

THE 85/15 RULE

Verifying Compliance with the 85/15 Rule

September 30, 2020



TEAM MISSION



Safeguarding the Integrity of the GI Bill®

Learning Objectives



- Understand the purpose of the 85/15 Rule.
- Determine if 85/15 calculations were correctly reported by reviewed educational institutions.
- Refer to Education Liaison Representative (ELR) any actionable findings.
- Provide relevant VA-approved verbiage in the standardized Narrative Report.





Common Terms

Throughout the presentation the following terms are used interchangeably and wherever used should be understood to refer to an Education & Training Institution (ETI):

- Educational Institution
- ETI
- Facility
- School
- Training Facility

The following terms are all used interchangeably throughout the presentation and wherever used should be understood to encompass the role of the Federal or State official conducting the Compliance Survey.

- Compliance Survey Specialist
- Education Compliance Survey Specialist
- SAA
- Survey Specialist

The 85/15 Rule



Why do we have the 85/15 Rule?

To ensure that a minimum number of students are willing to pay for the full cost of the program.

To ensure that the price of the program responds to the general demands of the open market and that a minimal number of non-VA beneficiaries find the program worthwhile and valuable.

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 Education & Training Institution (ETI) or VA.

If the ratio of Supported students to Non-Supported Students exceeds 85% only students maintaining continuous enrollment may receive benefits for that program.

NOTE: Students receiving Veteran Readiness and Employment (Chapter 31) or Survivors' and Dependents' Educational Assistance (Chapter 35) benefits must be counted when calculating 85/15 Rule compliance, but they can continue to be certified and enrolled if the Education & Training Institution (ETI) is found to be in violation of the 85/15 Rule.

EXEMPTIONS & WAIVER





Exemptions to the 85/15 Rule

The provisions of the 85/15 Rule do not apply to:

- A farm cooperative training course (38 USC 3680A [d] [2] [B] and 38 CFR 21.4201 [c] [1] [i]).
- Flying clubs (also known as "aero clubs") operating under regulations of the Armed Forces as "non-appropriated sundry fund activities" (38 CFR 21.4201 [c] [1] [ii]).
- Veterans in pursuit of a program leading to a high school diploma, equivalency certificate, or a refresher, remedial, or deficiency course (38 CFR 21.4201 [c] [2]).
- Facilities which do not charge tuition, fees, or other charges (routinely this means that sites approved for On-The-Job [OJT] or Apprenticeship [APP] training) (38 USC 3680A [d] [1]).

Note: In addition to the types of facilities above, students receiving Veteran Readiness and Employment (Chapter 31) or Survivors' and Dependents' Educational Assistance (Chapter 35) benefits. These students must be counted as Supported Students for determining a program's compliance with the 85/15 Rule, but students receiving these specific benefits can be certified for benefits, even if the program is in violation of the 85/15 Rule.

Department of Defense 85/15 Rule Exemption

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



Offered under contract

- Department of Defense (DoD)
- Department of Homeland Security (DHS)

On or immediately adjacent to

- Military base
- Facility of the National Guard

Approved by the State Approving Agency (SAA)

Be available **only** to:

- Military personnel and their dependents
- Civilian base employees
- Persons authorized by the base Commander, outside the U.S.
- If on or immediately adjacent to National Guard facility, National Guard members and their dependents

Confirming the DoD Exemption




The educational institution interested in confirming the DoD Exemption will do so by providing the DoD or DHS Contract to their Education Liaison Representative (ELR)

- ELR will assess the sufficiency of the information submitted and develop, as necessary.
- If confirmed, the ELR will update WEAMS to reflect DoD Exemption status and provide written notification of the determination that the exemption is or is not confirmed.
- The Chief Education Liaison Officer (CELO) or designee signs the DoD Exemption determination letter.

