



September 15, 2025

Ms. Cheryl Amitay,
Veterans Benefits Administration

RE: Waiver or Recovery of Overpayments
RIN: 2900–AS36

Dear Ms. Amitay,

Veterans Education Success (VES) submits this comment in support of the Department's proposed amendments to 38 CFR § 21.4009 and 21.9695 regarding the waiver and recovery of overpayments. These amendments will improve accountability for institutional misreporting, ensure proper assignment of financial liability, and protect veterans from being held responsible for errors they did not cause.

The proposed changes appropriately implement Section 1019 of the *Johnny Isakson and David P. Roe, M.D. The Veterans Health Care and Benefits Improvement Act of 2020* and aim to align VA regulations with both statutory text and sound consumer protection policy. As proposed, the changes would clarify:

- If VA pays a school directly, the school is automatically liable for any overpayment.
- If VA pays a student directly, the student is not liable for any overpayment that is the result of the school's willful or negligent conduct.
- Where the school is at fault, VA will not seek repayment from the student.
- The rule applies to debts established on or after January 5, 2021.

Below, we offer specific comments on each of the rule's core components.

Ending Redundant Use of the School Liability Process

We support VA's proposed VA's removal of its current process for schools to request a review, the School Liability Process (SLP), for cases where the current statute already establishes liability to schools. The proposed rule eliminates § 21.9695(b)(3) and updates cross-references to reflect that SLP is no longer needed for overpayments made directly to schools.

VA states:

"VA proposes to remove the current regulatory provision in 38 CFR 21.9695(b)(3) that requires VA to provide the School Liability Process under § 21.4009 to determine whether an overpayment is the result of willful or negligent conduct before holding a school liable for an overpayment paid directly to the school on behalf of an eligible individual."

This change avoids unnecessary procedural delays when the law already assigns liability to the institution.

Schools will still keep due process opportunities in cases involving student-paid benefits, but automatic cases would no longer need to be routed through the SLP review. Eliminating this step reduces VA's administrative burden and strengthens program integrity by preventing

avoidable delay in debt recovery. We support this change and agree that it is consistent with the clear intent of 38 U.S.C. § 3685(b)(2).

Clarifying School Liability for Payments Received

We strongly support VA's proposed revision of § 21.9695(b)(2) to clarify that schools are liable for GI Bill overpayments paid directly to them, including tuition, Yellow Ribbon contributions, and advance payments, even when there is no demonstration of fault.

As VA rightly explains:

“The statute does not require any VA findings, specifically findings of willful or negligent conduct, before considering the listed payments (tuition and fees, Yellow Ribbon program matching contributions, other advance payments) as liabilities of the school.”

This is consistent with the statutory text of 38 U.S.C. § 3685(b)(2), which unambiguously assigns liability to schools for payments received under Sections 3313(h), 3317, 3680(d), and 3320(d). There is no exception for good-faith mistakes or inadvertent errors.

VES supports this approach because it eliminates any confusion about who is responsible when VA funding is disbursed to schools in error. Schools that receive federal funds should be held accountable for returning them if they should not have been received in the first place. We believe this policy is fair, and consistent with practice in other federal education programs. Further, it helps to ensure institutional diligence in enrollment reporting. We urge VA to finalize this clarification as proposed.

Preventing Schools from Shifting Liability to Students

VA's proposed revision to § 21.9695(b)(1)(iii) reaffirms a fundamental principle, that when a school causes an overpayment through false certification or negligent reporting, VA will hold the school liable, *not the student*. VA states, “if we determine that an overpayment made to a veteran is the result of a school's willful or negligent conduct, we would hold only the school and not the veteran liable for the overpayment.”

This reflects VA's historical practice and basic common sense. Veterans should never be forced to repay funds VA disbursed based on a school's own mistakes. Nor should institutions be allowed to shift financial responsibility to students after VA has determined the school to be at fault.

This safeguard ensures that schools cannot use their own misconduct as a shield and then shift the financial consequences onto veterans. The Congressional Intent is clearly aligned with this thinking. As the bipartisan conference report to the Isakson-Roe Act explains:

“This section would require that schools and training programs be financially responsible for all GI Bill overpayments related to tuition and fees instead of students if the Secretary finds that the overpayment was made as a negligent failure of the school to report a

discontinuance of the student in the program or in the case of excessive absences.”¹

To be in total alignment with this intent, VA’s final rule should make it even more explicit that schools are ***absolutely prohibited*** from pursuing students for repayment when VA has assigned the liability to the school. This would solve any future confusion about whether or not the school can go after the student for the liability.

Finally, we believe this proposed language also appropriately prevents double recovery, ensuring that VA cannot recover the same overpayment from both the school and the student.

In short, we support this provision and recommend that VA include implementation guidance making clear that institutions are prohibited from seeking reimbursement from students when VA has determined that the school is liable.

Aligning Student Liability

We support VA's revisions to § 21.9695(b)(1), which outline the limited circumstances under which a student may be held liable for an overpayment. The proposed language limits individual liability to instances where the student received the payment directly, unless VA waived the debt, VA made the error, or the payment resulted from school misconduct. However, we urge the Department to explicitly prohibit institutional recovery from individual veterans in such cases, including when funds initially paid to the student were ultimately paid to the institution. Without this safeguard, VA could end up pursuing students for debts created by school misconduct or by schools retaining overpayments, even though the student acted in good faith. This structure avoids unfairly placing liability on the student when the debt is due to actions by the school or the Department.

We thank the Department for its thoughtful work on this rule and for the opportunity to provide comment.

Sincerely,



William Hubbard
Vice President for Veterans & Military Policy

¹ House Committee on Veterans’ Affairs, *H.R. 7105, As Amended: The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*, Conference Report, U.S. House of Representatives, 2020, https://veterans.house.gov/uploadedfiles/hr_7105_vets_division_section_summaries_final.pdf.