



VETERANS EDUCATION SUCCESS®

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Submitted via electronic portal

Jason Hoge
Director of Operations
Debt Management Center
Office of Management, 189
1 Federal Drive Suite 4500
Fort Snelling, MN 55111

Re: RIN 2900-AR20-Threshold for Reporting VA Debts to Consumer Reporting Agencies

Dear Mr. Hoge:

I write on behalf of Veterans Education Success to provide comments on the proposed rule regarding the threshold for reporting Department of Veterans Affairs (“VA” or “the Department”) debts to a consumer reporting agency (“CRA”). Veterans Education Success 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.

Debts owed to the Department as a result of overpayments related to veterans’ usage of the GI Bill and other veterans educational benefits are a significant and increasing problem.¹ A 2015 GAO report found that, in the prior fiscal year, the Department had made \$416 million in Post-9/11 GI Bill overpayments, affecting 1 in 4 beneficiaries, which can result in thousands of dollars of debt for each veteran.² These debts are often caused by an error or delay by the Department or an institution and, because of the size of the debts, can result in crippling financial injury. As the Department already understands, negative credit reports to a CRA make this problem for veterans worse by causing housing insecurity, job loss, or revocation of a security clearance.

In light of the significant differences between educational overpayment debt and other types of debt owed to the Department, and the fact that most of these debts are caused by error or delay by VA or an institution, the proposed rule should be revised to exempt, or at a minimum, specifically restrict, the reporting of educational overpayment debts to a CRA. Also, changes should be made to the proposed rule to ensure that a debt is not reported to a CRA if it is being disputed by the veteran or if it is owed by a veteran who is totally and permanently disabled.

Educational Overpayment Debts Should Be Exempted or Separately Addressed.

According to the 2015 GAO report, 90% of GI Bill overpayments were a result of enrollment changes by veterans.³ School reporting errors (e.g., submitting incorrect enrollment or tuition information) constituted another 8% of the overpayments, and VA processing errors (e.g., duplicate

¹ Bureau of Consumer Financial Protection, Office of Servicemember Affairs Annual Report (January 2019), p. 12. https://files.consumerfinance.gov/f/documents/cfpb_osa_annual-report_2018.pdf

² *Post-9/11 GI Bill: Additional Actions Needed to Help Reduce Overpayments and Increase Collections*, United States Government Accountability Office (October 2015). <https://www.gao.gov/assets/gao-16-42.pdf>

³ *Id.* p. 11.



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payments or data entry errors) made up the final 2%.⁴ Enrollment change overpayments usually occur because of slow enrollment verification and the misguided policy of disbursing students' tuition and fees to the institution for the entire term after a student sits for just one day of class, even if the student withdraws or changes his or her course load a few days into the term. This incentivizes predatory schools⁵ to prioritize enrollment over academic success and to employ deceptive tactics to convince military-connected students to remain enrolled for "just one day."⁶ Also, a majority of institutions rely on a single-stage certification process that is prone to creating overpayments. When a student drops a class during the add/drop period, but the Department is not informed by the school until the end of the term, it makes little sense for the student to be penalized for the overpayment debt for a course that they did not even take, especially with a negative credit report to a CRA. Congress understood this to be a problem and, in Section 1010 of the [Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020](#), required institutions to submit a verification of each individual enrolled in a program who is receiving veterans benefits. Because the problem of overpayments caused by institutions' past failure to timely inform the Department about a student's enrollment change is one that is out of the veteran's control and for which the institution (and not the veteran) benefitted, it is unfair and unduly punitive to report those debts to a CRA.⁷

This problem is exacerbated by the fact that the Department traditionally has sought repayment of the debt from students, instead of the institutions that were the true recipient of the money. We have spoken to veterans who are shocked and overwhelmed when they received a letter from the Department demanding repayment of tens of thousands of dollars, sometimes even in excess of \$100,000, for tuition overpayments. This is particularly confusing and distressing when the veteran never had access to those funds or took the courses, and they followed their institution's rules related to enrollment changes. Congress recognized this unique problem and, in Section 1019 of the [Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020](#) amended Title 38 of the U.S. Code to ensure that an educational overpayment "shall constitute a liability of the educational institution to the United States." This language makes clear that Congress wants the Department to treat educational overpayment differently than other debts, and the Department should recognize that in this rule by exempting or at least restricting the report of those debts to a CRA.

