



June 1, 2023

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

Re: Risk-Based Surveys

Dear Director Garcia:

Thank you for your response to our previous letter concerning the implementation of risk-based surveys. We apologize for our delay. We appreciate your detailed response, which was informative. While we understand the points you have raised, we believe the Education Service's Standard Operating Procedures (SOPs) for the risk-based surveys still contain some inaccuracies.

We are very grateful that the Education Service has taken seriously the Isakson-Roe law and has dedicated time and effort to complying with the new law. We understand you are confident that P.L. 116-315 § 1014 has been implemented as required by law. However, there are still discrepancies between your interpretation of the statutory language and the concerns we raised in our previous letter. We believe the SOPs developed by Education Service confuse 38 U.S.C. § 3673(e)(3) and 38 U.S.C. § 3673A(b)(2) and fail to incorporate the specific triggers outlined in 38 U.S.C. § 3673(e)(3) that require a risk-based survey by the State Approving Agency (SAA) within 60 days of receiving notice or becoming aware of certain events.

Specifically, you state that the risk-based surveys described in 38 U.S.C. § 3673(e) are not mentioned in the SOP because they are not applicable to the issue at hand. You regard the Risk-Based Survey (RBS) SOP as pertaining only to *Section 1013* of Isakson-Roe (PL 116-315) and not Section 1014, which lists the triggers for a risk-based survey that must be completed by the SAA within 60 days. However, the SOP specifically presents itself, in the introduction, as broadly implementing Isakson-Roe's risk-based surveys. The RBS SOP states under the *Purpose* section that it "establishes the framework necessary to consistently execute RBSs in accordance with legislative requirements."¹

Given this objective and the presentation of the SOPs to SAAs, we strongly recommend that the "framework" for consistent execution of RBSs needs to include circumstances when an SAA is required to complete a risk-based survey within 60 days of receiving notice or becoming aware of certain triggers, as provided in Section 1014 of Isakson-Roe and codified at 38 U.S.C. § 3673(e). By omitting these triggers, the SOPs may lead to an inconsistent application of risk-based surveys, causing indirect adverse effects on students, and a potential neglect of institutions that truly warrant examination.

¹ VBA Education Service Oversight & Accountability Division, "Standard Operating Procedure: Risk Based Surveys" (Version 1.0), Jul. 22, 2022. Pg. 4.

Furthermore, while we understand your assertion that the SOPs do not need to directly address 38 U.S.C. § 3673(e) because you find the statutory provisions clear and unambiguous, we believe it is crucial to consider the practical implications of omitting certain statutory requirements – especially as SAAs seek to address issues in the field.

Consider the fact that there is a heavy reliance on these SOPs by SAAs; in the guidelines produced by the National Association of State Approving Agencies (NASAA), they even go so far as to indicate this reliance up front, stating, “Please ensure that you are following the latest guidance in the RBS SOP and any written guidance provided by Department of Veterans Affairs.”²

We are very grateful to your team for developing these SOPs. At the same time, we strongly believe the following changes are needed in the SOPs:

- The statutory time limits for VA and SAAs to act when certain triggers are present, as specified in 38 U.S.C. § 3673(e)(1), are one of the most essential components of this law – but are omitted entirely from your SOPs. These time limits were developed in collaboration with the Congressional Veterans Affairs Committees and SAA input to ensure that risk-based surveys are completed with the intended timeliness they necessitate. However, the current SOPs fail to mention the requirement for SAAs to complete the survey and provide a complete report to the Secretary within 60 days. By not including this critical timeframe in the SOPs explicitly, there is a risk of delayed or inadequate actions in response to triggering events, as some SAAs may be less familiar with these statutory requirements. We understand that NASAA has expressed to your staff that they, too, believe the SOPs’ failure to mention the 60-day time limit is a serious omission.
- The Risk-Based Survey SOP lists “legislatively mandated risk factors”³ in three places, but, in each instance, quotes the wrong statutory provision – quoting from 38 U.S.C. § 3673A(b)(2) (which sets forth the “scope” of factors an SAA should cover *during* a risk-based survey) and failing to list the actual statutorily-mandated risk *triggers* located at 38 U.S.C. § 3673(e)(3). The “scope” factors from 3873A(b)(2) were intended to set forth a minimum list of the items an SAA should look at *during* a review. They do not set forth the risk factors that trigger a survey. We do not object to the inclusion of these scope items as possible additional triggers for a risk-based survey given that many items listed in the “scope” – such as student complaints – are indeed likely to suggest risk. But, at the least, the RBS SOP certainly needs to specifically list out the triggers that Congress did provide in 38 U.S.C. § 3673(e) and explain that when the SAA receives notice or becomes aware of any one of the § 3673(e) triggers the SAA is required to complete a risk-based survey and submit a report to the Secretary within 60 days. The SOP also should set forth the legislatively-required standard for an SAA’s report.

