



**CENTER FOR PUBLIC INTEREST LAW  
CHILDREN'S ADVOCACY INSTITUTE  
VETERANS LEGAL CLINIC**  
University of San Diego School of Law  
5998 Alcalá Park  
San Diego, CA 92110-2492  
CPIL/CAI: P: (619) 260-4806 / F: (619) 260-4753  
VLC: P: (619) 260-7470 / F: (619) 260-7425  
www.cpil.org  
www.caichildlaw.org  
www.sandiego.edu/veterans-clinic/



Mr. Phil McAllister, Esq.  
Regulatory Actions Coordinator  
California Department of Veteran Affairs  
1227 O Street, Suite 300  
Sacramento, CA 95814

September 24, 2019

**Re: Comment of Groups Representing Veterans, Consumers, and Children Regarding September 11, 2019 Modified Proposed Rulemaking to Title 12 of California Code of Regulations Regarding CSAAVE Title 38 Approval of Postsecondary Institutions**

Dear Mr. McAllister:

Pursuant to the notice dated September 11, 2019, the undersigned groups representing veterans, consumers, students, and children offer public comment in support of proposed sections 443, 444, 445, 446, and 447 of Title 12, Division 2, Chapter 3, subchapter 3.6, California Code of Regulations, as modified September 11, 2019.

As we observed in our prior comments to the first publicly noticed regulations, the proposed regulations as modified mostly and simply memorialize existing applicable law and offer consistency and transparency<sup>1</sup> to how CSAAVE implements its already-existing duty of approving institutions. Regulations such as the ones proposed not only promote government efficiency in decision-making but when, as here, significant discretion is given to approving agency, regulations such as the ones proposed are practically required to avoid underground rulemaking banned by Government Code section 11340.5(a).

**I THE UNDERSIGNED RESPECTFULLY BUT PASSIONATELY OPPOSE SEVERAL OF THE MODIFICATIONS.**

**A. The Deletion of Proposed §§443(b) and 445(a)(3)(A).**

The proposed modified regulations delete institutional self-disclosure of what many experts and the Cal Grant program believe to be the single most useful benchmark of institutional quality: the cohort default rate (CDR). The rationale offered is that CDR varies regionally due to socioeconomic factors. This rationale, respectfully, is unpersuasive.

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<sup>1</sup> "A major aim of the APA was to provide a procedure whereby people to be affected may be heard on the merits of proposed rules." *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204.

First, that there are regional differences in default rates has not prevented the Cal Grant program from obtaining this information for possible further inquiry. The Cal Grant program uses it as a per se qualification for statewide eligibility, regional variations notwithstanding. As Cal Grant uses CDR for eligibility, surely CSAAVE should comfortably use it as merely a point of inquiry to protect veterans.

Second, regional variations of CDR are irrelevant when it comes to a veteran's deserving—and CSAAVE's approval—of a quality program. Veterans attending an institution in one part of the state can reasonably be expected to seek employment near the institution. The veteran likely lives nearby; that is why the veteran chose the program. Thus, the CDR for a particular institution serving a region is relevant to those living and seeking employment in that region. Regional variation is therefore a reason for CSAAVE to scrutinize CDR. Such variations make CDR *more*, not less, useful and accurate in determining whether veterans will be well served by attending the institution.

Third, as the prior version of the regulations simply required self-disclosure of CDR, regional differences can be taken into account by CSAAVE when electing what, if anything, to do with the information.

Fourth, to the extent that deleting this requirement was based on conjecture the Department of Veterans Affairs would revoke CSAAVE's contract, that concern can no longer serve as a basis for not doing the right thing by veterans and re-inserting this indisputably useful self-disclosure.

The requirement of self-disclosure of CDR should be restored.

## **B. The Deletion of the Most State-relevant Parts of Proposed §443(i)**

The proposed modified regulations delete the single most useful facet of the “placement rate” definition and no adequate explanation is offered relevant to the deletion. The proposed modified regulations delete self-reporting by institutions of placement data when a certain placement rate is required by a state licensing agency. The explanation offered for this deletion is that it was done “to accommodate those schools that are not required to report completion rate as a part of accreditation.”