There are other instances where educational overpayment debts are incurred but are not the fault of the student and should not be reported to a CRA. For example, we have heard from veterans that, due to an error, the Department has authorized GI Bill benefits to veterans for a greater percentage than what they correctly rate based on their qualifying period of service. This error is not always caught in a timely manner by the Department and payments for tuition and fees or housing assistance are sometimes disbursed, thereby resulting in an overpayment that, if reported to a CRA, will have

⁴ *Id.* p. 12.

⁵ Veterans who have come to us for help have told us that recruiters lied to them about the types of classes and programs offered, the school's true tuition and how much they would need to pay out of pocket beyond the GI Bill, the school's accreditation and their ability to transfer to a public university, whether the school had real professors, the classroom equipment available, and more.

⁶ See, e.g. Testimony of Chris Neiwee, Former DeVry military recruiter, June 12, 2013. <https://vetsedsuccess.org/former-devry-military-recruiter-whistleblower-testimony/>

⁷ In contrast to VA's disbursement of a full term of GI Bill after just one day, the Department of Education delays disbursement for new students and prorates the amount of tuition the school has "earned" during the term, up until 60 percent of the semester has passed (after the 60 percent cutoff, a school is viewed as having earned 100 percent of the term of Title IV funds).



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devastating effects on a veteran's life. Also, overpayments can occur if a service member who is approved for his or her dependent to use transferred Post-9/11 GI Bill benefits later does not meet the additional service obligation requirement. Payment of the overpayment debt falls on the dependent, who is often unaware that the obligations were not met. Retroactive adjustments to GI Bill benefits are particularly unfair to veterans who may have already missed the opportunity to drop classes or withdraw from the institution without financial penalty. Reporting those debts to a CRA causes unnecessary and unfair financial injury.

Numerous veterans and their family members have contacted Veterans Education Success about the issue of overpayment debts. Below are some examples of what we were told.

“The school that has wrongly handled my account resulting in a large overpayment from the VA is National University, San Diego, where I have been an active full-time student with their satellite campus aboard Twentynine Palms, CA. Over the course of my degree progress, mismanagement of information and poor handling of my student account has resulted in the VA Debt Collector's office stating that I owe \$4664 immediately. I was given a 30-day notice to pay with almost no option to fight. While I took all [efforts] to fulfill or drop classes according to school and VA policies, the school has failed to report the appropriate and accurate information to VA and its required deadlines and thus I have been put in a position where I have no options but to pay the large sum of debt or cripple my credit score.” – J.W.

“VA is charging our son \$100,000+ GI Bill/911 saying he doesn't qualify for the benefit...they paid four years [of] college and now...four years later they sent a letter asking to pay back that amount of money. We called them every semester and received letters of the remaining months/benefit. We are under a lot of stress with this...my husband is an 80% Disabled Veteran with 22 years of service/ honorable discharge and I am a disabled person...I don't stop crying.” – E.R.

M.H. reported to us that her son incurred a GI Bill debt due to an overpayment. He paid the full balance, but because it was after the time frame VA required, the debt was sent to a collection agency and his credit report now shows this debt as a delinquency. “He is only 26 years old, started his life, and is now struggling to get a simple credit card approved. Not only that, he worries how this will affect his opportunities when applying for jobs, an apartment or a loan. My son paid the VA debt in full. Why should he now have this reflect negatively for 7 years? We feel it's unfair and my son's life is now greatly impacted. What can he do and how can I, the parent and veteran of 27 years help him? This is causing us much anxiety and stress. There has to be a better process where lives are not disrupted in such a harsh way.”

J.H., the son of a veteran said that his “father transferred his education benefits to me and I received an approval [letter] from the VA in 2013 for my college. I exhausted all my benefits in 2016, graduated in Summer 2018 and received a letter from the VA Fall 2018 stating because my father did not complete his service obligation I am required to pay back all of the paid benefits. I have been in dispute with the VA since then and have not received a response since my last dispute this year. [I] received a letter late February from the VA and Department of Treasury that I owe the U.S Gov't said debt and I do not know what to do, I am unable to pay back that large amount and I believe the debt is not my responsibility. I need urgent help on this problem.”



