



VETERANS EDUCATION SUCCESS

March 7, 2023

Joseph L. Garcia, Executive Director
Education Service
Veteran Benefits Administration
Via email

Re: Risk-Based Surveys

Dear Director Garcia:

We thank you and your team at the Education Service for making progress towards implementing risk-based surveys as required by the Protect the GI Bill Act, enacted as part of the larger *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*.

We recognize the considerable time and effort your team has put into the VBA Education Service's Standard Operating Procedure for Risk Based Surveys¹ and Standard Operating Procedures for Targeted Risk Based Reviews² (SOPs).

While the Education Service is to be commended for preparing thorough and thoughtful SOPs, we wish to bring to your attention a very important gap: Specifically, both SOPs fail to reflect Section 1014 of the Isakson-Roe law, codified at 38 U.S.C. § 3673(e) ("Notice of Government Action"). This is actually the key section of the law as it outlines when a risk-based survey should take place. Specifically, section 3673(e) of the law requires a risk-based survey by the State Approving Agency (SAA) within 60 days of VA's or the SAA's receiving notice or becoming aware of one or more "events" that are set forth in § 3673(e)(3):

- The placement of an institution on Heightened Cash Monitoring Level 2. See 38 USC § 3673(e)(3)(A);

¹ VBA Education Service, Oversight and Accountability Division, *Standard Operating Procedure, Risk Based Surveys* (Jul. 22, 2022), <https://vetsedsuccess.org/vbas-standard-operating-procedures-for-risk-based-surveys-july-22-2022/>.

² VBA Education Service, Oversight and Accountability Division, *Standard Operating Procedure, Targeted Risk Based Review (TRBR)* (Oct. 1, 2022), <https://vetsedsuccess.org/vbas-standard-operating-procedures-for-targeted-risk-based-reviews-oct-1-2022/>.

- Punitive action against an institution by a federal agency or department for misconduct or misleading marketing practices that would violate the standards defined by the Secretary of Veterans Affairs. See 38 USC § 3673(e)(3)(B);
- Punitive action against an institution by a State for any reason. See 38 USC § 3673(e)(3)(C);
- The loss, or risk of loss, by an institution of accreditation, including notice of probation, suspension, an order to show cause relating to the educational institution's academic policies and practices or to its financial stability, or revocation of accreditation. See 38 USC § 3673(e)(3)(D); and
- The placement of an educational institution on provisional certification status by the Secretary of Education. See 38 USC § 3673(e)(3)(E).

There are several problems that arise from the SOPs' failure to reflect the requirements of 3673(e).

First, the SOPs appear to confuse the "scope" of a risk-based survey, codified at 38 U.S.C. § 3673A(b)(2), with the triggering events, listed above and codified at 38 U.S.C. § 3673(e)(3). This apparent confusion results in the SOPs' instructing SAAs to conduct a risk-based survey when an institution's veteran enrollment increases from, for example, two students to four students. (Enrollment increase is a factor in the statute's "scope" of a review in 38 U.S.C. § 3673A(b)(2) but is not a triggering event for a review under 38 U.S.C. § 3673(e)(3).)

This apparent confusion also has resulted in the SOPs' explanation that the loss or risk of loss of accreditation is merely an additional factor worth considering, but not a statutory trigger, in determining whether a risk-based survey is needed. This is clearly at odds with the explicit language of 38 U.S.C. § 3673(e)(3)(D), which specifically names the loss or risk of loss of accreditation as a trigger for a risk-based review. Similarly, the SOPs incorrectly limit state government actions to those that reach a court verdict or settlement, which is clearly at odds with the explicit language of 38 U.S.C. § 3673(e)(3)(C).

This is not to say that the SOPs are not thoughtful. We do appreciate that the topics outlined in 38 USC § 3673A(b)(2) ("scope" of a review), such as veteran complaints, may actually indicate risk before one of the triggering events in § 3673(e)(3) occurs. Similarly, the "Targeted" SOP provides well-thought out appendices providing numerous "risk indicators" worth reviewing during a targeted risk-based review (see pp. 11-12 and 18-20 of "Targeted" SOP). Therefore, we commend VBA's efforts to identify risky schools early. To do this, however, VBA should ensure that the automatic triggers for a risk-based survey in § 3673(e)(3) are incorporated into the SOPs and should develop an algorithm for using the items listed in § 3673A(b)(2) as early indicators of risk.

Second, the SOPs also fail to reflect the statute's strict time limits for VA and the SAAs to act, codified at 38 U.S.C. § 3673(e)(1), including that VA must alert an SAA within 30 days of becoming aware of a triggering event, see § 3673(e)(1)(A), while the SAA must immediately notify the Secretary upon becoming aware of a triggering event. See 38 USC § 3673(e)(1)(B). Most important, the SAA must complete the risk-based survey and provide the Secretary with a complete report within 60 days. See 38

USC § 3673(e)(1)(C). Nowhere in either SOP is there any mention of the requirement that an SAA complete the risk-based survey and deliver the results to the Secretary within 60 days. This statutory time limit – specifically imposed by Congress to ensure that risky schools receive prompt examination – would surely be worth teaching SAAs about and including in the SOP.

Third, the SOPs also fail to reflect Isakson-Roe’s methodology of assigning risk-based reviews to SAAs to complete, codified at 38 U.S.C. § 3673(e)(1). In contrast, the Education Services’s Targeted SOP states that Education Service staff (“Chief Education Liaison Office” staff) will conduct “targeted” risk-based surveys (see p. 7 of the “Targeted” SOP). This is at odds with the statute.

Again, we thank you for your thoughtful work on the SOPs. We hope it will not be difficult for your staff to incorporate 38 U.S.C. § 3673(e) into your SOPs.

Finally, a question, please: Has the Education Service made progress on the creation of a database for SAAs to utilize in conducting risk-based surveys, as required by 38 U.S.C. § 3637A(c)? If not, how can we be of assistance on that?

Thank you for your work to serve student veterans.

Sincerely,

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

Carrie Wofford
President

Cc:

- Joshua Jacobs, Nominee for UnderSecretary of Veterans Benefits
- House and Senate Veterans Affairs Committee professional staff
- The American Legion
- National Association of State Approving Agencies