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NACUBO

September 30, 2013

Ms. Jasmeet Seehra
Office of Management and Budget
Department of Defense Desk Officer
Room 10102
New Executive Office Building
Washington, DC 20503

Re: Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness
Proposed Rule, Voluntary Education Programs (Aug. 14, 2013)
Docket No. DOD–2013–OS–0093

Dear Ms. Seehra:

We write on behalf of the American Council on Education ("ACE"), the National Association of College and University Business Officers ("NACUBO"), and the other higher education associations listed below to express our continued commitment to assisting service members, veterans, their spouses and their family members in pursuing a high-quality education. As we stated in our letter to Secretaries Duncan, Panetta and Shinseki and Director Cordray on June 22, 2012, we have a strong belief in the fundamental tenets of the "Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses and Other Family Members" (the "Principles"): Service members, veterans, their spouses and their family members should have the information, support and protections they deserve as they pursue their education. We continue to embrace the opportunity to work with the Department of Defense ("DoD") to improve the educational experiences of our nation's service members and veterans. To that end, we write to express our concern that DoD's Proposed Rule published in the *Federal Register* on August 14, 2013, 78 Fed. Reg. 49382, ("Proposed Rule") contains amendments to the Voluntary Education Programs regulations and the DoD Voluntary Education Partnership Memorandum of Understanding ("MOU") that would make it difficult for institutions of good intent to serve this population.

As we highlighted in our June 22, 2012, letter, many associations and educational institutions have developed initiatives and campus programs that are a testament to the commitment of the higher education sector to fostering service member- and veteran-friendly campuses. Colleges and universities have developed and implemented best practices with respect to disclosures to and counseling for service members and veterans as well as policies that recognize the particular circumstances of those individuals. For example, many campuses have created checklists to ensure that service members and veterans are aware of all the financial resources available to assist them; designated a specific person in the financial aid office as the point person for all military and veteran-specific education benefits, and developed special orientation programs, online and in person, to educate military and veteran students regarding resources and support available to them.

The attachment to this letter provides observations on aspects of the Proposed Rule that we believe require DoD guidance or clarification in the final regulations and MOU. We have divided our comments into two categories: (A) comments on text of the MOU, and (B) comments on the proposed regulations.

Thank you for your consideration.

Sincerely,

Molly Corbett Broad
President
American Council on Education

John Walda
President and Chief Executive Officer
National Association of College and University Business Officers

On behalf of:
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Hispanic Association of Colleges and Universities
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

cc: Carolyn L. Baker, Chief, Voluntary Education Programs
Military Community & Family Policy

Comments on the August 14, 2013, Proposed Rule

A. Comments on Proposed Substantive Requirements

1. Return of Tuition Assistance ("TA") Funds After Withdrawal

> **DOD MOU § 4(f)(2) – Administration of Tuition (78 Fed. Reg. 49397): "TA will be limited to tuition and is refundable in accordance with the institution's tuition refund policy. Additionally, the following refund requirements must be met: (a) Must be 100 percent refundable up until the start of the course. (b) The institution's policy for returning unearned TA funds for Service members who stop attending due to Military service obligations must be aligned with provisions in section 484B of Title IV of the Higher Education Act of 1965, and the Department of Education regulations set out at 34 CFR 668.22. (c) The institution's policy for returning unearned TA funds for Service members who withdraw prior to the course completion must be aligned with provisions in section 484B of Title IV of the Higher Education Act of 1965, and with Department of Education regulations set out at 34 CFR 668.22."**

Under Principle of Excellence (f), an educational institution that participates in the DoD TA Program must "agree to an institutional refund policy that is aligned with the refund of unearned student aid rules applicable to Federal student aid provided through the Department of Education under Title IV of the Higher Education Act of 1965, as required under section 484B of that Act when students withdraw prior to course completion." The U.S. Department of Education's ("ED's") regulation regarding the return of Title IV funds is commonly referred to as "R2T4." While Principle (f) speaks to "align[ment]" with R2T4 requirements, it does not compel wholesale adoption of those requirements for TA Program funds. In addition, simply grafting R2T4 rules onto the TA Program is impracticable and will not provide desired protections for service members and other TA-eligible persons. Below we explain our concerns and offer thoughts on an approach.

a. R2T4 regulations were not designed to apply to return of all types of federal funds.

The R2T4 regulations in 34 C.F.R. § 668.22 were designed solely to address particular matters that arise with respect to Title IV funds and the process for return of such funds to ED. The regulations were not designed to apply to all types of federal funds. The regulations are substantively and procedurally complex, with more than 200 pages of ED guidance on how to determine the date on which a student withdraws officially or unofficially from an institution, how to calculate the amount of money that must be returned to ED, the specific Title IV programs to which funds must be returned and in what order, and the timing of all decisions and actions. ED has developed worksheets and software to facilitate institutional compliance with the required calculation, which has multiple components. Within the rules established by ED, an institution has some discretion with respect to the R2T4 calculation, particularly in terms of the date to use as the withdrawal date when a student withdraws unofficially from an institution.

