

# VA | 85-15 Rule



# Lesson Objectives

- Review the purpose of the 85-15 Rule.
- Review when facilities are required to provide 85-15 calculations.
- Review the purpose of the 35% Waiver.
- Review exemptions to the 85-15 Rule.
- Review the difference between Supported and Non-Supported Students.
- Review how to complete 85-15 calculations.
- Review the consequences of failing to provide 85-15 calculations.



# What Is The 85-15 Rule?

The 85-15 Rule prohibits paying Department of Veterans Affairs (VA) benefits to students enrolling in a program when more than 85% of the students enrolled in that program are having any portion of their tuition, fees, or other charges paid for them by the school or VA.

If the ratio of Supported students to Non-supported students exceeds 85% at the time a new VA student enters or reenters (such as after a break in enrollment), the student cannot be certified to receive benefits in the program.

NOTE: The 85-15 Rule does not apply to students receiving **Vocational Rehabilitation and Employment (Chapter 31)** or **Survivors' and Dependents' Educational Assistance (Chapter 35)** benefits. Students receiving these benefits must still be counted when calculating 85-15 Rule compliance, but they can continue to be certified and enrolled if the school is found to be in violation of the 85-15 Rule.



# What Is The Purpose Of The 85-15 Rule?

Congress was concerned that schools would develop courses specifically designed for Veterans with available Federal monies and that the ready availability of Federal funds could serve as a strong incentive for some schools to enroll eligible Veterans. The rule of a minimum enrollment of students not wholly or partially subsidized by the VA was a way of protecting Veterans by allowing the free market mechanism to operate.

Congress also wanted to ensure that the price of programs was also required to respond to the general demands of the open market as well as to those with available Federal monies to spend. The passage of the 85-15 Rule required that a minimal number of non-Veterans were required to find the course worthwhile and valuable for the payment of Federal funds to Veterans who enrolled would not be authorized.



# Is My School Affected By The 85-15 Rule?

All facilities approved to receive VA benefits must follow the provisions of [38 United States Code \(USC\) 3680A](#) and [38 Code of Federal Regulations \(CFR\) 21.4201](#) except for:

- On-the-Job Training (OJT) or Apprenticeship (APP) sites.
- Any farm cooperative program.
- Any program offered by a flying club (“aero club”) established of a military department of the Armed Forces.
- Servicepersons pursuing a program for a high school diploma, equivalency certificate, or in any refresher, remedial or deficiency course.
- Schools that have received a Department of Defense (DoD) Waiver.
- Schools that have received an Education Service Waiver for Developing Schools.

NOTE: Calculations for branch locations must be done separately. If a site has its own Facility Code there must be a separate 85-15 calculation submitted.



# What Is The Department of Defense Waiver?

A site is exempt from all provisions of the 85-15 Rule if it has a Department of Defense Waiver. In order to be eligible for a Department of Defense 85-15 Rule Waiver, the program must meet all of the following:

1. Be offered under contract with the Department of Defense or the Department of Homeland Security.
2. Be on, or immediately adjacent to, a military base or a facility of the National Guard (including the Air National Guard) or Selected Reserve.
3. Be approved by the State Approving Agency (SAA) of the state:
  - a. Where the base is located; or
  - b. Where the parent school is located, if the program is offered overseas.
4. Be available only to:
  - a. Military personnel and their dependents;
  - b. Military personnel, their dependents and civilian employees of a base located in a State;
  - c. Persons authorized by the base commander to attend the course provided the base is located outside the United States; or
  - d. In the case of a program offered on or immediately adjacent to a facility of the National Guard or the Selected Reserve, members of the National Guard, members of the Selected Reserve and their dependents.

NOTE: A School does not have to apply for this waiver, it should automatically be applied when the conditions outlined above are met. If there are any changes to a program (i.e. it is no longer taught on the military base, but instead at the school's training site a mile away), they must be reported to the Education Liaison Representative (ELR) and SAA, and effective the date of that change, the program is no longer exempt from the 85-15 rule.



# What Is The Education Service Waiver For Developing Schools?

A site is exempt from all provisions of the 85-15 Rule if it has an Education Service Waiver for Developing Schools. When a school requests this waiver to the 85-15 Rule, the decision will ultimately be made by the Director of Education Service. This waiver is rarely granted and is based on VA's review of:

1. The availability of comparable alternative educational facilities effectively open to Veterans in the vicinity of the school requesting a waiver.
2. The status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population.
3. Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to VA.
4. The general effectiveness of the school's program in providing educational and employment opportunities to the particular Veteran population it serves. Factors to be considered should include the percentage of Veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

NOTE: A school interested in applying for this waiver should reach out to their ELR for additional information.