Respectfully, this explanation about *accreditation* has nothing to do with deleting self-reporting related to whether or not an institution is meeting the requirements of *state licensing agencies*. Whether an institution is placing students at rates consistent with state licensing agency requirements is indisputably indicative of a program or institution's value to veterans. If students cannot get a license or a licensee job at rates consistent with licensing agency rules, that is surely something to which CSAAVE should not blind itself when weighing whether an institution is worthy of serving veterans. There is no reason for CSAAVE to make itself purposefully ignorant of such foundational data, no explanation is provided, and the language stricken related to licensing agency placement rates should, respectfully, be restored.

Moreover, the deleted self-disclosure is consistent with current law. Education Code §67102 in relevant part, also with emphasis supplied, provides:

(2)(A) The institution shall provide information on where to access California license examination passage rates for the most recent available year from graduates of its undergraduate programs leading to employment for which passage of a California licensing examination is required, if that data is electronically available through the Internet Web site of a California licensing or regulatory agency.

The requirement of self-disclosure of state licensing agency placement rate information should be restored.

## **II. INDEPENDENT STATE GROUNDS EXIST FOR THE PROPOSED REGULATIONS.**

The federal Department of Veterans Affairs' rescission of its contract with CSAAVE is not a reason to suspend promulgation of these regulations.

When it comes to federal law, 38 USC § 3671(b) offers three ways a state may assume a role as a state approving agency. Only one is by agreement with the VA. One of the others is whether a state has "created" a state approving agency—the case here. Moreover, 38 USC § 3682 provides in relevant part that "no department, agency, or officer of the United States, in carrying out this chapter, shall exercise any supervision or control, whatsoever, over any State approving agency, or State educational agency, or any educational institution."

When it comes to state law, CSAAVE has freestanding and binding obligations. Education Code §§ 67101 and 67102 unambiguously vest independent state mandates on CSAAVE; the agency is not permitted to violate state laws and neither are resident institutions. The binding and authorizing impact of these state laws is not and cannot be rescinded by a mere letter. Education Code §67101 provides (with emphasis added):

The Title 38 Funding Program is hereby established, under the administration of the California State Approving Agency for Veterans Education. The California State Approving Agency for Veterans Education **shall** approve qualifying institutions desiring to enroll veterans or persons eligible for Title 38 awards in accordance with federal law, this chapter, **and other reasonable criteria established by the California State Approving Agency for Veterans Education.**

The "other reasonable criteria" is notably *in addition* to what is "in accordance with federal law" and provides an independent, state-grounded, freestanding basis for these regulations.

Education Code §67102 in relevant part requires as a matter of state law institutions to provide information to CSAAVE that state law has determined is relevant to serving California resident veterans. For example:

(B) The institution shall be responsible for certifying to CSAAVE compliance with the requirements of subparagraph (A).

(3)(A) A degree-granting institution shall provide evidence of accreditation of the institution and of all degree programs to CSAAVE. The accrediting agency shall be recognized by the United States Department of Education. An unaccredited degree-granting institution participating in the Title 38 award program on January 1, 2015, shall satisfy both of the following to remain eligible to receive Title 38 awards:

(i) The institution shall obtain and provide evidence to CSAAVE of its candidacy or preaccreditation status, with an accrediting agency recognized by the United States Department of Education, by January 1, 2016, for the institution to be eligible for Title 38 awards for the academic year of 2015-16 or 2016-17, or both.

(ii) The institution shall obtain and provide evidence to CSAAVE of accreditation from the accrediting agency with which it had candidacy or preaccreditation status by January 1, 2017, for the institution to be eligible for Title 38 awards for the academic year of 2017-18, and each academic year thereafter.

These state laws remain on the books and neither CSAAVE nor institutions are free to ignore them.

### III. CONCLUSION.

Respectfully, please restore what has been deleted as described above.

Sincerely,



Robert C. Fellmeth

Price Professor of Public Interest Law, University of San Diego School of Law Executive  
Director, Center for Public Interest Law / Children's Advocacy Institute

*on behalf of*

Ed Howard

Senior Counsel, Children's Advocacy Institute

Robert F. Muth

Academic Director, Legal Clinics, Professor in Residence, Supervising Attorney, Veterans Legal  
Clinic, University of San Diego School of Law

Leigh Ferrin

Director of Litigation and Pro Bono, Public Law Center

Joanna Adler

Staff Attorney, Consumer Law Project, Public Counsel

Joseph Jaramillo

Senior Attorney, Housing and Economic Rights Advocates (HERA)

David Brennan

Professor in Residence, University of San Diego School of Law