

Public Comment: Docket No. DOD-2013-OS-0093
Defense Department Voluntary Education Programs Proposed Rule
Regulations.Gov Tracking # 1jx-87wm-uk01 (Same comments as Tracking # 1jx-87wm-rrsn - but with the additional signatory Military Officers Association of America)

Thank you for the opportunity to comment on the proposed Department of Defense Instruction 1322.25 and revised Memorandum of Understanding (MOU) for Voluntary Education Programs.

Title IV Participation

We applaud the Defense Department for limiting Tuition Assistance to institutions that are accredited, approved by SAAs for the VA, and that are actually participating in Title IV (in Enclosure 3, section 1(b)(2)). We support the Department's specific adoption of certain Program Integrity requirements throughout the DoDI and MOU, as that makes clear the Department's oversight and enforcement authority.

Attached please find a letter from major veterans and military service organizations to the Senate Appropriations Subcommittee for Defense requesting the same. In line with this letter, the Defense Department should also extend the Title IV participation requirement to MyCAA dollars, in light of the fact that 30% of MyCAA dollars are going to programs that the Education Department refuses to recognize.

Eligibility for Licenses

Also in line with the attached letter to the Senate Appropriations Subcommittee for Defense, the DoDI and MOU should, in Enclosure 3, section 1(b)(2), and enclosure 3, section 2(a), and elsewhere, as relevant:

“Ensure that Tuition Assistance and MyCAA dollars finance only those programs that leave graduates eligible to sit for relevant professional licenses. In many programs currently eligible for Tuition Assistance and MyCAA, graduates are not allowed to sit for required licensing exams or other necessary credentialing requirements, making them ineligible to pursue a career in the field for which they believe they were trained. It is unfair to service members and their spouses, and a poor use of taxpayer dollars to allow programs that purport to prepare students for civilian careers to tap into military benefit programs when graduates are not eligible to sit for relevant professional licenses or certifications.”

The Defense Department should note that S. 1197, the National Defense Authorization Act for FY 2014, Sec. 524 (Sec. 2006a) would limit both TA and

MyCAA to programs that are complying with Title IV program participation agreements, and that leave graduates eligible for any required licensing or other state requirements.

The DoDI and MOU should also not approve programs of study for which no educational training is needed to obtain the job (i.e., when a high school or GED degree suffices for such jobs) or for which the student already has sufficient educational training (i.e., to avoid the problem of students ending up with the same job opportunities they had before the education).

In general, the use of TA and other benefits should lead towards useful degree attainment, not simply credits earned solely for the purpose of promotion point acquisition. This may require training Defense Department education advisors and other leaders who advise military students.

Funding for Marketing and Recruiting

Also in line with the attached letter to the Senate Appropriations Subcommittee on Defense, the DoDI and MOU should:

“Restrict Tuition Assistance and MyCAA funds to those institutions of higher education that do not utilize federal education aid to pay for recruiting and marketing. Institutions of higher learning should remain free to pay for marketing and recruiting using their own funds. There is no need to name colleges or to single out any one type of higher education institution. No institution of higher education – whether it is a public university, a community college, a private non-profit, a proprietary college, or a career training program – should spend taxpayer dollars on recruiting students from the military community.”

In addition, the DoDI and MOU should require any school that spends more than 10% of its revenues on marketing and recruiting (the schools the President warned about when he announced the Executive Order) to report to the Department and publicly disclose to prospective students data on: (1) the share of the school’s revenue spent on marketing, advertising and recruiting; (2) the average per student expenditures on instruction; and (3) average per student expenditures on marketing, recruiting and advertising.

Transfer of Credits

The proposed MOU mandates that schools participating in TA must disclose their own credit-acceptance policies. But the problem is not whether low-quality schools accept credits from elsewhere. The problem is that a low-quality school’s credits are worthless when a student tries to transfer, or when the student graduates and tries to apply to graduate school or get a job.

President Obama explained the problem when he signed Executive Order 13607 on April 27, 2012: “[T]here are some bad actors out there. . . . They’ll say that if you transfer schools, you can transfer credits. But when you try to actually do that, you suddenly find out that you can’t.”

