



# 85/15

## The Impact of PL 117-174 on Reporting Procedures



October 19, 2022



# LEARNING OBJECTIVES

At the completion of this training, you will be able to:

1. Recognize the changes to the 85/15 rule as a result of the passage of PL 117-174
2. Identify reporting requirements for your ETI
3. Identify approved reporting forms
4. Identify additional resources on the 85/15 rule



# COMMON TERMS



**Calculation date:** the date the ETI performs the calculation of the 85/15 ratio

**Enrollment period:** a predetermined period of instruction (semester, quarter, module, etc.)

**Reporting date:** the date the ETI must submit routine 85/15 reports to VA



**Reporting period:** the time frame within which an ETI must submit reports to VA

**Term start date:** the date a program starts at an ETI as published in the SAA approved catalog, calendar or enrollment contract

# PUBLIC LAW 117-174



## What is Public Law (PL) 117-174?

Senate Bill (S.) 4458, called the “Ensuring the Best Schools for Veterans Act of 2022”, became PL 117-174 when it was signed by the President on August 26, 2022.

## What does it do?

This act amended subsection (d) of section 3680A of title 38, United States Code, to modify the law known as the “85/15 rule” for approval of programs of education under laws administered by Secretary of Veterans Affairs.

# PUBLIC LAW 117-174

## What hasn't changed?



The 85/15 rule provides that:

- ETIs not charging tuition, fees, or other mandatory charges are exempt from the 85/15 rule;
- ETIs located on or adjacent to a military base may be exempted from the 85/15 rule if they meet stated criteria in 38 CFR 21.4201;
- ETIs with a program found to exceed 85 percent supported student enrollment may apply for a waiver of the 85/15 rule for that program;
- ETIs without a 35 percent exemption are required to monitor, calculate, and routinely report 85/15 calculations; and
- ETIs are excluded from **only from 85/15 routine reporting requirements** if their GI Bill® student enrollment equals 35 percent or less of the total student population **AND** the ETI is approved under 38 USC 3676 (**non-accredited programs**).

# PUBLIC LAW 117-174

## What has changed?

For terms beginning on or after August 26, 2022, the new law exempts ETIs from 85/15 requirements:

When their GI Bill<sup>®</sup> student enrollment is

- 35 percent or less of the total student population, **AND**
- the ETI is approved under:
  - 38 USC 3675 (accredited programs) or
  - 38 USC 3672.



# PUBLIC LAW 117-174

## What has changed?

For terms beginning on or after August 26, 2022, the new law contains provisions that exempts **approved programs** with fewer than 10 supported students enrolled in the program.

- ETIs with a 35 percent exemption do not need to routinely report 85/15 enrollment ratios, but, **if approved under 38 USC 3676**, are required to monitor and provide the total count of supported students (not FTE) when performing routine 85/15 calculations;
- ETIs without a 35 percent exemption need to report **ONLY** the total number of supported students (not FTE) enrolled in **an approved program** not otherwise exempted from the 85/15 rule **when the total number of supported students enrolled is fewer than 10.**

Existing 85/15 reporting tools (forms) are being updated to include a way to capture this information.



# PUBLIC LAW 117-174



## What has changed?

For terms beginning on or after August 26, 2022, the new law contains a provision allowing **ETIs found to be non-compliant with the 85/15 rule to apply for a review of that determination by the Under Secretary for Benefits and the Secretary of Veterans Affairs.**

This provision establishes an appeals process by which an ETI that does not agree with VA suspending payment to the Undersecretary and then Secretary of Veterans Affairs.





# PUBLIC LAW 117-174

## How does this change affect my ETI?



ETIs without a 35 percent exemption are required to monitor, calculate, and routinely report 85/15 calculations.

When the ETI doesn't have a 35 percent exemption, when performing routine 85/15 calculations and reporting, it may report only the number of supported students enrolled when there are fewer than 10 supported students enrolled in the program. The ETI must still submit with its report to VA on a routine basis:

- Providing either that the approved programs have fewer than 10 supported students; **and/or**
- Providing that the program has 10 or more supported students enrolled and the 85/15 ratios for those programs with 10 or more supported students enrolled.



# PUBLIC LAW 117-174

## How does this change affect my ETI?



ETIs are excluded from **only from 85/15 routine reporting requirements** if their GI Bill® student enrollment equals 35 percent or less of the total student population **AND** the ETI is approved under 38 USC 3676 (**non-accredited programs**).

The non-accredited ETI with the 35 percent exemption may report only the number of supported students enrolled when there are fewer than 10 supported students enrolled in the program.