# When Must I Provide 85-15 Calculations To VA?

## If the facility is structured on a Term Basis then –

- 85-15 calculations must be submitted to the ELR of jurisdiction no later than 30 days after the start of the term or before the beginning of the following term whichever occurs first.

## If the facility is not structured on a Term Basis then –

- 85-15 calculations must be submitted to the ELR of jurisdiction no later than 30 days after the beginning of each calendar quarter.
- Calendar quarters align with the quarters of VA's fiscal year which starts in October and ends in September.
- Due dates for routine reporting of 85-15 calculations will be as follows:
  - **January 30th** for October – December
  - **April 30th** for January – March
  - **July 30th** for April – June
  - **October 30th** for July – September

**Anytime calculations are requested by an ELR, SAA, Education Compliance Survey Specialist (ECSS) or other VA employee.**



# What Does The 35% Waiver Do?

**35% Waiver** - A waiver which allows a school to not have to routinely report 85-15 calculations to the VA.

**35% Waiver Criteria** - The school's total number of Supported Students enrolled in programs approved to receive VA benefits must be less than or equal to 35% of the total student enrollment enrolled in all programs approved to receive VA benefits.

**Applying for the 35% Waiver** - A school interested in applying for the 35% Waiver will do so by contacting their ELR who will assist the school through the application process. The decision to grant a 35% Waiver is made by the Chief Education Liaison Officer (CELO) of jurisdiction.

**NOTE:** A 35% Waiver does not mean the school does not have to comply with the 85-15 Rule. It means that the school does not have to routinely provide calculations to the VA. A school with a 35% Waiver must still:

- Report all instances when a program has a population of Supported Students in excess of 85%.
- Provide 85-15 calculations at the request of a VA official or SAA.



# What Is A Supported Student?

- Persons who are in receipt of VA benefits.
- All students who are receiving institutional aid, where the institutional policy for determining the recipients of such aid is unequal with respect to Veterans and non-Veterans.

Example 1: The school offers a \$500.00 tuition scholarship to students who get or maintain a 3.5 Grade Point Average (GPA) or higher. This scholarship is not offered to students receiving VA benefits. All students receiving the scholarship would now be counted as Supported Students.

Example 2: The school waives all tuition costs for the spouses and children of faculty members. This waiver is not offered to the spouses and children if they are receiving VA benefits. All students receiving this waiver would now be counted as Supported Students.



# What Is A Non-Supported Student?

- Persons not in receipt of institutional aid.
- Students in receipt of any Federal aid (other than Department of Veterans Affairs benefits).
- Undergraduates and non-college degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to Veterans and non-Veterans alike .
- All graduate students in receipt of institutional aid.

**Example 1:** The school offers a \$500.00 tuition scholarship to all students who get or maintain a 3.5 GPA or higher. This scholarship is offered to all students, regardless if they are receiving VA benefits or not. Students not receiving VA benefits who receive this scholarship can be counted as Non-Supported Students.

**Example 2:** The school waives all tuition costs for the spouses and children of faculty members. This waiver is offered to all spouses and children, even if they are receiving VA benefits. Students not receiving VA benefits who receive this waiver can be counted as Non-Supported Students.



# How Is The 85-15 Calculation Done?

1. The school must first ensure they are calculating the 85-15 Rule computations for their specific site. Each Facility Code of a school must submit its own 85-15 Rule calculations.
2. The school must break its students into their individual programs. **85-15 Rule computations are done by program, not by individual classes students might be taking**, though separate programs of education, or separate concentrations or tracks, must be individually identified and are subject to their own 85-15 Rule computations. A separate concentration or track is one which varies in its predetermined and identified educational objectives (i.e. variations in fees may be the result of students training with different equipment. In these instances, the variation in equipment may result in variation in the training, such that the training one student receives on one type of equipment is sufficiently different from the training the other student receives on the other type of equipment, so as to constitute a separate and distinct “predetermined and identified educational objective.” In that case, the two students would be enrolled in separate programs for approval purposes).



# How Is The 85-15 Calculation Done?

3. The School must identify each student as being a Supported Student or a Non-Supported Student.
4. The number of Supported Students is added to the number of Non-Supported Students for a Total Number of Students.
  - NOTE: This is adjusted based on the student's Full-Time / Part-Time status.
5. The number of Supported Students is then divided by the Total Number of students. This is then converted into a percentage.

NOTE: If this percentage is equal to or under 85%, the school is in compliance with the 85-15 Rule. If this percentage is over 85%, then the school has violated the 85-15 Rule.