ED's *Federal Student Aid Handbook* explains that the R2T4 rules do not dictate an institutional refund policy and do not forbid an institution from developing its own refund policy. See 2012-2013 *Federal Student Aid Handbook*, 5-3. As a result, many institutions have a policy that addresses return of unearned Title IV funds to ED and a separate policy that addresses institutional refunds of tuition and fees to

students. College and universities consider a "refund" to occur when an institution gives money back to a student, while a "return" occurs when an institution gives money back to a federal agency where such monies derived from that agency. Thus, R2T4 rules may require an institution to return unearned Title IV funds to ED when a student withdraws, while the institution's refund policy may provide for no refund of tuition and fees or for a refund in an amount that is less than the amount owed to ED under the R2T4 rules. Under such circumstances, a student may be obligated to the institution for tuition and fees if the R2T4 payment results in a shortfall in the student's account.

Unlike the TA Program, Title IV provides funds for qualified expenses beyond tuition and fees, such as living expenses. Therefore, when a student receives both TA Program funds and Title IV funds, some or all of the Title IV funds may end up being paid to the student for living expenses and not for tuition and fees. Nevertheless, R2T4 assumes that Title IV funds were used to pay for tuition. When a student receives both TA funds and Title IV funds, an institution is required to return monies to ED pursuant to R2T4 rules, even where the Title IV monies were not used for tuition. If R2T4 rules were applied to TA funds, institutions could be required to return a sum of money that exceeds the tuition payments that it received. R2T4 and TA return rules must be harmonized–and not applied in parallel without regard for each other–to avoid such an unfair situation for institutions.

b. <u>Wholesale adoption of R2T4 requirements is impracticable and will not serve the interests of TA recipients.</u>

We have considered carefully MOU § 4(f)(2) in the Proposed Rule and respectfully conclude that wholesale adoption of R2T4 for TA Program funds is impracticable and will not serve the interests of service members and other TA-eligible individuals. To begin, the Proposed Rule and MOU are silent with respect to the process that institutions would be required to follow to implement the requirement. While ED has an electronic process by which institutions effectuate Title IV funds returns, DoD has no procedural apparatus established to facilitate the flow of funds from an institution back to DoD upon a student's withdrawal from an institution. Moreover, as with R2T4, even if an institution returns funds to DoD, students will still be obligated to pay the institution for any amounts due to the institution after application of the institution's refund policy. If R2T4 were to apply to TA funds, an institution could seek to collect from a TA recipient any amounts the institution was required to return to DoD if the TA recipient remained responsible for those amounts after application of the institution's refund policies. Such a situation can create impediments for students; for example, when a student is indebted to an institution, he or she may be unable to obtain a copy of his or her transcript and may be denied subsequent re-enrollment until the debt is resolved.

In addition, we understand that DoD may be concerned about situations in which a student withdraws from some but not all courses in a term. R2T4 rules apply only when a student withdraws from all courses in a term. Those rules do not address situations where a student drops one course and remains enrolled in other courses. If a student drops one course but remains enrolled in other courses, the student is not treated as a withdrawal under R2T4 and the institution is not required to make an R2T4 payment. Rather, the institution's refund policy would apply in such a situation. Therefore, wholesale adoption of 34 C.F.R. § 668.22 would not address situations where TA recipients withdraw from only one or a few classes instead of their entire courseload.

Ultimately, the Proposed Rule and MOU § 4(f)(2) could be a deterrent for institutions to participate in the TA Program. Institutions already devote substantial resources to navigating the TA Program process with their students, and this administratively complex process is particularly daunting for institutions that enroll only a small number of TA-eligible students. In addition, non-standardized billing procedures across the various service branches require institutions to devote additional resources in order to meet the needs of service members and TA-eligible individuals. For example, the services each have their own

processing portal: the Army has the GoArmy portal, the Air Force has AIPortal, and the Navy and Marines use the Navy portal.[1] Layering on top of these requirements the responsibility to return funds to DoD in accordance with R2T4 rules would be unduly burdensome and would impose a range of costs on institutions that some may not be willing to bear.

c. Alignment with R2T4 does not require blanket adoption of R2T4 requirements; adherence to the general principle of the HEA's R2T4 provision offers a way to think about a workable approach to TA refunds.

"Aligned with" does not mean "identical to." We believe that the MOU should take an approach that is in the spirit of ED's R2T4 rule–and thus is "aligned" with it–but does not attempt to apply it wholesale. As discussed above, R2T4 sets forth a methodology for returning funds to ED after a Title IV-recipient student withdraws. We understand that DoD also seeks a method in accordance with which institutions would return funds to DoD after a TA-recipient withdraws. R2T4 sets forth the rules for returns to ED. Similarly, the MOU can set forth its own rules for return to DoD. By specifying the circumstances under which TA funds will be returned to DoD just as the R2T4 rules specify the circumstances under which Title IV funds must be returned, DoD can align its practices with R2T4's purposes.

