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MONITORING VETERANS SUPPORT

By Charles A. Repp

Postsecondary institutions are facing serious and mounting difficulties with the Veterans Administration (V.A.) as they continue to certify veteran students as eligible for education financial benefits. It is evident that institutions must make a more judicious effort than in the past to control better their veterans support programs. Failure to understand the need for this tighter control and the new pressures the Veterans Administration is applying to postsecondary education may result in serious charges by the V.A. of *Prima Facia* school liability. (for the administration veterans support programs.)

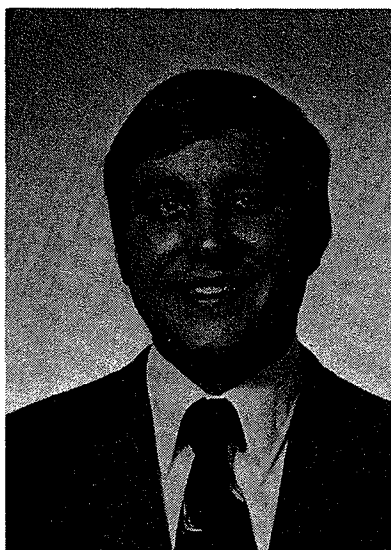
Title 38 — United States Code Section 1785 *Overpayments to eligible persons or veterans*, is one federal law that serves as a basis for the increased problems that institutions of higher education are encountering. This law prompted the issuance of (DVB) Department of Veterans Benefits Circular 20-75-111 on November 14, 1975. The purpose of this circular is:

to outline the specific areas of responsibility and to provide broad guidelines for the determination and processing of school liability for overpayments.

The (DVB) Circular also emphasized that:

The extensive increase in educational overpayments has made it necessary to reinforce existing statutory and regulatory requirements that schools promptly report to V.A. concerning course changes, interruption and terminations.

The circular guided Veterans Administration personnel, in what the V.A. terms the "Adjudication — Prima Facia Determinations of School Liability."



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The results of these laws, regulations, and V.A. actions are becoming increasingly obvious around the country. The news media reports of colleges and universities facing *prima facie* liability are occurring with increasing frequency since DVB Circular 20-75-111 was released in November 1975. Surprise audits of veterans support programs at many institutions around the country are becoming a common occurrence and a source of unfortunate embarrassment when veteran students have been falsely or mistakenly certified by institutions and when such certifications have resulted in V.A. overpayment of benefits to the veteran. The institution making such a certification can be judged to be in *prima facie* liability. The importance of the term *prima facie* should be noted. It is defined as "adequate to establish a fact unless refuted." In other words it is not always a question of the institution's "intent" in the certification of veterans as being enrolled when they may not be enrolled; rather, it is simply whether such a mistake has been made by the institution, regardless of whether it was intentional. Overpayment certifications are unintentional in most institutions. Intent is a matter to be concerned with after the fact of overpayment has been established. Therefore, institutions of higher education would be wise to take definite steps in preparation and in defense of any V.A. accusations of *prima facie* school liability in order to protect their reputations as well as their student veterans.

In order to better monitor and make *prima facie* determinations, the Veterans Administration laid some earlier ground work which was outlined in DVB Circular 20-75-84 issued August 14, 1975. It observed:

Recent changes in V.A. Regulations 14253 and 14277 have established a requirement that all schools set standards of progress and submit these standards to the State approving agency for approval.

The V.A. also stated in 20-75-84 that:

The State approving agency on supervisory visits and the V.A. on compliance and liaison visits will specifically check to see that the school is enforcing their standards of progress and that required reports are being properly sent to V.A. If the State approving agency discovers any irregularities in the application of the standards, they will take action immediately to see that the violation of approval criteria is corrected or withdraw the school approval and refer the information to the regional office having liaison responsibility for the State.

It was further pointed out that:

Schools must have sufficient capability to promptly report not only unsatisfactory progress, but also drops, withdrawals, and unscheduled interruptions.

This requirement which stressed the term "promptly report" has focused on what has been and still is one of the most difficult series of tasks faced by any university registrar; the retrieval and updating of information data rapidly. Without the kinds of automated data systems that make such tasks relatively easy for other organizations like business and industry, many higher education institutions are faced with a serious problem. Nevertheless, these federal regulations are an effort on the part of the federal government to con-

trol the overpayment of educational benefits to veterans and encourage benefit payments for education that will truly help the veteran student. Unfortunately, this makes life increasingly more complicated for the institutional staff.

Guarding Against Prima Facia Liability

Institutions must make an initial determination as to whether their student veterans program is so large that individual staff attention to each veteran will be difficult or impractical. If the institution is small enough to allow individual staff oversight of a few veterans, then a comprehensive plan for the monitoring of the veterans support program may be unnecessary. If however, the institutional veteran student enrollment represents a significant portion of the total enrollment, then the institution would be wise to consider some methods of safeguarding their veterans support program from a surprise V.A. visit, which may prove undesirable and damaging if *prima facia* liability is determined. These methods or steps need not always involve any additional expenditure of resources by the institution other than the time of the staff and probably their diversion from other duties. Here are some steps that can help:

1. The first step in constructing safeguards in a veteran support program begins at the top. The president should be made aware of the impending and potential troubles that a V.A. "compliance survey" may cause the institution. Presidential attention to adverse news media reports about other institutions in trouble should cause the president to become concerned and make this anxiety known to the administrative staff, prompting their action.