Confirming the DoD Exemption



Standard WEAMS Entry

PROGRAM SPECIFIC INFORMATION		
Additional Organization Details & Approval Information	Issues and Remarks	Financial Payment Info
<input type="checkbox"/> Pay List	<input checked="" type="checkbox"/> VA-ONCE	<input type="checkbox"/> Registered APP
<input type="checkbox"/> Branch	<input checked="" type="checkbox"/> Practical Training	<input checked="" type="checkbox"/> Distance Learning
<input type="checkbox"/> Consortium	<input checked="" type="checkbox"/> Remedial Training	<input type="checkbox"/> IHL Exempt
<input checked="" type="checkbox"/> Accreditation	<input type="checkbox"/> Waiver	<input type="checkbox"/> Advanced Payment
<input type="checkbox"/> Check to School	<input type="checkbox"/> Cooperative	<input checked="" type="checkbox"/> Executive Order 13607
<input type="checkbox"/> National Approval	<input type="checkbox"/> IHL with Flight	<input type="checkbox"/> Federal Approval
<input type="checkbox"/> Priority Enrollment	<input type="checkbox"/> Online Only	<input type="checkbox"/> Independent Study
<input type="checkbox"/> School Closure	<input type="checkbox"/> VALOR	<input type="checkbox"/> Covered Ed Instn
<input type="checkbox"/> STEM	<input type="checkbox"/> Preferred Provider	
Remarks: APPROVAL IS HEREBY GRANTED FOR THE FOLLOWING: 2019-2020 UNDERGRAD CATALOG VOL 19 NO 1 EFF 09/02/2019, 2019-2020 GRADUATE SCHOOL CATALOG VOL 7 NO 1 EFF 09/02/2019 APPR THRU 09/01/2020. DOD EXEMPTION CONFIRMED EFF 07/25/2019. 		
*Status: <input type="text" value="Approved"/>		
*Status Effective Date: <input type="text" value="05/17/2015"/>		

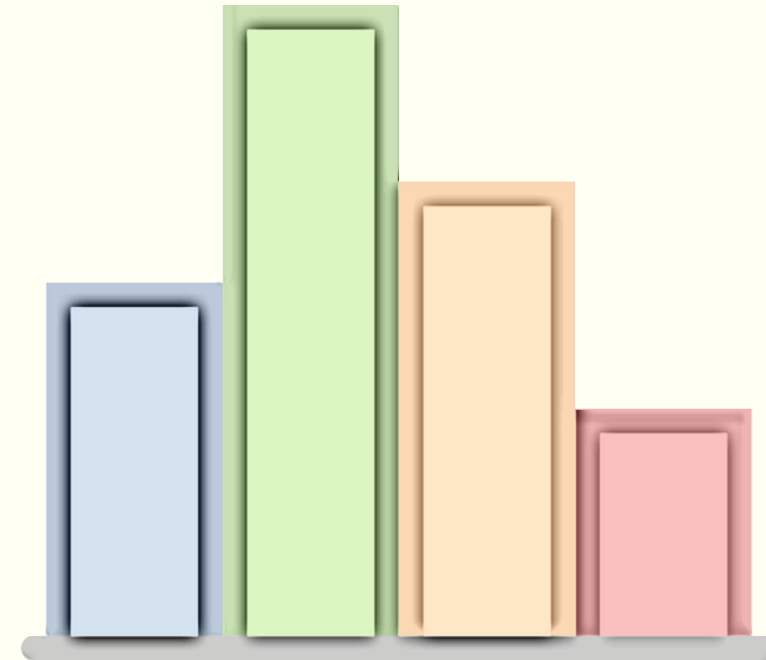
35% Exemption

35% Exemption Criteria

The total number of VA beneficiaries enrolled must be less than or equal to 35% of the total student enrollment.

Programs that exceed 85% Supported Student enrollment are not included in the exemption, and the ETI must monitor and report enrollment data on any programs not included in the 35% Exemption.

Note: Total student population is NOT based on Full Time Equivalency (FTE).



35% Exemption

An ETI with a 35% Exemption is not required to routinely report 85/15 calculations to the VA. The 35% Exemption has no impact on 85/15 calculations requested during a Compliance Survey, or if requested by an ELR, SAA or other Education Service VA employee.

The Exemption is specifically limited to the educational institution having to provide routine reports to their ELR of jurisdiction.



Note: There will be a national reset to rescind all 35% Exemptions effective October 1, 2020.

Applying for the 35% Exemption

The educational institution interested in applying for the 35% Exemption will do so by providing the 35% Exemption form with a completed Statement of Assurance of Compliance with 85 Percent Enrollment Ratios to their Education Liaison Representative (ELR).