We therefore propose the following approach with respect to the return of TA when a student withdraws:

> An institution that participates in the TA Program must comply with the following requirements for the return of TA funds received on behalf of a particular student:
>
> (1) The institution must return all TA Program funds to the relevant service when the student does not begin attendance at the institution;
> (2) Up to a course's start date, the institution must return to the relevant service all TA Program funds provided for a course if the student does not start such course (regardless of whether the student starts other courses); and
> (3) The institution must apply its refund policy when the student withdraws and, to the extent such policy requires a refund to the student of monies that derive from the TA Program, the institution must return those funds to the relevant service instead of to the student.

To avoid confusion, the MOU would not include the proposed provisions that reference HEA Section 484B and 34 C.F.R. § 668.22 (i.e., Section 4(f)(2)(b) and (c)), and certain other conforming revisions would be appropriate. Importantly, our proposed approach would be consistent with HEA Section 484B and 34 C.F.R. § 668.22 because it would set forth rules regarding return of TA Program funds to the DoD, just as R2T4 sets forth rules for return of Title IV to ED. Moreover, our proposed approach would best serve TA recipients' interests by not causing the situation described above when a student remains obligated for tuition and fees. The approach would be comprehensible to institutions and could be practicably implemented. Finally, the approach would be consistent with ED rules, which allow institutions to set their own institutional refund policies. See 2012-2013 *Federal Student Aid Handbook*, 5-3.

2. Title IV Participation

DOD MOU § 3(i) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395): "Educational institutions must: . . . Have policies in place and within compliance with the regulations issued by the Department of Education (34

[1] We continue to urge DoD and the Services to move to a single common processing portal for TA.

CFR 688.71[sic]-668.75 and 668.14) 2/ related to program integrity issues, including restrictions on recruitment, misrepresentation, and payment of incentive compensation. Adopt an institutional policy banning inducements (including any gratuity, favor, discount, entertainment, hospitality, loan transportation, lodging, meals, or other item having a monetary value of more than a de minimus amount) to any individual or entity (other than salaries paid to employees or fees paid to contractors in conformity with all applicable laws) for the purpose of securing enrollments of Service members or obtaining access to TA funds as part of efforts to eliminate unfair, deceptive, and abusive marketing aimed at Service members."

DOD MOU § 3(j) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395): "Educational institutions must: . . . Have policies in place and within compliance with the regulations issued by the Department of Education (34 CFR 688.43, 668.71-75, 668.14 and 600.9) related to program integrity issues, including State authorization. Refrain from high-pressure recruitment tactics as part of efforts to eliminate unfair, deceptive, and abusive marketing aimed at Service members. Such tactics include making multiple unsolicited phone calls to Service members for the purpose of securing their enrollment."

DOD MOU § 3(k) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395): "Educational institutions must: . . . Refrain from providing any commission, bonus, or other incentive payment based directly or indirectly or use third party lead generators on securing enrollments or Federal financial aid (including TA funds) to any persons or entities engaged in any student recruiting, admission activities, or making decisions regarding the award of student financial assistance. These tactics are discouraged as part of efforts to eliminate unfair, deceptive, and abusive marketing aimed at Service members."

Principle of Excellence (c), which is the apparent basis for proposed MOU Sections 3(i) through 3(k), requires an institution that participates in the TA Program "to end fraudulent and unduly aggressive marketing techniques on and off military installations, as well as misrepresentation, payment of incentive compensation, and failure to meet State authorization requirements, consistent with the regulations issued by the Department of Education (34 C.F.R. 668.71-668.75, 668.14, and 600.9)." As explained below, we respectfully submit that proposed MOU Sections 3(i) through 3(k) go beyond what Principle (c) requires and are ambiguous as to scope and implications. Our concerns are as follows.

- Proposed MOU Sections 3(i) and 3(j) refer to ED regulations "related to program integrity issues." ED used the term "program integrity" to refer to a particular rulemaking that it conducted in 2009-2010; the term has no meaning within ED regulations. Moreover, the program integrity rulemaking was not limited to the matters identified in Principle (c) (namely, misrepresentation, incentive compensation and state authorization), but rather addressed a range of Title IV topics. In addition, no ED regulation addresses "restrictions on recruitment" as described in proposed MOU Section 3(i), other than the incentive payment prohibition, which is already mentioned in proposed MOU Section 3(i). We

2/ The proposed MOU references 34 C.F.R. § 688.71. The correct cite is 34 C.F.R. § 668.71.

request that the MOU not use the term "program integrity issues" and instead reference the specific regulations identified in Principle (c).