Ironically, the current MOU may mislead military students into enrolling at some of the worst schools, whose credit acceptance policies are the most generous precisely because they lack academic rigor.

Perhaps the Defense Department was concerned about the burden on schools to have to research if their credits are transferable out to other schools – because there are thousands of colleges in the U.S. However, there are several key disclosures that would not be burdensome for schools:

- (1) Ideally, DoD could require programs to disclose whether their credits are transferable to the 4-year public state university in the state of the student’s legal domicile. Requiring a program to check on the transferability of its credits to 50 state 4-year universities is not overly burdensome and would provide useful information to military students as they make a decision. Many students on active duty would want to know if their online credits will be recognized when they get back home and pursue a degree or graduate school at their home-state 4-year public university.
- (2) Alternatively, DoD could require all programs to disclose whether their credits are accepted as transfer credits by merely 10 flagship public 4-year schools. Asking programs to find out if their credits are transferable to 10 schools would not be too burdensome, especially since most legitimate schools already know their credits are good. Which ten? Several suggestions:
 - a) The best 10 public 4-year universities, according to the U.S. News & World Report College Rankings (this year it is UC-Berkley, UCLA, UVA, UMI – Ann Arbor, UNC-Chapel Hill, College of William & Mary, GA Institute of Technology, Pen State, UC-Davis, UC-San Diego, UC-Santa Barbara, U-Illinois at Urbana Champaign, and U-Wisconsin at Madison).
 - b) The best 10 public 4-year universities according to the Education Department’s College Ratings system – once that system is up; or
 - c) The Big Ten Conference of Collegiate Football since those college names are familiar to most Americans and would be a useful barometer to military students. (University of Illinois, Indiana University, University of Iowa, University of Michigan, Michigan State, University

of Minnesota, University of Nebraska, Northwestern University, Ohio State University, Pennsylvania State University, Purdue, and University of Wisconsin-Madison).

- d) The 10 public 4-year universities with the largest student enrollment (and therefore some of the highest name recognition).

In addition, schools should be required to disclose relevant factual information about past treatment of their credits, especially if the school knows or has reason to know that their credits will not transfer. The state of California has long mandated language that limits representations about transferability of credit.

Student Outcomes

The Executive Order 13607 Section 3(c) requires: "The Secretaries of Defense, Veterans Affairs, and Education shall develop a comprehensive strategy for developing service member and veteran student outcome measures that are comparable, to the maximum extent practicable, across Federal military and veterans educational benefit programs, including, but not limited to, the Post-9/11 GI Bill and the Tuition Assistance Program."

The current DoDI and MOU fail to adequately define the "meaningful information" students should receive. To implement the Executive Order, please adopt the list of key data that is outlined in the attached "Military & Veteran Students Educational Bill of Rights" section 1(a)(i) – (xiii) – the document that was the precursor to Executive Order 13607. Note that this "Bill of Rights" specifies that these data must be disclosed "in plain language and in easily accessible, obvious places on all materials and websites."

Unfair, Deceptive, and Abusive Recruiting

Executive Order 13607 Section 2(c) requires the Departments of Defense and Veterans Affairs to "end fraudulent and unduly aggressive recruiting techniques on and off military installations, as well as misrepresentation, payment of incentive compensation, and failure to meet State authorization requirements, consistent with regulations issued by the Department of Education."

Executive Order 13607 Section 4(f) also requires the Secretaries of Defense and Veterans Affairs to "take all appropriate steps to ensure that websites and programs are not deceptively and fraudulently marketing educational services and benefits to program beneficiaries, including initiating a process to protect the term 'GI Bill' and other military or veterans-related terms as trademarks, as appropriate."

The DoDI and MOU Section 3(d)(1)(b) prohibit, but do not define, "unfair, deceptive, and abusive recruiting practices." DoD should define the terms clearly to ensure that institutions, recruiters, education advisors, and third-party reviewers unambiguously understand that recruiting activity that was tolerated prior to

Executive Order 13607 will no longer be tolerated.