- ELR will assess the sufficiency of the information submitted and develop as necessary.
- If confirmed, the ELR will update WEAMS to reflect 35% Exemption status and provide written notification of the determination that the exemption is or is not confirmed. ***Note: a partial 35% Exemption may be authorized, if overall enrollment of VA beneficiaries does not exceed 35% but there are programs that do exceed 85% enrollment of Supported Students.***
- The CELO or designee signs 35% Exemption determination letter.



Confirming the 35% Exemption



Standard WEAMS Entry

PROGRAM SPECIFIC INFORMATION		
Additional Organization Details & Approval Information	Issues and Remarks	Financial Payment Info
<input type="checkbox"/> Pay List	<input checked="" type="checkbox"/> VA-ONCE	<input type="checkbox"/> Rep
<input type="checkbox"/> Branch	<input checked="" type="checkbox"/> Practical Training	<input checked="" type="checkbox"/> P
<input type="checkbox"/> Consortium	<input checked="" type="checkbox"/> Remedial Training	<input type="checkbox"/> P
<input checked="" type="checkbox"/> At	<input checked="" type="checkbox"/> Waiver	<input type="checkbox"/> P
<input type="checkbox"/> Check to School	<input type="checkbox"/> Cooperative	<input checked="" type="checkbox"/> E
<input type="checkbox"/> National Approval	<input type="checkbox"/> IHL with Flight	<input type="checkbox"/> Fede
<input type="checkbox"/> Priority Enrollment	<input type="checkbox"/> Online Only	<input type="checkbox"/> Independ
<input type="checkbox"/> School Closure	<input type="checkbox"/> VALOR	<input type="checkbox"/> Covered Ed Instn
<input type="checkbox"/> STEM	<input type="checkbox"/> Preferred Provider	

Remarks:

2019-2020 UNDERGRAD CATALOG VOL 19 NO 1 EFF 09/02/2019,
2019-2020 GRADUATE SCHOOL CATALOG VOL 7 NO 1 EFF
09/02/2019 APPR THRU 09/01/2020.

85 PERCENT EXEMPTION OF PERIODIC REPORTING OF 85 PERCENT
ENROLLMENT RATIOS APPR EFF 07/25/2019.

*Status:

*Status Effective Date:

A future update to WEAMS will reflect "35% Exemption" vice the current "Waiver" option.



What Is The Education Service Waiver?

When courses exceed 85% Supported Students, the school may apply for a waiver to the Director, Education Service.

When applying, the school must submit enough information to allow the Director, Education Service, to judge the merits of its request against the criteria below.



- Availability of similar courses
 - Vicinity
- Developing schools - serving a disadvantaged population
 - Strengthening Institutions Program
 - Special Needs Program
- Compliance survey history with no serious discrepancies
- General effectiveness of the courses
 - Employment opportunities
 - Factors
 - ✓ Course completion
 - ✓ Ratio of educational expense to full-time equivalency enrollment

Education Service Waiver

When the Education Service Waiver is Granted

If the facility has been awarded the Education Service Waiver then they are exempt from having to monitor or report 85/15 calculations for the period defined in the waiver, for the identified programs listed in the waiver.

- ELRs should **not** request 85/15 calculations for identified programs if the term began during the period defined in the waiver.
- If the facility has programs approved that are not listed on the waiver, or if a student has a term date that begins outside of the period defined in the waiver, the ELR will request 85/15 calculations as normal.



SUPPORTED STUDENTS VS. NON-SUPPORTED STUDENTS





Supported vs Non-Supported

Supported Students are:

- Any student receiving any amount of VA Education benefits.
- Any student where the full amount of tuition and fees has not been paid to the educational institution prior to the start of the 15th day of class.
- Any student who received a loan for tuition, fees, or other charges directly from the educational institution if the policy for determining the recipient of such loan is unequal with respect to veterans and nonveterans.
- Any student who receives a loan considered to be less than an Arm's Length transaction.
- Any student where the educational institution accepts less than full tuition, fees, or other charges from a loan company (the repayment works to essentially reduce the tuition, fees, or other charges accepted by the educational institution from the loan company).
- Any student who is granted any waiver or forgiveness of tuition, fees, or other charges.
- Any student who receives an institutionally funded scholarship or grant, if the institutional policy for determining the recipient of such aid is not equal with respect to veterans and nonveterans alike.