- Proposed MOU Sections 3(i) and (j) require an institution to "[h]ave policies in place and within compliance with the regulations issued by the Department of Education." Neither ED regulations nor Principle (c) require institutions to have particular policies related to misrepresentation, state authorization and incentive compensation. Accordingly, we request that the MOU not require policies related to such matters. Consistent with Principle (c), the proposed MOU should focus on compliance with the specified ED regulations.

- We understand that it is important to DoD that all institutions that receive TA Program funds also be participants in the Title IV programs. The proposed MOU requires that each institution receiving TA Program funds be a Title IV participant. See DoD MOU § 3(b) (78 Fed. Reg. 49394). We are concerned that as currently drafted the proposed MOU is unnecessarily redundant and lacks appropriate procedural mechanisms by which to address possible non-compliance. Because the proposed MOU requires each institution that participates in the TA Program to participate in Title IV, institutions necessarily must comply with ED regulations and are subject to ED enforcement of those regulations. Indeed, ED has developed specialized expertise with respect to HEA implementation and interpretation of the regulations that it promulgates pursuant to its statutory authority under the HEA. Furthermore, noncompliance typically does not lead to immediate revocation of Title IV participation, particularly given that noncompliance may be inadvertent, immaterial, or based on reasonable interpretations of sometimes ambiguous law. ED regulations mandate due process after a finding of noncompliance and, in general, ED imposes financial penalties or conditions on Title IV participation when it determines that an institution violated the HEA or ED regulations. The proposed MOU is unclear as to how DoD will determine and address noncompliance with another agency's regulations where it lacks relevant expertise and experience.

- Based on the concerns described in the above three bullets, we request that the MOU be revised to include a single provision related to compliance with the Title IV requirements specified in Principle (c), and that the provision read as follows:

> Educational institutions must: . . . Participate in the federal student aid programs under Title IV of the Higher Education Act of 1965, as amended ("Title IV"). As a condition of Title IV participation, institutions must comply with requirements related to misrepresentation, payment of incentive compensation, and state authorization, consistent with regulations issued by the Department of Education (34 C.F.R. 668.71-668.75, 668.14, and 600.9, respectively). An institution's eligibility to receive TA funds is conditioned on its compliance with those Department of Education requirements, as such compliance is determined by Department of Education.

- Proposed MOU Sections 3(i) and (j) combine Title IV-derived requirements with DoD-derived requirements, which may create some confusion. For example, the ban on inducements and the admonition to refrain from high-pressure recruitment tactics are DoD requirements that are not found in ED regulations. Indeed, the logic of combining in one section the state authorization requirement with the requirement related to high-pressure recruitment tactics is unclear. We request that the MOU include a section related to Title IV-derived requirements and a separate section related to DoD-derived requirements.

- Proposed MOU Sections 3(i) and 3(k) both reference the HEA's incentive payment prohibition. If those sections are both intended to reference the HEA prohibition, then they are redundant. If Section 3(k) is intended to apply the HEA's incentive payment prohibition to TA Program funds, then it would be helpful if the MOU were clearer with respect to that intent.

- The ban on inducements is overbroad and could restrict the ability of institutions to offer scholarships or other assistance to TA-eligible persons. For example, the language in proposed MOU Section 3(i) prohibits any "discount" or "loan" for the purpose of securing enrollments. Bona fide scholarship , tuition discount, and institutional loan programs are designed to provide financial assistance as a means of encouraging prospective students to decide to select the institution offering such programs. The ban on inducements suggests that any institutional financial assistance is inherently improper and abusive. We request that the MOU recognize that institutional scholarships, loans and other financial assistance are permissible.

- We offer as an observation that proposed MOU Sections 3(i) through 3(k) use words that convey a mixed message. On one hand the sections instruct institutions to "refrain" from certain activity; the use of the word "refrain" suggests a prohibition. On the other hand, the sections indicate that the activities described therein are "discouraged", which suggests not a prohibition but a best practice. We respectfully suggest that our alternative language, proposed above, could help alleviate confusion and facilitate compliance.

3. <u>Lead Generators</u>

> **<u>DOD MOU § 3(k) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395)</u>: "Educational institutions must: . . . (k) Refrain from providing any commission, bonus, or other incentive payment based directly or indirectly or use third party lead generators [sic] on securing enrollments or Federal financial aid (including TA funds) to any persons or entities engaged in any student recruiting, admission activities, or making decisions regarding the award of student financial assistance. These tactics are discouraged as part of efforts to eliminate unfair, deceptive, and abusive marketing aimed at Service members."**

The proposed MOU seems to forbid institutions from using third-party lead generators. The Proposed Rule and MOU are unclear as to whether an institution that receives TA Program funds must not use a third-party lead generator to identify prospective students who are service members or otherwise TA-eligible, or must not use a third-party lead generator to identify any prospective students. The Proposed Rule and MOU are also unclear as to how DoD defines "third party lead generator." Although we are committed to end "fraudulent and unduly aggressive recruiting techniques on and off military installations," a ban on third-party lead generators is overbroad for purposes of Principle (c) and is inconsistent with ED requirements.