As the President said when he signed the Executive Order:

“We’re going to bring an end to the aggressive -- and sometimes dishonest -- recruiting that takes place. We’re going to up our oversight of improper recruitment practices. We’re going to strengthen the rules about who can come on post and talk to servicemembers.”

In the DoDI and MOU, why allow an institution to contact a servicemember more than three times? Should a servicemember need to say she or he is not interested more than three times before the calls and visits and e-mails stop?

Deceptive marketing continues today – in call centers and on websites and printed materials by some predatory schools – especially regarding job placement and graduation rates, eligibility for licensing, and transferability of credits. The worst examples are at schools with large recruiting budgets. Therefore, the DoDI and MOU should require any school that invests more than 10% of revenues in marketing or recruiting to obtain a neutral, third-party analysis (by a government or non-profit organization selected by the Consumer Financial Protection Bureau, the U.S. Federal Trade Commission, or the U.S. Department of Justice Consumer Protection Branch) of whether the school’s website, materials, and call center scripts or training contain any deceptive or fraudulent statements.

In addition, the attached “Military & Veteran Students Educational Bill of Rights” explains in section 1(e) some bans to put in place to curb deceptive recruiting. This “Bill of Rights” in section 2 also explains how to stop the floodgate of recruiting of military. The DoDI and MOU should bar TA and MyCAA dollars to any school that violates Section 2 of the “Bill of Rights.”

The DoDI and MOU should also:

- Require all recruiting calls to be recorded and available for inspection by the government or third party education reviewer, and do not allow recruiting calls from cellphones.
- Restrict marketing on bases to be purely the provision of factual information as compared to public community colleges and state universities – without any strong-arm convincing.
- Forbid any school receiving TA or MyCAA from “guaranteeing” job placement or a certain salary (as this is deceptive).
- Ban same-day recruitment and registration, as these tend to be the schools with the most egregious recruiting and lowest quality, and because same-day registration does not give the servicemember time to consider options.

- Ban “pain-based” recruiting (see attached training manuals from 4 different schools all using “pain-based” recruiting), and require schools that spend more than 10% of their revenue on marketing and recruiting to submit their recruiting training manuals and materials to DoD to ensure there is no “pain-based” recruiting or incentive compensation.
- Extend all these rules to any institution’s 3rd party lead generator or contractor paid by the institution – so that institutions do not simply outsource their aggressive and deceptive marketing practices.
- Suspend or terminate any institution that engages in deceptive or fraudulent marketing.

In addition, there are several phrases that need to be trademarked because they are ripe for abuse and profiteering. We will give you these names privately.

Student Support Services

The President said when he signed the Executive Order:

“We’re going to require those schools to step up their support for our students. They need to provide a lot more counseling. If you’ve got to move because of a deployment or a reassignment, they’ve got to help you come up with a plan so that you can still get your degree.”

The current DoDI and MOU is useful but lacks some elements. The attached “Military & Veteran Students Educational Bill of Rights” sections 1(c) and (d) describes the type of career services and student support services that is needed.

Educational Counseling

Executive Order 13607 Section 2(h) requires schools to designate a point of contact. MOU enclosure 3, section 2(b)(2) should specify that a school’s recruiter is an inappropriate point of contact.

The attached “Military & Veteran Students Educational Bill of Rights” section 3 describes the type of educational counseling that veterans and military service organizations believe is needed.

The DoDI 1322.25 cover memo section 3(c) and (d) and enclosure 3, section 2(c) fails to adequately ensure students can make an informed choice. Will servicemembers be told the difference in cost, quality, job placement, and licensing pass rates between predatory colleges and public state universities? Will servicemembers be educated about the risks for abuse by predatory institutions; such information is necessary to make an informed choice. The DoDI and MOU

should include the attached “Know Before You Enroll” warning stories and tip sheets to alert servicemembers to the risk of fraud, so they can make an informed choice.

In addition, MOU enclosure 2, section 5 should specify that heads of the military departments should ensure that servicemembers, base commanders, and installation education advisors are taught about the risks of abuse.