The ETI must:

- Continue to monitor enrollments for all approved programs; **and**
- Calculate the 85/15 ratios for ALL approved programs with 10 or more supported students enrolled; **and**
- Create reports for every enrollment period (whenever students may matriculate/start the program) that include information on **all** approved programs; **and**
- When the ETI has a program excluded from the 35 percent exemption, it must submit 85/15 reports on those excluded programs to VA on a routine basis.

# PUBLIC LAW 117-174

## How does this change affect my ETI?



ETIs are excluded from **the 85/15 rule** if their GI Bill® student enrollment equals 35 percent or less of the total student population **AND** the ETI is approved under 38 USC 3675 (**accredited programs**) or 38 USC 3672.



When the ETI has a 35 percent exemption, and is approved under 38 USC 3675 or 3672, the ETI is **not required to monitor or report the 85/15 ratios** (no matter how many supported students are enrolled).

# PUBLIC LAW 117-174

## What do I need to do now?



- If **VA granted an ETI or a program a 35 percent reporting exemption** as part of the October 1, 2021, reset, no action is required.
- If an **ETI submitted a 35 percent reporting exemption to VA since the October 1, 2021**, reset the ETI does not need to reapply. VA is actively reviewing exemption requests and will contact the school directly, if necessary.
- If the ETI **has not applied for a 35 percent reporting exemption**, the ETI can apply using 35 Percent Exemption Request from 85/15 Reporting Requirement, [VA Form 22-10216](#).
- If the **ETI does not qualify for a 35 percent reporting exemption**, then the ETI must continue to report 85/15 computations as done previously.

# PUBLIC LAW 117-174

## What else has changed?



For terms or calendar quarters beginning on or after August 26, 2022, the following students may be classified as **non-supported**:

- Students who are not Veterans or reservists currently using GI Bill benefits<sup>®</sup>, and are not in receipt of institutional aid;
- Any graduate students 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; and
- **Students on a repayment plan completed (paid in full) no later than 180 days from the end of the term, quarter, semester, or enrollment period, whichever is later.**

# PUBLIC LAW 117-174



## What are the requirements of an institutionally-funded payment plan now?

When classifying a student as non-supported for 85/15 rule purposes, a student using an institutionally funded payment plan for tuition and mandatory fees will be considered non-supported if *all* the following apply:

1. The availability and requirements of the payment plan are available for review and/or inspection by students, the State approving agency and VA (a) on the school's website and (b) in a dated hard copy on file at every campus of the ETI.
2. The ETI T&F payment plan includes the following provisions:
  - a. The payment plan is available to any enrolled student who is interested in participating.
  - b. The payment plan explicitly requires the student to pay the outstanding balance **no later than 180 days from the end of the term, quarter, semester or enrollment period (when participating in an NCD program at an ETI on an other than term, quarter, or semester basis)**.
  - c. The payment plan must be paid in full before students can begin training for the next term **beginning on or after the expiration of the payment plan**.

*Any payment plans that do not meet this criteria will count as “supported” unless the student has paid the full amount of tuition, fees, and other mandatory charges prior to the reporting date.*



# PUBLIC LAW 117-174

## What else is there to know?

ETIs not exempted from the 85/15 rule are required to report the number of supported students enrolled in each **approved program**.

VA Forms 22-10215 and 22-10215a, and the soon to be released form for vocational flight schools, will all include a place for this entry.

**VA will provide additional guidance and training on updates to VA forms and reporting requirements soon.**



# Frequently Asked Questions



# PUBLIC LAW 117-174

## Frequently Asked Questions



### **How do I count students receiving other federal funds such as Title IV?**

Federal funds other than those disbursed under title 38 or title 10 under the GI Bill<sup>®</sup> program are not counted as “support” for the purposes of the 85/15 rule.

**Our facility offers need-based scholarships that are not offered to 100 percent eligibility tiered VA beneficiaries because there is no 'need' due to their receipt of GI Bill<sup>®</sup> funding. However, if the student were not in receipt of GI Bill<sup>®</sup>, or not in receipt at the 100 percent level, they would qualify for this scholarship. Are the recipients of the scholarship considered supported?**

If any VA beneficiary may receive the institutionally-funded scholarship, such as a VA beneficiary at 70 percent eligibility, then the aid is not restricted. Note: if the needs-based scholarship is for tuition and fees only, the school is required to deduct those funds from the tuition and fees assessed prior to submitting a certification to VA on behalf of those affected beneficiaries.