The Principles of Excellence, including Principle (c), make no mention of lead generators. The HEA and ED's implementing regulations do not ban lead generators or recruiters. Rather, the HEA and ED regulations aim to prevent "fraudulent and unduly aggressive recruiting techniques" by regulating the way in which recruiters and lead generators are paid. Specifically, ED requires institutions that participate in Title IV programs not to provide "any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV, HEA program funds." 34 C.F.R. § 668.14(b)(22)(i). The HEA incentive payment

prohibition addresses concerns that commissions and other payments based on enrollments create incentives that can lead to fraudulent and unduly aggressive recruiting. ED has recognized, though, that individuals and companies that assist institutions to identify prospective students are not inherently fraudulent and aggressive. See 75 Fed. Reg. 66832, 66875 (Oct. 29, 2010) (noting that ED "understands the value of partnerships between institutions and entities that provide various support and administrative services to these institutions" and that "[s]uch arrangements are permitted" as long as there are no incentive payments based on success in securing enrollments). Accordingly, we respectfully request that the apparent ban on third-party lead generators be removed from proposed MOU Section 3(k).

4. **Fees**

> **Representative Example: 32 C.F.R. § 68.6(a)(2)(ii)(B) (78 Fed. Reg. 49388): "When an institution's charges exceed the established cap per semester hour of credit, or its equivalent, the responsible Service, will pay no more than the established cap per semester unit (or equivalent) for tuition."**

The Proposed Rule would remove all references to the use of TA Program funds for "fees"; thus, the Proposed Rule and MOU appear to require that TA Program funds be used only to pay tuition. Compare 78 Fed. Reg. 49388 (proposing new language for 32 C.F.R. § 68.6(a)(2)(ii)(B) that omits any mention of fees), with 32 C.F.R. § 68.6(a)(2)(ii)(B) (2013) ("When an institution's charges exceed the per semester-hour of credit, or its equivalent limit as specified in DoDI 1322.25, the responsible Service shall pay no more than the specified limit per semester-unit for tuition and fees combined."). Universities and colleges follow no universal approach to the classification of costs as "fees" versus "tuition." Thus, an institution may include certain costs in its "tuition," while another institution may include those costs as a separate fee.

Post-9/11 GI Bill benefits cover tuition and fees. DoD relies upon the Veterans Administration ("VA") to determine "eligibility" for Post-9/11 GI Bill benefits, which includes a determination of what constitutes a qualifying educational expense. See 78 Fed. Reg. 34251, 34253 (June 7, 2013). The VA has determined that tuition and fees are expenses that qualify for coverage under the Post-9/11 GI Bill. 74 Fed. Reg. 14654, 14672 (March 31, 2009). Although previously under the Post-9/11 GI Bill, tuition benefits were calculated separately from fee benefits on a state-by-state basis, this practice was abandoned because it resulted in "confusion, complexity, and inequities" because institutions take widely varying approaches to the categorization of fees and costs. See S. Rep. No. 111-346, at 9 (2010). Currently, the Post-9/11 GI Bill covers both tuition and fees, combined.

In addition, given that DoD caps the cost per credit hour at $250 and the cost per fiscal year at $4,500, see 78 Fed. Reg. 49383, there is already a standard in place to ensure that TA Program funds are not used to cover unnecessary and excessive fees. If TA Program funds may not be used to pay fees, some students may be discouraged from choosing institutions with low tuition that charge a variety of either across the board fees or fees to students who participate in certain programs. For example, at one community college in California, in-state students do not pay anything called "tuition"; rather students pay $46 per credit hour and an additional $56 in fees (not based on credit hours taken) per semester. A TA-eligible individual would need to pay those fees out-of-pocket or from other sources. Similarly, a student pursuing a degree in a field that may have high fees associated with coursework (such as pharmacy) may alter his or her preferred coursework if fees are not covered by his or her benefits. A service member should not decide which institution to attend or courses to take based on how an institution chooses to categorize costs.

We therefore request that the references to fees be restored to the Proposed Rule and MOU, and any statements that TA Program funds may not be used for fees (such as in the first sentence of § 68.6(a)(2)(ii)(E)) should be eliminated. In many cases tuition charges alone will meet or exceed the caps referenced above, but for the reasons stated above we respectfully submit that TA recipients should be able to use their TA benefit to cover both tuition and fees, up to the cap.