Access to Military Installations

Executive Order 13607 Section 4(e) requires the Secretaries of Defense and Veterans Affairs to “establish new uniform rules and strengthen existing procedures for access to military installations by educational institutions.”

The President explained the problem when he signed the Executive Order:

“So they harass you into making a quick decision with all those calls and emails. And if they can’t get you online, they show up on post. One of the worst examples of this is a college recruiter who had the nerve to visit a barracks at Camp Lejeune and enroll Marines with brain injuries -- just for the money. These Marines had injuries so severe some of them couldn’t recall what courses the recruiter had signed them up for. That’s appalling. That’s disgraceful. It should never happen in America.”

In accord with the Executive Order and the President’s speech, the DoDI and MOU should ban recruiting at military hospitals and Warrior Transition Units or Battalions. In addition, the DoDI and MOU should require any servicemember in a recovery regimen to get clearance from their chain of command and their attending physician or clinical lead, prior to enrolling in any course. This will help prevent abuse of brain-injured or medicated servicemembers.

Thank you for your improvements denying access to installations in DoDI and enclosure 3, section (3). Installation education advisors are required to deny access to installations if a school uses unfair, deceptive, abusive, or fraudulent devices, schemes, or artifices, including misleading advertising or sales literature, as well as schools that engage in unfair, deceptive, or abusive marketing tactics such as unit briefings or assemblies, open recruiting efforts, or distribution of marketing materials on the installation.

It will be critically important that the Defense Department educate the education advisors about what unfair, deceptive or misleading literature or advertisements look like. Deceptive advertising and marketing (especially about job

placement rates and the true cost and true debt-load) is so ubiquitous that installation education advisors may not recognize ads and marketing as problematic.

The DoDI and MOU must also ensure that no education center has a school branding or posters on the walls or entrance. For example, there should be no “Kaplan Study Center” on a base. This grants a specific school the DoD’s imprimatur.

The DoDI and MOU Enclosure 3, section 3 should include a provision to require installation education advisors to deny access to any school that has been found guilty of defrauding the federal government or of deceiving or defrauding students, or has settled with a federal or state law enforcement agency, or that is currently under investigation or currently fighting a suit by a federal or state law enforcement agency.

In addition, the attached “Military & Veteran Students Educational Bill of Rights” Section 8 describes additional protections needed to stop predatory practices on installations. Some predatory schools continue to have “office hours” on bases.

http://www.businessweek.com/magazine/content/10_02/b4162036095366.htm.

As Section 3 in the “Military & Veteran Students Educational Bill of Rights” makes clear, DoD must train base commanders about the risks of abuse by predatory institutions. Please remember that approval of a school to come on base gives an imprimatur of legitimacy.

The DoDI and MOU should prohibit former servicemembers from using their base privilege if they are being paid by an institution to gain access to the base or recruit servicemembers. Personnel working or teaching on base should be required to get background checks with CAC cards, not just visitor passes, similar to access to VA facilities.

Because installation education advisors and others in a position to allow schools access to bases are ripe for manipulation by predatory schools, strict guidelines must be put in place to absolutely prohibit financial and non-financial favors, gifts, and compensation by schools wanting to gain access to an installation.

Risk-Based Program Reviews

Executive Order 13607 section 4(d) requires “targeted risk-based program reviews of institutions to ensure compliance with the Principles.”

The DoDI and MOU language is insufficient on risk-based program reviews. The attached “Military & Veteran Students Educational Bill of Rights” Section 7 lists the risk-based program reviews that are needed. Military students and taxpayers are not served well if DoD funds schools that are being sued, or have been successfully sued, for defrauding students and the federal or state governments. If a school shows rapid enrollment or large drop-out rates, it must be reviewed. DoD

must protect military students and taxpayer dollars from risky programs, hence the need for risk-based program reviews.

MOU language in 1(c)(2)(r)(2) (immediate expulsion of otherwise eligible institutions from TA on national security grounds) should be expanded or separately applied to include immediate loss of eligibility for institutions found guilty of (or pleading *nolo contendere*) to charges involving defrauding or misleading students or violations of Title IV, GI Bill, or DoD TA rules or misuse of said funds.

