof that the statutory discharge provisions are not working as intended. For example, the PSLF program, which is very important to both veterans and servicemembers (since military service is the quintessential public service), has granted only a handful of write-offs in the 4 years when the first cohort of participants became eligible for its benefits -- as we have written in several letters to the Department. Similarly, the proper functioning of the Department's Total and Permanent Disability Discharge program is of high importance to the disabled veterans we serve, and we have led multiple letters from veterans and military organizations to the Department regarding this program. Also important to veterans is the closed school discharge program, and we have helped many veterans apply for the discharge and can be helpful to the Department as it seeks to ensure smooth operation of this program. We work with veterans facing all of the various shortcomings of the current repayment and discharge systems and can be helpful to the Department as it seeks to improve regulations governing these important topics.

We are also pleased to see the inclusion of borrower defense and gainful employment on the agenda. These are both important statutory provisions that work in tandem with each other and should be re-regulated in a manner that simplifies and strengthens them in comparison to their previous iterations. If carefully coordinated with each other, the gainful employment regulation--of a statutory criterion for eligibility of certain programs--would prevent the participation of subpar programs in Title IV, while the borrower defense rule would provide relief to students and recourse for the taxpayers should a subpar program get through the gatekeeping safeguards despite the Department's best efforts. We hope that the Department will deploy these two important tools to weed out subpar programs and provide relief to their victims, especially the brave men and women who

served their country in uniform and whose lives have been ruined by predatory education companies. Illustrating the importance of these programs, veteran Juan Harris, explained:

“I went to University of Phoenix to get a better job and can't even get a promotion at my current job. I have a degree and an MBA from this school. I applied for over 200 jobs, and no one would hire me. Got only one interview. I actually received more job offers when I removed University of Phoenix from my resume.”

Finally, while acknowledging the statutory prohibition on the start of the 90/10 regulatory process, we urge the Department to move expeditiously after October 1 to convene a negotiating committee and develop proposed regulations as quickly as possible. This item is of utmost importance to veterans and military-connected students and, given the self-executing nature of the rule, is sufficiently straightforward to be quickly resolvable. As veteran Chris Wolfa states:

“These schools target and exploit military veterans for their GI Bill benefits, deliver a subpar education, then leave us with worthless degrees or no degree at all. It's their business model. I proudly served my country and earned my GI Bill, and this is how I ended up. I remain \$23,000 in debt with no degree to show for it. If you want to support the troops, please scrutinize these schools and defund them when they do us wrong.”

We appreciate the difficulty and the enormity of the task facing the Department as it seeks to improve outcomes for students and taxpayers. The topics identified by the Department in its notice, along with the few additions proposed here, would make a great start on re-orienting Title IV regulations toward better outcomes for students and taxpayers. We stand ready to assist the Department in this effort and believe we can provide the Department with important and unique information about the experiences of veterans and military-connected students.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Wofford'.

Carrie Wofford
President