5. **Readmission**

> **DOD MOU § 3(h) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395): "Have a readmissions policy for Service members: (1) Allow Service members and reservists to be readmitted to a program if they are temporarily unable to attend class or have to suspend their studies due to service requirements. (2) Follow the regulation released by the Department of Education (34 CFR 668.8[sic]) regarding readmissions requirements for returning Service members seeking readmission to a program that was interrupted due to a Military service obligation, and to apply those provisions to Service members that are temporarily unable to attend classes for less than 30 days within a semester or similar enrollment period due to a Military service obligation. A description of the provisions for U.S. Armed Forces members and their families is provided in Chapter 3 of Volume 2 of the Federal Student Aid Handbook."**

We understand that the proposed MOU would require institutions to readmit service members to an academic program if they are temporarily unable to attend class or must suspend their studies due to a military service requirement; a separate clause obligates institutions to comply with ED's regulation regarding readmission requirements for service members, namely 34 C.F.R § 668.18. 3/ Section 668.18 applies only to an absence of more than 30 days. We support application of the principles in Section 668.18 to absences of fewer than 30 days. However, as a practical matter, some absences of fewer than 30 days may not trigger the need for readmission because the student's absence does not result in a withdrawal under the institution's policies. Accordingly, we request that proposed MOU Section 3(h)(2) be clarified to provide that if a service member is temporarily unable to attend classes for fewer than 30 days within a semester or similar enrollment period due to military service obligation, the institution must readmit the student if such absence results in a withdrawal under the school's policies. We also request confirmation that an institution's substantive obligations with respect to readmission of service members is as described in 34 C.F.R. § 668.18, and that the Proposed Rule and MOU would entail no additional institutional obligations with respect to readmission of service members.

3/ The proposed MOU references 34 C.F.R. § 668.8 as the service member readmission regulation. The correct cite is 34 C.F.R. § 668.18.

6. **Consumer Information**

DOD MOU § 3(e) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395): "Prior to enrollment, provide each student with specific information on locating, understanding, and using the following tools: (1) The College Scorecard is a consumer planning tool and resource to assist prospective students and their families as they evaluate options in selecting a school and is located at: http://collegecost.ed.gov/scorecard/. (2) The Department of Education's Financial Aid Shopping Sheet is used by institutions to assist prospective students and their families better understand the costs of attending an institution before making the final decision on where to enroll. The Shopping Sheet is located at http://collegecost.ed.gov/shopping_sheet.pdf. (3) The Consumer Financial Protection Bureau, located at http://www.consumerfinance.gov. The Web site allows prospective students to enter the names of up to three schools and receives detailed financial information on each one and to enter actual financial aid award information."

We understand that MOU Section 3(e) requires institutions to direct students to information regarding certain tools that can help them decide where to attend college. In particular, we understand that MOU Section 3(e) requires institutions to communicate to prospective students the website addresses that provide information about the College Scorecard, the Shopping Sheet, and the Consumer Financial Protection Bureau ("CFPB") comparison tool. If our understanding is incorrect, we request that DoD provide clarification. In addition, we offer the following suggestions that could help to avoid confusion about the proper presentation of consumer information to students:

- We suggest that the MOU be revised to clarify that the information about these tools is to be provided to prospective students who are service members or otherwise eligible to receive TA Program funds.

- We suggest that the MOU be revised to identify the link for ED's general information page about the Shopping Sheet (http://www2.ed.gov/policy/highered/guid/aid-offer/index.html) instead of a link to the blank Shopping Sheet. Such approach would provide prospective students with both relevant background information and a link to the form Shopping Sheet. We also suggest that you modify the description of the Shopping Sheet in the MOU to indicate that it is a model aid award letter intended to assist prospective students in the comparison of different financial aid packages from different institutions.4

- We understand that the CFPB's comparison tool is available at http://www.consumerfinance.gov/paying-for-college/. Subsection (3) could be rephrased to describe more specifically in the first clause the information available to the student at the link. Without this clarification, there may be confusion as to whether institutions must advise students about the resources offered on the entire CFPB website, some of which are not relevant to the college decision-making process. We propose that subsection (3) be rephrased as follows: "The Consumer Financial Protection Bureau's webpage 'Paying for College' can be used by students to enter the names of up to three schools and receive detailed financial information on each one and to enter actual financial aid award information. The tool can currently be found at http://www.consumerfinance.gov/paying-for-college/."

4/ We would like to share our observation, as we have with ED, that because the Shopping Sheet was developed with undergraduate students in mind, it has the potential to be more confusing than helpful for graduate students.

7. **Military Service Approvals**

DOD MOU § 3(l) – Educational Institution (Including Certificate and Degree Granting Educational Institutions) Requirements for TA (78 Fed. Reg. 49395): "Refrain from automatic program renewals, bundling courses or enrollments. The student and Military Service must approve all course enrollments prior to the start date of the class."

Proposed MOU Section 3(l) is ambiguous as to its scope, the meaning of its terms, and how it will apply in practice.

- What constitutes "automatic program renewals, bundling courses or enrollments"? For example, are "automatic program renewals" and "automatic enrollments" the same? If not, how do they differ in meaning? With respect to "bundling courses," does the proposed MOU require that a TA-eligible student take only one class at a time?