# PUBLIC LAW 117-174

## Frequently Asked Questions



### **Do chapter 31 and chapter 35 students count as supported students?**

All GI Bill<sup>®</sup> and Vocational Readiness and Employment (VRE) beneficiaries are counted as supported. Chapter 31 and 35 students are counted both as supported students for 85/15 purposes and as beneficiaries when calculating enrolled students for 35 percent exemption request. However, if a program is suspended for 85/15 purposes, the regulation does not prohibit chapter 35 students and chapter 31 students from using their benefits for a program that is suspended due to 85/15.

### **How does the VA verify that our internal count on supported vs. non-supported students is correct?**

Calculations for all non-exempt ETI are reviewed during Compliance Surveys. For ETIs newly exempt from the 85/15 rule (under PL 117-174), reports will be reviewed for any period prior to August 26, 2022, when the Compliance Survey review period spans that date.

# PUBLIC LAW 117-174

## Frequently Asked Questions



### **Do we have to do 85/15 calculation if we get the 35 percent exemption?**

An ETI approved under 38 USC 3675 or 3672 does NOT need to monitor 85/15 ratios for any of its approved programs. ETIs approved under 38 USC 3676 is required to continue to monitor (this would include performing routine calculations) and provide these reports on compliance.

### **Do we need to include the 85/15 ratios with our 35 percent exemption request?**

Only ETIs approved under 38 USC 3676 must submit the 85/15 ratios using VA Form 22-10215/22-10215a with the request for the 35 percent exemption.

### **How do we calculate for the 35 percent exemption?**

The 35 percent exemption is based on the total number of students receiving GI Bill® benefits at your ETI divided by the total number of students enrolled at the ETI.

# PUBLIC LAW 117-174

## Frequently Asked Questions



### How long does the 35 percent exemption last?

The 35 percent exemption expires every 24 months.

### Is the 35 percent exemption automatically updated without ETI action?

ETIs will need to reapply for the 35 percent exemption prior to the expiration of the current exemption. Application should be made in accordance with current guidance:

- If the school is organized on a term, quarter, or semester basis, it must submit the 35 percent exemption request no later than 30 days after the beginning of the term for which the school wants the exemption to apply.
- If the school is not organized on a term, quarter or semester basis, it must submit the 35 percent exemption request no later than 30 days after the beginning of the calendar quarter for which the school wishes the exemption to apply.

# PUBLIC LAW 117-174

## Frequently Asked Questions



**Our ETI doesn't have a 35 percent exemption. How do we count students when calculating whether a program has fewer than 10 students?**

When calculating the total number of supported students, count person-for-person, ALL supported students enrolled in the program as of the term start date.

**When an approved program has fewer than 10 supported students enrolled, can the program be 100 percent supported and still be compliant with the 85/15 rule?**

Yes. PL 117-174 allows ETIs to maintain 100 percent supported student enrollment in any program when the **overall enrollment of students in that program** is fewer than 10 supported students regardless of the ETIs accreditation or exemption status.

# PUBLIC LAW 117-174

## Frequently Asked Questions



**For ETIs not exempt from monitoring and/or reporting 85/15, how do we identify on our reports those programs that do not exceed 10 supported students?**

An ETI without a 35 percent exemption or one that is approved under 38 USC 3676 with a 35 percent exemption should continue to use the current version of VA Form 22-10215 and 22-10215a to monitor and report 85/15 ratios to VA. The total number of supported students should be annotated in the Program Name block, enter N/A where appropriate, and the date of calculation before moving to the next program on the list.

Example:

Department of Veterans Affairs					
Statement of Assurance of Compliance With 85 Percent Enrollment Ratios					
1. Institution Name		2. Facility Code		3. Term Start Date	
ABC Training Institute		25345678		10/01/2022	
4. 85/15 Calculation					
Program Name	Number of Supported Students FTE	Number of Non-Supported Students FTE	Total Enrollment	Supported Student Percentage FTE	Date of Calculation
COSMETOLOGY (8)	N/A	N/A	N/A	N/A	10/18/2022
HVAC 600-HR	12	04	16	75%	10/18/2022
NAIL TECHNICIAN (6)	N/A	N/A	N/A	N/A	10/18/2022

# 85/15 Resources

Resources created or updated on or before 08/26/2022 reflect information accurate prior to the passage of PL 117-174.

**01** [The 85/15 Rule](#)

**02** [SCO Handbook](#)

**03** [Public Law 117-174](#)

**04** [38 U.S. Code §3680a](#)

**05** [April 2022 Office Hours](#)

**06** [February 2022 Office Hours](#)

**07** [September 2021 Office Hours](#)

**08** [38 CFR §21.4201](#)



**EDUCATION SERVICE  
GI BILL PROGRAMS**