Supported vs Non-Supported



Arm's Length Transaction

Transactions between two parties

- Independent
- No close relationship with each other

Parties have equal bargaining power

- Not subject to undue pressure/influence from the other party
- No fiduciary duties between the parties



Supported vs Non-Supported

Non-Supported Students are:

- Any student who pays the full amount of tuition, fees, and other mandatory charges to the educational institution prior to the start of the 15th day of class.
- Any student who finances their tuition, fees, and other mandatory charges through an Arm's Length Transaction (i.e. a Promissory Note with a neutral 3rd party lending facility).
- Any student receiving Title IV Department of Education aid
- Any student receiving Tuition Assistance through the Department of Defense.
- Any students receiving non-institutional aid (scholarships, grants, or other types of aid offered by a third-party entity not affiliated with the school).
- Graduate Students in Receipt of Institutional Aid.
- Any students receiving an institutionally funded loan, scholarship, or grant, if the policy for determining the recipient of such aid is equal with respect to veterans and nonveterans alike.

NOTE: If the student is receiving multiple types of aid and any of it is Supported – the student must be counted as a Supported Student.

REVIEW OF 85/15 DURING A COMPLIANCE SURVEY



Review of 85/15 During a Compliance Survey

Basic Steps to Review 85/15 during a Compliance Survey:

While onsite:

1. Review for 85/15 compliance
2. Validate any waiver or exemption in effect at the ETI.
 - 35% Exemption
 - Department of Defense (DoD & DHS Exemption
 - Education Service Waiver
3. Identify any Risk Factors.
4. Perform 85/15 Full Review if Risk Factors are identified.





Risk Factors

If the Compliance Survey Specialist/SAA identifies any of the following, or if based on his or her professional judgement s/he deems it appropriate, an 85/15 Full Review will be necessary:

- Consistently close or at 85% ceiling for a program (79% or more).
- Supported and Non-Supported Students not calculated properly.
- Lack of verifiable information.
- Excessive tuition or fees not consistent with similar programs.
- Students enrolled in multiple programs with varying educational objectives.
- Students have traveled from out-of-state to attend short term program.



Review of 85/15 During a Compliance Survey

Basic Steps to Review 85/15 during a Compliance Survey:

Before closing the Compliance Survey:

1. Ensure that the facility has listed all approved programs on the Statement of Assurance of Compliance with 85 Percent Enrollment Ratios.
2. Submit necessary referrals to ELR for any suspected violations that require review. Submit necessary referrals to SAA for any approval relation violations related to 85/15 (adequacy of records). 38 US Code (USC) 3690, 38 Code of Federal Regulations (CFR) § 21.4209
3. Note any discrepancies in Section II of the Narrative.
4. Provide details of 85/15 Compliance Review in Narrative, Section III.

During the Compliance Survey the facility's compliance with the 85-15 Rule (38 USC 3680A) was reviewed. (Add the following additional text based on findings.)

- During the review it was found that this site is in compliance with the provisions of the 85-15 Rule.
- Due to possession of a Department of Defense (DoD) waiver, this site is exempt from the 85-15 Rule.
- Due to possession of an Education Service Waiver for Developing Schools waiver, this site is exempt from the 85-15 Rule.
- Due to its type, this site is exempt from the 85-15 Rule.
- During the review it was found that this site is not in compliance with the provisions of the 85-15 Rule. The specific violations can be found in the Discrepancies section



Review of 85/15 During a Compliance Survey

A Compliance Survey Specialist can accept the self-reporting of the 85/15 Rule from the ETI if the reported numbers demonstrate that the ETI is in compliance by a wide margin (79% or less of the students are Supported Students). The Compliance Survey Specialist can also more deeply review 85/15 calculations anytime they warrant it necessary based on professional judgement.

The ETI must be reputable, have had no previous 85/15 Rule reporting issues, and there must be no evidence that indicates any apparent discrepancy in the numbers.