- Is the intent to ban all practices described in Section 3(l) under all circumstances and with respect to all students, or is the intent a more limited restriction? Is Section 3(l) intended to state an absolute prohibition or a discouraged practice?

- Is DoD's primary intent to ensure that the appropriate military service approve each and every course in which a student seeks to enroll and to pay for with TA Program funds? If so, cannot such intent be served directly through an MOU term that makes clear such requirement?

- If a military service fails to act in a timely manner to approve course enrollments prior to the start date of a class, what are the appropriate steps an institution should take to best serve the TA-eligible individual?

We would appreciate clarification of the points above and corresponding appropriate modifications to the MOU.

8. **Delivery Requirements**

DOD MOU § 4(c)(3) – TA Program Requirements for Educational Institutions (78 Fed. Reg. 49396): "When a Service member changes his or her educational goal or major at the attending school and the Services' education advisor approves the change, then the institution will provide a new evaluated educational plan to the Service member and the Service. . . ."

We request clarification that proposed MOU Section 4(c)(3) would impose similar evaluated educational plan delivery requirements as Section 4(c)(2). We suggest that the phrase "within 60 days" be added at the end of the first sentence in Section 4(c)(3) to clarify the amount of time an institution has to provide a new evaluated educational plan for a service member or other TA-eligible individual.

9. **Approval of New Course or Program Offering**

DOD MOU § 4.(c)(5) – TA Program Requirements for Educational Institutions (78 Fed. Reg. 49396): "Prior to the enrollment of a Service member, the institution

must obtain the approval of the institution's accrediting agency for a new course or program offering, provided such approval is appropriate under the substantive change requirements of the accrediting agency."

Proposed MOU Section 4(c)(5), which addresses accreditor approval for new courses or programs, is currently included in a section of the MOU that discusses degree requirements. We suggest that the provision be moved to MOU Section 4(d), which addresses approved and TA-eligible courses. In addition, we propose that the word "appropriate" be replaced with the word "required"; such replacement would be more in keeping with the intended meaning of the requirement.

B. Comments on Definitional Terms and Structure

1. Defined Terms -- 32 C.F.R. § 68.3 (78 Fed. Reg. 49385):

"Academic institution" is defined as: "A college, university, or other postsecondary educational institution of higher education."

The Proposed Rule and the proposed MOU alternate between using the defined term "academic institution" and the undefined term "educational institution." The proposed MOU also refers to "Certificate and Degree Granting Educational Institutions." 78 Fed. Reg. 49394. To promote clarity, we would propose that DoD use the term "educational institution" in the regulation and MOU, and define the term to mean "a college, university, or other institution of higher education."

"Academic institution representative" is defined as: "An employee of the academic institution."

The definition of "academic institution representative" can be deleted because this term is not used in the Proposed Rule or MOU.

"Degree requirements" is defined as: "A planning document provided by the educational institution that outlines general required courses to complete an educational program. The planning document presents the general education and major-related course requirements, degree competencies (e.g., foreign language, computer literacy), and elective course options that students may choose for specified program of study."

The definitions of "degree requirements" and "educational plan" (see below) are almost identical. To avoid confusion and to convey properly the intended scope of related requirements (see point below regarding the term "educational plan"), we propose elimination of the defined term "educational plan" and revision where appropriate to replace "educational plan" with "degree requirements."

"Educational plan" is defined as: "A planning document provided by the educational institution that outlines general degree requirements for graduation. Typically an educational plan presents the general education and major-related course requirements, degree competencies (e.g., foreign language, computer literacy), and elective course options that students may choose for a specified program of study. This document is required from the institution prior to the enrollment of the Service member at the institution."

The use of the term "planning document" may suggest that the plan must be individualized. We understand that the "educational plan" is not intended to be an individualized document but rather to be the institution's general publication regarding degree requirements for graduation, which many institutions publish online and in paper catalogs. If the term "educational plan" is maintained, we request that the MOU include language to clarify that point. For example, DoD could remove the word "planning" from the first sentence of the definition because that word implies that the educational plan will be individualized.

"Evaluated educational plan" is defined as: "An official academic document provided by the educational institution that:"

"(1) Articulates all degree requirements required for degree completion or in the case of a non-degree program, all educational requirements for completion of the program;"

"(2) Identifies all courses required for graduation in the individual's intended academic discipline and level of postsecondary study; and"

"(3) Includes an evaluation of all successfully completed prior coursework, and evaluated credit for military training and experience, and other credit sources applied to the institutional degree requirements. At a minimum, the evaluated education plan will identify required courses, College Level Examination Program, and DSST (formally known as the DANTES Subject Standardized Tests) Program, and potential American Council on Education recommended college credits for training and experiences, which are applicable to courses study leading to a degree. Education advisors will assist Service members in developing their education plan for final approval by the educational institution. For participating SOC Degree Network System institutions, SOC Army Degrees, SOC Navy Degrees, SOC Marine Corps Degrees, or SOC Coast Guard Degrees Student Agreement serves as this documented educational plan."