2. Once the president is made aware, plans for temporary diversions of necessary resources, both human and monetary, may be proposed. For example, most large and medium sized institutions have a person who conducts internal audits. An immediate internal audit should be ordered for the veterans support programs. Such an internal audit should cover a "walk through" approach of finding out exactly what happens to a veteran student being institutionally certified for V.A. benefits from the time he or she enters through the admissions process, registers, attends classes, drops out, formally withdraws, and/or graduates. The emphasis should be clearly on what is done; who does it; when it is done; how it is done; and why. A formal written document of such a comprehensive internal audit should be drafted and submitted to the president stating the auditor's conclusions about the current status of the program and posing the auditor's recommendations for the improvement of the veteran certification process.

3. All actions to monitor the veteran support program should be considered carefully and deliberately. Periodic internal reviews of the program are necessary to insure that actions recommended in the first internal audit are being accomplished in the aftermath.

4. The determination of the last date that a veteran student attends classes is a vital control point for all veterans support programs. It is this determination and subsequent reporting to the V.A. that can ultimately avoid any school *prima facia* liability. Failure to make determination may result in

liability and costly V.A. overpayment to the veteran student making the institution and the veteran liable. The Veterans Administration in *Information Bulletin*, DVB IB 22-76-3, "Clarification of Last Date of Attendance Determination" addressed this matter:

As a result of meetings between Veterans Administration staff and higher education association representatives clarification of the standards of progress regulations was obtained.

Standards of progress can rest squarely upon the veteran students attendance determination. The V.A. went on to state that:

A school may determine last date of pursuit in a number of ways. If it does not take attendance, it may use any of the following methods of determining last date of pursuit: (1) last activity date reflected in instructor's record; (2) last papers submitted; (3) last examination completed; or (4) a student's reasonable statement of last date of attendance. The V.A. will be checking whatever records are available to determine last date of pursuit when it makes a compliance survey.

It might be best for an institution to simply take attendance as a method of determining the last date of pursuit. This may not be feasible, however, for a variety of reasons usually expressed by the faculty and the students.

5. The veteran student needs to know what he or she is responsible for in terms of the law and the consequences of fraudulent acceptance of payments. Title 38, Chapter 61 — Penal and Forfeiture Provisions, Section 3502 plainly states:

(a) Any person entitled to monetary benefits under any of the laws administered by the Veterans Administration whose right to payment thereof ceases upon the happening of any contingency, who thereafter fraudulently accepts any such payment, shall be fined not more than \$2,000, or imprisoned not more than one year, or both.

(b) Whoever obtains or receives any money or check under the laws administered by the Veterans Administration without being entitled to it, and with intent to defraud the United States or any beneficiary of the United States, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

Certainly this kind of reminder to veteran students will help to sober their thinking about receiving overpayment of educational benefits. The more the veteran student is made aware, the better a veteran support program can be successfully monitored. Handout material, frequent reminders, instructor announcements, all can help educate the veteran student about his or her responsibility and liability, which should be a matter of significant concern to the veteran student.

6. The institution should draft standard operating procedures for the conduct of the veterans support program and constantly update such a document as the need for change requires. Such a set of procedures will prove invaluable when a compliance survey by the V.A. occurs. Emphasis again should be

placed upon what, when, who and how veterans are certified for their educational benefit payments.

7. A good defense is a good offense. The institution may wish to invite a V.A. visit, before one is announced by V.A. unexpectedly. In this way the institution is showing an honest concern about its veterans support program and the V.A.'s problems of regulation, too.

Automation Applied To The Certification Process

Most large institutions enrolling students and veteran students use automated data processing in their admission/registration process. When a large population of veterans is involved, it is not a monumental task for veterans to be identified and a "veteran student locator" list generated on a regular basis from the registration list. This is a process at George Mason University. The "veteran student locator", produced monthly, shows credit hours carried by the veteran student. It is compared against the registrar's master print-out list for credit hour discrepancies. When discrepancies are discovered, the V.A. can be notified at the end of each month as to the veteran's status for benefit payment processing purposes.

Unfortunately, despite its tremendous time saving advantage, the computer cannot identify the veteran who simply drops out of classes and fails to notify the institution. To counteract this problem, some institutions and state systems have required faculty to take roll in their classes and to report student absences. In this way, a student's satisfactory or unsatisfactory progress can be determined by the institution and reported to the V.A.; otherwise, the absences may not appear until the end of the term when final grade reports are submitted by the instructors, by which time the veteran may have received considerable amounts of overpayment. However, the required practice of taking roll is often received negatively by faculty members and by student veterans in particular.

There are many unanswered questions about the ultimate ramifications of V.A. determined *prima facie* school liability. Are schools to be held criminally negligent? Will the institutions be required to repay overpayments they certify? What is negligent intent and what is accidental? Do dollar amounts determine the degree of institutional guilt or innocence? These are all questions that are still in need of answers. It does seem obvious, however, that closer monitoring of veterans support programs will be necessary.

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