- **Example 1:** An English program at a reputable community college shows an 85/15 Rule calculation of 23% of its students being Supported Students. The Compliance Survey Specialist could accept this self-reporting, with no additional review or verification, of the 85/15 Rule calculation.
- **Example 2:** An English program at a reputable community college shows an 85/15 Rule calculation of 23% of its students being Supported Students. While reviewing the ETI's documents, the Compliance Survey Specialist notices that the ETI is heavily advertising to recruit Veterans into the program. The Compliance Survey Specialist is concerned that the ETI may be underreporting its Supported Students. The Compliance Survey Specialist will not accept the ETI's reporting in this instance but will instead validate the 85/15 Rule calculation for that program themselves.



Assigning Students – Multiple Majors

How Are Double Majors Counted?

Students enrolled in double majors must be counted for each major in which they are enrolled in (this is true for both Supported and Non-Supported Students). The student is counted as a full-time or part-time student under each major based on the total number of credits the student is pursuing during the enrollment period.

- Example 1: A student is receiving Post 9/11 GI Bill® (Chapter 33) benefits, is enrolled as a full-time student for reporting purposes, and is majoring in both Biology and Chemistry. For 85/15 Rule purposes, this student would count as a full-time Supported Student for both the Biology and Chemistry programs.
- Example 2: A student is completely self-paying for their schooling and is enrolled as a part-time student majoring in French, Latin, and Spanish. For 85/15 Rule purposes, this student would count as a Non-Supported Student enrolled part-time for all three majors in which s/he is enrolled.



Assigning Students – Concentrations/Tracks

How Are Concentrations and Tracks Counted?

Students must be counted for each concentration and track in which they are enrolled (this is true for both Supported and Non-Supported Students).

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 Education and Training Institution (ETI) would list on the 85/15 Statement of Assurance of Compliance with Enrollment Ratios:

Aviation Management – Flight Track

Aviation Management – Non-Flight Track

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

A student is counted as a full-time or part-time student under each approved concentration or track based on the student's overall rate of pursuit or individual training time.

Assigning Students – Part-time Students

Calculating part-time students

Part-time students must be converted to a full-time equivalent number.

This is done by multiplying the number of part-time students by the student’s training time.

Example:

Number of Students	Individual Training Time	Calculation	Full Time Equivalent Number of Students
20	.25	$20 * .25$	5
15	.5	$15 * .50$	7.5
10	.75	$10 * .75$	7.5

These 45 part-time students equate to a total of 20 FTE which must be added to the total full-time number of either Supported or Non-Supported Students.

A student is counted as a full-time or part-time student under each approved concentration or track based on the student’s overall rate of pursuit or individual training time.

Review the Reviewed Documents to Ensure that 85/15 Compliance was Checked at the Proper Review Periods Institutions of Higher Learning (IHL)



Routinely speaking Institution of Higher Learning (IHL) programs are structured on a term (semester or quarter) basis. This means that when the reviewer is calculating 85/15 for programs, they will review and report 85/15 compliance on each individual term.



Example:

VA-ONCE Community College has a fall, spring, and multiple summer terms. The ETI is obligated to review and report the 85/15 calculations, for each of its programs, for its terms fall and spring terms. 38 CFR §21.4201 exempts reporting summer sessions at ETIs organized on a term, quarter or semester basis.

NOTE: A Compliance Survey Specialist may request 85/15 calculations for any standard or non-standard term that falls within the review period for the Compliance Survey. If the Compliance Survey Specialist requests the 85/15 for a term, the facility is obligated to provide the 85/15 calculations for that term.

Review The Reviewed Documents To Ensure That 85/15 Compliance Was Checked At The Proper Review Periods Non-College Degree (NCD)



Routinely speaking Non-College Degree (NCD) programs are structured on a term basis where terms may overlap each another. This means that when the reviewer is calculating 85/15 for programs, they will review and report 85/15 compliance on all students enrolled in a program at the start of each new term.

It helps to visualize this as a cascading effect with one pool of students graduating from one module into another larger pool of students and so on.



Review The Reviewed Documents to Ensure that 85/15 Compliance Was Checked at the Proper Review Periods NCD Example



VA-ONCE NCD Facility has one approved program (Example program) which is offered in and has the following term dates:

01/01/19 – 07/01/19

02/01/19 – 08/01/19

03/01/19 – 09/01/19

04/01/19 – 10/01/19

The ETI must review 85/15 compliance as it begins enrolling students in its initial term (01/01/19 – 07/01/19) to ensure that it's Supported Student population remains in compliance with the requirements of the 85/15 Rule.