The definition of "evaluated educational plan" appears to confuse the role of the "education advisor" and introduces an undefined concept: "documented educational plan." Education advisors are not involved in developing degree requirements for particular institutions; however, they will be able to assist service members and other TA-eligible individuals with assessing their skills and determining what education program they may want to pursue. As a result, we propose to eliminate the reference to "education advisors" in the definition of "evaluated educational plan" or to revise the definition to describe more accurately the education advisor's role. We also ask DoD to clarify what constitutes a "documented educational plan"; if "documented educational plan" is actually a reference to "evaluated educational plan," then we would propose that the word "documented" be replaced with "evaluated."

We also request removal of the second sentence added to paragraph (3), which references, for example, the College Level Examination Program, DSST, and American Council on Education recommended

college credits. The proposed language suggests that an institution must consider whether it will award credit based on the identified sources and must address such matters in the evaluated education plan, even when the institution may have a policy that it does not award credit based on such sources. Indeed, MOU Section 3(n)(2)(a) states that an institution's policies will determine whether it will award credit for comparable prior learning experiences.

2. **Failure to Resolve Complaints**

   32 C.F.R. § 68.4(d)(2) (78 Fed. Reg. 49386): "In accordance with Executive Order (E.O.) 13607, . . . (2) DoD will implement a complaint system for Service members, spouses, and adult family members that will register, track, and respond to student complaints on-line. Educational institutions that have an [sic] MOU with DoD with reoccurring complaints or an unwillingness to resolve complaints will be removed from the DoD MOU Participating Institutions list and will not be authorized to participate in the DoD TA Program."

Our member institutions are deeply committed to providing quality education to service members and other TA-eligible individuals. As we stated in our June 22, 2012, letter regarding the Principles of Excellence, we support a complaint system that swiftly and efficiently resolves legitimate concerns that service members or other TA-eligible individuals raise regarding an institution. To protect our institutions from unfounded complaints, however, the MOU should include language to confirm that removal from the Participating Institutions list will only be the result of a substantive complaint. In addition, the MOU should include language to confirm that institutions will have due process before they are removed from the Participating Institutions list. For example, the MOU could specify that an institution has a right to appeal a finding that it has recurring substantive complaints or that it has been unwilling to resolve a complaint.

3. **Grades**

32 C.F.R. § 68.6(a)(9) (78 Fed. Reg. 49389): "Reimbursement will be required from the Service member if a successful course completion is not obtained. For the purpose of reimbursement, a successful course completion is defined as a grade of "C" or higher for undergraduate courses, a "B" or higher for graduate courses and a "Pass" for "Pass/Fail" grades. Reimbursement will also be required from the Service member if he or she fails to make up a grade of "I" for incomplete within the time limits stipulated by the institution or 6 months after the completion of the class, whichever comes first. . . ."

Proposed Rule Section 68.6(a)(9), which addresses reimbursement of funds when a student fails to attain certain grades in his or her coursework, may be too stringent. First, we respectfully suggest that attaining a B or higher in graduate level courses may be setting a higher bar than DoD intends for students who are engaged in coursework at this level. Indeed, requiring a B or higher grade could discourage students from pursuing advanced coursework. We propose that the MOU revert to the grade used in the current regulation: "C." In addition, we suggest that DoD allow a student to resolve an "incomplete" within the timeframe set forth by the institution or within one year of class completion. A six-month timeframe may be too short for some students because a class may be offered only once per year. So, for example, if a student received an incomplete for a course only offered in the fall semester, he or she may need to wait until the following fall semester to complete the course.

4. **Air Force Addendum, paragraph 8 (78 Fed. Reg. 49399): "Accept the Government Purchase Card (GPC) for payment of Mil TA."**

The proposed MOU would eliminate the current process by which an institution may receive a waiver from the requirement that institutions receive TA payments from the Air Force by government purchase card ("GPC"). This waiver process has provided an important option for many campuses and we ask that it be reinstated.

Requiring acceptance of TA payments by GPC will increase the costs of participating in the TA program for institutions that currently do not accept credit cards for payment of tuition from any individual or organization. Mandatory acceptance opens the institution to challenges from all other payers and could result in the imposition of significant additional fees from credit card companies. For example, receiving a $10,000 payment via GPC would cost an estimated $400 in interchange fees, money that would be far better spent on services for students. While TA payments made by means other than GPC may not be as timely, this delay is preferable to the imposition of additional fees. We would encourage the services to consider Automated Clearing House (ACH) transactions as a viable alternative. ACH combines the ease of an electronic payment with minimal expense for all parties involved.