# Why Do I Have To List And Calculate Concentrations And Tracks Separately?

This is required as per regulation [38 CFR 21.4201\(e\)](#) which states

*“(e) Computing the 85-15 percent ratio—(1) Determining when separate computations are required. Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions, as well as courses or curricula leading to a secondary school diploma or equivalency certificate offered at any branch or extension, must have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.”*

Specific determinations if a concentration or track needs to be individually listed are made by the ELR and SAA of jurisdiction.



# How Are Double Majors Or Multiple Concentrations Counted?

Students enrolled in double majors must be counted for each major they are enrolled in (this is true for both Supported and Non-Supported Students).

Example 1: A student is receiving Post 9/11 GI Bill (Chapter 33) benefits and is majoring in both Biology and Chemistry. For 85-15 Rule purposes, this student would count as a Supported Student for both the Biology and Chemistry programs.

Example 2: A student is completely self-paying for their schooling and is majoring in French, Latin, and Spanish. For 85-15 Rule purposes, this student would count as a Non-Supported Student for all three majors they are enrolled in.

This rule is similarly true for concentrations/tracks.

Example: A student is receiving Post 9/11 GI Bill (Chapter 33) benefits and is majoring in Aviation Management (which has a flight component). The school would list on the 85-15 Statement of Assurance of Compliance with Enrollment Ratios spreadsheet:

- Aviation Management – Flight Track
- Aviation Management – Non-Flight Track

And would count this student as a Supported Student in the Aviation Management – Flight Track.



# Can I Count Every Student As Full-Time?

No.

Facilities must accurately assess both Supported Students and Non-Supported Students based on the following categories:

- Full-time
- $\frac{3}{4}$  time
- $\frac{1}{2}$  time
- $\frac{1}{4}$  time



## How Is 3<sup>rd</sup> Party Aid Assigned?

The following groups may be counted as Non-Supported Students (so long as they don't possess a qualifier that would make them a Supported Student):

- Students receiving Title IV Department of Education aid (i.e. Pell Grants).
- Students receiving Tuition Assistance through the Department of Defense.
- Students receiving non-institutional aid (scholarships, grants, or other types of aid offered by a third-party entity not formally affiliated with the school).



# What Happens If I Cannot Or Will Not Provide 85-15 Rule Calculations?

If a school states they are unable to provide the 85-15 Rule calculations, they will be reminded of the provisions of 38 CFR 21.4201 (g) (3).

This regulation states that if a school fails to submit a timely computation, then no benefits will be paid for the enrollment of any VA beneficiary enrolled in any of the schools approved programs, until the school completes the 85-15 Rule calculations and is found to be in compliance with it.



# How Do I Report 85-15 Calculations To The VA?

You must complete the ***85-15 Statement of Assurance of Compliance with Enrollment Ratios.***

This can be completed via the excel spreadsheet version:



Statement Of  
Compliance Of Enrollment Ratios

Or

This can be completed via providing a paper version, using the instructions provided in the [School Certifying Official Handbook – Appendix B.](#)



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# What Happens if the Ratio Exceeds 85%

- ELR suspends the program for enrollments and reenrollments effective the date the ratio exceeds 85%.
- ELR updates WEAMS.
- ELR notifies the school of suspension.
- ELR provides a copy of the suspension letter to the SAA.
- If 35% waiver was previously approved it is no longer valid, and must report 85/15 calculations for all programs.



# What Happens to VA Students

## Term basis

Benefits for students with running awards and who remain continuously enrolled will NOT be affected.

“Continuously enrolled” does not require summer enrollment.

## Not on a Term basis

Benefits stop after break in enrollment, unless the break was beyond student’s control.



# Reinstatement after Suspension

- The ELR notifies the school that the suspension is lifted and the effective date.
- The ELR updates WEAMS.
- The ELR sends a copy of letter to the SCO.



# Lesson References

- [38 United States Code \(USC\) 3680A](#)
- [38 Code of Federal Regulations \(CFR\) 21.4201](#)



# EXERCISE #1

ABC Community College's spring term is from January 29 to May 25, 2018. The institution is not approved for the 35% waiver. The institution calculated its 85/15 ratio for all approved programs during the add/drop period through February 11, 2018.

Is the institution in compliance with submitting the 85/15 Ratio report in a timely manner?



# EXERCISE #2

Hackberry University's BA/Criminal Justice program has been suspended for new enrollments in Spring 2018 because it violated the 85% enrollment ratio. Two veterans using the VA Educational benefits enrolled in this program did not take classes during the Summer 2018 term.

Can they continue in this program for the Fall 2018 term even though the program continues to exceed the 85%?



# EXERCISE #3

All 5 trainees at Waldo's Welding are veterans using their Post-9/11 GI Bill while on the OJT program.

Can Waldo's Welding accept any more veteran trainees? Why?



# Questions



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