The ETI enrolls 5 students using GI Bill® benefits (Supported Students) and 1 student completely self-paying (Non-Supported Student).

The current 85/15 calculation for Example program is 83.33%.

Review The Reviewed Documents to Ensure that 85/15 Compliance Was Checked at the Proper Review Periods NCD Example



When enrolling students for the following term 02/01/19 – 08/01/19 the educational institution must review 85/15 compliance by including all students who are still attending, so all new students and all still enrolled students in the term 01/01/19 – 07/01/19 must be factored into the calculation. So, because a new Supported Student would put the educational institution out of compliance with 85/15 (it would be 6 Supported Students and 1 Non-Supported Student which would make the 85/15 percentage 85.71%), the site would be unable to enroll a new Supported Student until a new Non-Supported Student enrolled.

- For the 02/01/19 – 08/01/19 term the ETI enrolls 2 students who are completely self-paying (Non-Supported Students) and 4 students using GI Bill® benefits (Supported Students).
- Because the terms overlap, all students are calculated together for a total of 9 Supported Students and 3 Non-Supported Students.

The current 85/15 calculation program is 75% for Example Program.

Review The Reviewed Documents To Ensure That 85/15 Compliance Was Checked At The Proper Review Periods

NCD Example



When enrolling students for the following term 04/01/19 – 10/01/19 the educational institution must review 85/15 compliance by including all students who are still attending; so all of the students enrolled in the current term and students still enrolled from the terms 01/01/19 – 07/01/19, 02/01/19 – 08/01/19, and 03/01/19 – 09/01/19 must be factored into the calculation.

- For the 04/01/19 – 10/01/19 term the ETI enrolls 0 students who are completely self-paying (and 3 Non-Supported Student) and 2 students using GI Bill® benefits (Supported Students).
- Because the terms overlap, all students are calculated together for a total of 14 Supported Students and 3 Non-Supported Students

The current 85/15 calculation program is 82.35% for Example Program.

Complete The Statement Of Assurance Of Compliance with 85% Enrollment Ratios



To check Compliance manually, complete the Statement of Assurance of Compliance with 85/15 Enrollment Ratios.

1. The number of Supported Students is added to the number of Non-Supported Students for a Total Number of Students.
2. The number of Supported Students is then divided by the Total Number of students. This is then converted into a percentage.





Review of 85/15 During a Compliance Survey

The Survey Specialist has completed his or her review and calculations were done correctly:

- The Survey Specialist will include in the Compliance Survey Narrative that the 85/15 Rule calculations were reviewed and found to be correct.
- A copy of the updated Statement of Assurance of Compliance with 85 Percent Enrollment Ratios will be sent via email to the ELR of jurisdiction for their review and addition to the ETI's approval folder.

When completing the electronic version of the VA Form 22-1934 in EFORCE, line number 11 (CERTIFICATION OF THE 85% ENROLLMENT LIMITATION WAS VERIFIED), under “Areas of Review”, will be checked “Yes” for findings.

(continued)



Review of 85/15 During a Compliance Survey

The Survey Specialist has completed his or her review and calculations were done incorrectly, but the program is still in Compliance with the 85/15 Rule:

- The Survey Specialist will review the miscalculation during the Exit Interview and will include the error in the Compliance Survey Narrative.
- A copy of the updated Statement of Assurance of Compliance with 85 Percent Enrollment Ratios will be sent via email to the ELR of jurisdiction for their review and addition to the ETI's approval folder.

When completing the electronic version of the VA Form 22-1934 in EFORCE, line number 11 (CERTIFICATION OF THE 85% ENROLLMENT LIMITATION WAS VERIFIED), under “Areas of Review”, will be checked “No” for findings.

(continued)



Review of 85/15 During a Compliance Survey

(continued)

- The Compliance Survey Specialist must review the most recent term of that program (if not already reviewed) and confirm if the program is currently in compliance with the 85/15 Rule. They will review the error during the Exit Interview and will include the error in Section I of the Compliance Survey report.
- A copy of the updated Statement of Assurance of Compliance with 85 Percent Enrollment Ratios will be sent via email to the ELR of jurisdiction for their review and addition to the ETI's approval folder.

