December 8, 2022

Cheryl Amita
Chief of Policy & Regulations
Education Service
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

RE: RIN 2900-AR56(P)

Dear Ms. Amita:

On behalf of the nation’s private nonprofit colleges and universities, the National Association of Independent Colleges and Universities, and the associations signed on below, I write to submit comments in response to RIN 2900-AR56(P)—Amendments to 85/15 Rule Calculations, Waiver Criteria, and Reports.

First, I want to acknowledge that we appreciate the work Education Service is doing to implement the recently enacted P. L. 117-174, Ensuring the Best Schools for Veterans Act, which creates a waiver from collecting and reporting 85/15 calculations by program for institutions of higher education that have an enrollment of 35% or fewer veteran students and a majority of accredited programs. This legislation is critical to ensuring that veterans who attend private nonprofit institutions remain eligible for using their Post 9-11 GI Bill benefits to pursue their degrees. The previous reset of the 35% waiver and recalculation of 85/15 temporarily and inadvertently made many programs ineligible for GI Bill benefits. This unintended result was due to a misinterpretation that caused the generous institutional aid private, nonprofit colleges and universities provide to many, if not all, our students, including veteran students, to be counted on the “supported student” side of the 85/15 equation.

With the passage of this bill, we understand that the changes proposed in the October 12, 2022, Notice of Proposed Rulemaking (NPRM) on 85/15 Rule Calculations are not intended to apply to institutions with a majority of accredited programs and an enrollment of 35% or fewer veteran students. However, because the NPRM and the communications from Education Service do not clearly reinforce the new 35% waiver, the proposed rule has caused confusion for School Certifying Officials, and Education Liaison Representatives are underinformed about the implementation of the new law. We recommend that the final rule clearly state that the changes being proposed in RIN 2900-AR56(P) do not apply to institutions with the 35% waiver. We also encourage Education Service to provide additional training to the Education Liaison Representatives across the country on the new law.
Second, while the NPRM does not apply to the use of GI Bill benefits at our institutions, we are concerned that it revisits the inclusion of institutional aid on the “supported student” side of the 85/15 calculations in a way that could be precedent-setting for future application to private nonprofit institutions. We understand the purpose of 85/15 and appreciate the intention of “preventing training institutions from developing courses solely for GI Bill students and then inflating tuition,” as noted in the NPRM. It is important to note that the awarding of institutional aid at our institutions has multiple purposes, but none is intended to defraud the VA for educational benefits.

Institutional aid at private nonprofit colleges is part of a student’s financial aid package to pay for the cost of attendance – tuition, fees, room and board and other educational costs. In FY 2020, private nonprofit colleges and universities provided $44.5 billion in institutional aid to their students, with 84% of entering full-time freshmen receiving an average award of $22,707. It is offered to students for a variety of reasons: to provide low-income students with additional grant aid in addition to their federal Pell Grant, to provide merit-based aid to attract a certain type of student, and more broadly, to make up the difference between state tuition support provided to state colleges and universities.

The awarding of institutional aid at private nonprofit colleges and universities has changed dramatically since the creation of the 85/15 rule in the 1950s, and the amendments adding institutional aid on the supported side of the ledger in the 1970s. We encourage VA to keep in mind the purpose and use of “institutional aid” at private nonprofit colleges as it continues to create rules for 85/15 implementation.

Making clear the exemption and maintaining it is even more critical if VA moves forward with the policy outlined in the NPRM. If applied to exempt institutions, it would have the impact of denying access to student veterans in programs and institutions with strong educational outcomes for students.

Sincerely,

Barbara K. Mistick, D.M
President
National Association of Independent Colleges and Universities

On behalf of the following associations:

Alabama Association of Independent Colleges and Universities
American Association of Presidents of Independent Colleges and Universities
Asociación de Colegios y Universidades Privadas de Puerto Rico
Association for Biblical Higher Education
Association of Catholic Colleges and Universities
Association of Independent California Colleges and Universities
Association of Independent Colleges & Universities of Massachusetts
Association of Independent Colleges & Universities of Rhode Island
Association of Independent Colleges and Universities in Pennsylvania
Association of Independent Colleges and Universities of Ohio
Association of Independent Colleges of Art & Design
Association of Independent Kentucky Colleges and Universities (AIKCU)
Association of Jesuit Colleges and Universities
Association of Vermont Independent Colleges
CCCU - Council for Christian Colleges & Universities
Commission on Independent Colleges and Universities in New York
Conference for Mercy Higher Education
Consortium of Hospital-Affiliated Colleges and Universities
Consortium of Universities of the Washington Metropolitan Area
Council of Independent Colleges
Council of Independent Colleges in Virginia
Council of Independent Nebraska College Foundation
Federation of Independent Illinois Colleges and Universities
Georgia Independent College Association
Independent Colleges and Universities of Florida (ICUF)
Independent Colleges and Universities of Missouri
Independent Colleges and Universities of New Jersey
Independent Colleges and Universities of Texas
Independent Colleges of Indiana
Independent Colleges of Washington
Iowa Private Colleges and Universities
Kansas Independent College Association
Louisiana Association of Independent Colleges and Universities
Maryland Independent College & University Association
Michigan Independent Colleges & Universities
Minnesota Private College Council
Network of Colleges and Universities, Evangelical Lutheran Church in America
North Carolina Independent Colleges & Universities
Oregon Alliance of Independent Colleges and Universities
South Carolina Independent Colleges & Universities
Tennessee Independent Colleges and Universities Association
West Virginia Independent Colleges and Universities
Wisconsin Association of Independent Colleges and Universities
Work Colleges Consortium