² NASAA RBS Guide (FY 2023), Pg. 2

³ Specifically, page 5 lists “legislatively mandated risk factors,” and pages 7 and 16 each have a section titled, “Legislative Risk Factors From Public Law 116-315.”

- The RBS SOP identifies “loss of accreditation” under “Other Risk Factors for Consideration.”⁴ This is at odds with the clear directive of Congress. Loss of accreditation or risk of loss of accreditation is a statutory event that Congress has deemed must trigger a risk-based survey, per 38 U.S.C. § 3673(e)(3)(D). The SOP should be revised to correctly identify loss, or risk of loss, of accreditation as a trigger for an RBS to be completed within 60 days, and not merely as an “other... factor” to be considered.
- The SOPs erroneously limit one of the risk factors to being, “Federal or State government actions *in court*.”⁵ This is at odds with the statute. The language in 38 U.S.C. § 3673(e)(3) does not limit the risk to being “in court.” Instead, the statute states it should apply to, “Punitive action taken by” federal agencies and “Punitive action taken by a State against an educational institution,” which goes beyond the narrower definition of actions solely within the judicial realm.⁶ Indeed, upon notice from the Secretary of any trigger in §3673(e)(3), there must be a careful review of “any other action against the educational institution by any Federal or State government entity or by the educational institution’s accreditor.”⁷ Clearly, it is incorrect to suggest in the SOPs that a risk-based survey is only required for or concerned with actions “in court.”
- The assignment of risk-based surveys to SAAs. The SOPs specify that the Education Service staff may conduct targeted risk-based reviews (TRBR).⁸ Specifically, the TRBR SOP states, “Once the TRBR is approved, the Oversight and Accountability team will create a TRBR schedule in Salesforce and a notification will be sent to the appropriate Chief Education Liaison Officer (CELO) to schedule and assign the compliance activity.”⁹ This is inconsistent with the statute and should be revised to ensure compliance with the law. We understand your assertion that TRBRs are “ad hoc reviews created by VA,” but Congress has promulgated a specific statute and the agency must adhere to it. 38 U.S.C. § 3673(e)(1) clearly assigns the responsibility of completing risk-based surveys triggered by notices of government action to the SAAs. To ensure consistency and maximize the effectiveness of risk-based surveys, it is essential to align the Education Service's practices with the statutory requirements.

⁴ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Risk Based Surveys” (Version 1.0), Jul. 22, 2022. Pg. 26. Pages 7-8 of the SOP provides a long list of various risk factors, and the only mention of accreditation is the bullet, “Other accreditor actions” under “Other Risk Factors for Consideration” on page 8.

⁵ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Targeted Risk Based Review (TRBR)” (Version 3), Oct. 1, 2022. Pg. 6.

⁶ 38 U.S.C. § 3673(e)(3)(B) and (C).

⁷ 38 U.S.C. § 3673(e)(6)

⁸ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Targeted Risk Based Review (TRBR)” (Version 3), Oct. 1, 2022. Pg. 4 (“3. Applicability: This procedure applies to Education Service, Oversight and Accountability Division and State Approving Agencies (SAA), when assigned a TRBR.”).

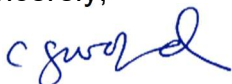
⁹ VBA Education Service Oversight & Accountability Division, “Standard Operating Procedure: Targeted Risk Based Review (TRBR)” (Version 3), Oct. 1, 2022. Pg. 7.

We would be very grateful for your incorporation of these statutory requirements into your SOPs and look forward to their expeditious incorporation.

Finally, we are grateful for your update about the use of the Salesforce-based database and the Approval Manager system. We have been eagerly following the progress on the Digital GI Bill work, and are hopeful that these systems will integrate in a meaningful manner. We would also be interested to know if there is any consideration towards leveraging these tools and data for prospective student veterans. We believe the insights that could be gleaned from these tools would be invaluable to veterans as they select where to apply their hard-earned benefits.

Thank you for your attention to these matters. We are so appreciative of you and your team for your unwavering dedication to our Nation's student veterans. We believe that by addressing these concerns, your SOPs can correctly carry out the letter of the law and strengthen the implementation of risk-based surveys – which will better serve students as they seek to achieve their academic goals.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Wofford', written in a cursive style.

Carrie Wofford
President

Cc:

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