The MOU (enclosure 3, section 1(b)(r)) currently provides for suspension or termination if an institution's senior officers are indicted on criminal charges. This should be expanded to include the same risk-factors as needed in risk-based program reviews, as outlined in the attached "Military and Veteran Students Bill of Rights" section 7.

DoD's program reviews must be more rigorous. How is it possible that almost no schools have been terminated? The contractor chosen for third-party reviews is small and ill-equipped to review large institutions. What are the standards for third-party review? The third-party education assessment process seems to contemplate unlimited delays to allow institutions to address deficiencies. Enclosure 2, 3(g). This should be amended to suspend schools that do not clean up their act quickly.

Complaint System

Thank you for establishing a complaint system. We encourage its rapid deployment. Please assign adequate personnel to forward to federal law enforcement agencies any complaints that indicate deception or fraud, as required by Executive Order 13607 section 4(c).

DoDI and MOU Enclosure 2, section 3(f) and (g) should specify that allegations of deceptive marketing and fraud will be sent to relevant law enforcement authorities, including the Federal Trade Commission, the Justice Department's Consumer Protection Branch, and the Consumer Financial Protection Bureau.

Refunds

We urge the DoDI and MOU refund policy to be more specific in requiring both TA funds and any co-pays to be refunded on the same basis of the same pro-rata calculation as Title IV funds are refunded. The attached "Military and Veteran Students Bill of Rights" section 10 explains the type of refund needed.

Effectiveness of Voluntary Education Programs

The requirement for USD (Personnel and Readiness) to maintain a program to assess the effectiveness of the voluntary education programs (Enclosure 2, section 1(d)) is useful, but could be more specific regarding student outcome measures and quality controls.

Conclusion

The Defense Department should prioritize the needs of military students and the military, and consider the value of limited taxpayer dollars. Bear in mind the words of the President, April 27, 2012:

“Some of you guys can relate; you may have experienced it yourselves. You go online to try and find the best school for military members, or your spouses, or other family members. You end up on a website that looks official. They ask you for your email, they ask you for your phone number. They promise to link you up with a program that fits your goals. Almost immediately after you’ve typed in all that information, your phone starts ringing. Your inbox starts filling up. You’ve never been more popular in your life. All of these schools want you to enroll with them.

And it sounds good. Every school and every business should be out there competing for your skills and your talent and your leadership -- everything that you’ve shown in uniform. But as some of your comrades have discovered, sometimes you’re dealing with folks who aren’t interested in helping you. They’re not interested in helping you find the best program. They are interested in getting the money. They don’t care about you; they care about the cash.

So they harass you into making a quick decision with all those calls and emails. And if they can’t get you online, they show up on post. One of the worst examples of this is a college recruiter who had the nerve to visit a barracks at Camp Lejeune and enroll Marines with brain injuries -- just for the money. These Marines had injuries so severe some of them couldn’t recall what courses the recruiter had signed them up for. That’s appalling. That’s disgraceful. It should never happen in America.

I’m not talking about all schools. Many of them -- for-profit and non-profit -- provide quality education to our servicemembers and our veterans and their families. But there are some bad actors out there. They’ll say you don’t have to pay a dime for your degree but once you

register, they'll suddenly make you sign up for a high interest student loan. They'll say that if you transfer schools, you can transfer credits. But when you try to actually do that, you suddenly find out that you can't. They'll say they've got a job placement program when, in fact, they don't. It's not right. They're trying to swindle and hoodwink you. And today, here at Fort Stewart, we're going to put an end to it. We're putting an end to it."

Signed,

Association of the U.S. Navy
Initiative to Protect Student Veterans, University of San Diego Law
School
Iraq & Afghanistan Veterans of America
Military Officers Association of America
National Guard Association of the U.S.
Paralyzed Veterans of America
Student Veterans of America
Veterans Education Success
Veterans for Common Sense
Veterans' Student Loan Relief Fund
VetJobs
VetsFirst, a program of United Spinal Association
Vietnam Veterans of America