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“My Yellow Ribbon Program was double-charged by the school (or you could say the VA overpaid the school in one semester) during my Summer 2020 semester resulting in me now owing the VA \$16,810 and not the school that received the funds. In order to help me, the school turned around and charged my Discover Student Loan for the \$16,810 that the school was charging the Yellow Ribbon Program and I was told they were returning the erroneous \$16,810 back to the VA and to not worry about coming up with \$16,810 to pay the VA, just focus on your student loan when you can. It is now August 2021 and I have received at least my third letter from the VA that I owe them the overpaid \$16,810 and the school I attend(ed), has not responded to my numerous emails, phone calls, and phone messages left for them asking for assistance and inquiring as to why this has not been resolved.” – K.G.

Educational overpayment debts are far too dissimilar to other types of VA debt to be treated in the same manner for determining if or when to report a debt to a CRA. Because educational overpayment debts are often the fault of the institution for failing to make timely reports of enrollment changes to the Department, or are caused by another school or VA error, the proposed rule should be revised to exempt all educational overpayment debts from reporting to a CRA. At a minimum, the rule should provide specific limitations on when educational overpayment debt can be reported. For instance, if the overpayment debt is owed because of a school or VA error or because the institution was paid for tuition and fees that, due to enrollment changes, the student did not utilize, those debts should not be reported to a CRA.

No Debt Should Be Reported That Is Under Dispute by a Veteran.

In keeping with VA’s mission to care for veterans and their families, the Department should prohibit the reporting of any debt to a CRA that is being disputed with VA. Especially for educational overpayment debts, that, as discussed above and as recognized in the proposed rule, are not the fault of the veteran, VA’s dispute and appeal process should be completed before the debt is reported to a CRA. K.G., a wife of an Airforce veteran informed us that she had disputed a debt on the basis that she had never received proof or explanation of why it was incurred. Despite her ongoing dispute, the Department referred her debt to collection and garnishment. For veterans and their family members like K.G. who are trying to determine why VA believes that they owe a debt or have argued to the Department that they should not owe the debt, it is unfair and unreasonable to report those debts to a CRA and cause further harm on top of what has been caused by the collection attempts. If the dispute is found in favor of the veteran, the inaccurate negative credit report may have caused irreversible financial harm, such as the loss of a security clearance, inability to obtain credit for the purchase of a home or vehicle, and inability to secure rental housing.

Moreover, section (c)(3) of the proposed rule highlights the unfairness in the lack of protections for veterans from CRA reporting when they are disputing their debt. Removing the minimum threshold for any debt where there is an “indication of fraud, misrepresentation, or bad faith”⁸ by the veteran but not automatically suspending the reporting to a CRA (and collections on that debt) when there is an error by the Department or a school, or if there is an indication of fraud, misrepresentation, negligence, or bad faith on the part of an institution, which is the actual recipient of VA’s money,

⁸ The VA should consider revising this aspect of the proposed rule to include greater clarity around the level of proof needed to establish an “indication of fraud, misrepresentation, or bad faith”, to ensure consistency for any veteran alleged to have committed such conduct.



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illustrates how veterans are not being treated fairly in this proposed rule. The final rule should specifically exclude any debt from being reported to a CRA until an individual's dispute or appeal with VA related to that debt is resolved.

No Debt Should Be Reported That is Owed by A Veteran Who is Totally and Permanently Disabled.

The proposed rule, in section (2)(ii), prohibits the reporting of debts to a CRA that are owed by a veteran who has been determined to be "catastrophically disabled." VA should align this rule to meet the Department of Education's ("ED") Total and Permanent Disability Discharge program. ED is in the process of discharging student loans owed by veterans that have a service-connected disability (or disabilities) that are 100% disabling or that are found to be totally disabled based on an individual unemployability rating. VA's use of "catastrophically disabled" in this proposed rule places a significantly higher standard even though a rating of 100% or a finding of total disability makes it just as unreasonable to expect the veteran to be able to repay the debt. VA should alter this section to use terminology that is consistent with other federal educational debt programs that recognize that veterans may not always be "catastrophically disabled" and yet, it would still be unfair to demand that they repay their debt to VA. The final rule should exclude any debt from being reported to a CRA that is owed by a veteran that is totally and permanently disabled or that is rated 100% disabled.

We ask that VA consider the causes and impact of overpayment debts arising from GI Bill and other veterans education benefits and we urge VA to significantly revise this rule to reflect the unique circumstances of overpayment debts resulting from these unique benefits. We would welcome the opportunity to discuss our comments to this proposed rule with you in further detail.

Sincerely,

Christopher J. Madaio
Vice President for Legal Affairs
Veterans Education Success