When completing the electronic version of the VA Form 22-1934 in EFORCE, line number 11 (CERTIFICATION OF THE 85% ENROLLMENT LIMITATION WAS VERIFIED), under “Areas of Review”, will be checked “No” for findings.

(continued)



Narrative Report of Compliance Survey

Based on findings during the compliance survey, make appropriate entry in the Narrative Report:

85/15: On the date of the survey, the ETI's enrollment was *[number]*, of whom *[number]* were Supported Students (for a percentage of *[number]*% Supported Students); thus,...

- *the 35% exemption of the 85/15 percent ratio was confirmed. It should also be noted that no programs were found to exceed 85% Supported Students in the ETI's latest detailed report.*

or

- *the 35% exemption of the reporting requirements of the 85/15 percent ratio was not verified, and the ratio must be reported to VA on a routine basis. The [State] ELR was made aware that the 35% exemption should be rescinded. It should also be noted that no programs were found to exceed 85% Supported Students in the ETI's latest detailed report.*

or

- *programs exceeding 85/15 percent ratio were identified during compliance, and the ratio must be reported to VA on a routine basis. The [State] ELR was made aware that programs exceeded 85/15 and specifics of this information is included in Section II of this report*

Note: If the facility does not have a 35% exemption, the ECSS doesn't need to provide this section, unless programs specifically violated the 85/15 ratio).



Requirement to Report

If an educational institution states they are unwilling or unable to provide 85/15 Rule calculations at the required reporting period or when requested by an ECSS, ELR, or SAA then the Compliance Survey Specialist will remind the facility that failure to provide the information can result in:

- No benefits will be paid for the enrollment of any VA beneficiary enrolled in any of the educational institutions approved programs, until the educational institution completes the 85/15 Rule calculations and is found to be in compliance with it [38 CFR 21.4201 (g) (3)]; and
- The SAA of jurisdiction will be informed that the educational institution is in violation of 38 CFR 21.4209(5).



Requirement to Report

If a facility still refuses to provide 85/15 calculations the Compliance Survey Specialist/SAA should immediately provide a referral to the ELR for an 85/15 violation and the SAA as an approval violation for failure to provide required documentation (38 U.S.C. § 3690, 38 CFR § 21.4209).

- The Survey Specialist will continue with the rest of the Compliance Survey review and report all other discrepancies normally.
- The Survey Specialist cannot close the Compliance Survey until they have received and reviewed the required 85/15 information or until the SAA withdraws the facility for failure to provide documentation.

HOW TO DO AN 85/15 FULL REVIEW





Review Received Documents and Assign Students

1. Immediately count all students receiving GI Bill® benefits as Supported Students.
 - For student's receiving Post-9/11 GI Bill® benefits (Chapter 33) who have a benefit level less than 100%: Did the student pay all outstanding charges or were those charges waived?
2. For all remaining records, review each student's individual ledger/invoice.
 - Was the student charged the full tuition and fees costs?
 - Was the student's tuition and fees discounted?
 - Did the student receive any ETI specific scholarships or waivers? Were those available to all students (or subset of students) or were they limited?
 - Did the student receive any 3rd party specific scholarships?
 - Was full tuition and fees required before student began classes? And if so, was this enforced?
 - Are students on a payment plan regularly making these payments?
3. For all records reviewed in #2, review each student's individual transcript.
 - Are student's completing their term, or routinely dropping midterm?
 - Are student's attending during the term they were reported in?
 - Are the ETI's standards of progress not being enforced? (i.e., Non-Supported Students aren't attending class, but the ETI is letting them remain in the program)



Full Review of 85/15

When investigating an Education and Training Institution's (ETI) 85/15 calculations, the Survey Specialist will:

1. Get all evidence from the ETI used to complete their Statement of Assurance of Compliance with 85 Percent Enrollment Ratios
2. Require the ETI to provide a list of all students enrolled in the program(s) for the term(s) being reviewed.
3. Require the ETI to provide a list of all transcripts and ledgers for all students in the program(s) for the term(s) being reviewed.
4. Review each record and ensure that all students attended the term(s) being reviewed and that the ETI correctly classified each student as being Supported or Non-Supported Students.
 - a. While reviewing these records, the Compliance Survey Specialist will watch out for trends that might indicate fraudulent reporting. Examples would include non-declared students being reported as Non-Supported Students or excessive individuals with the same last name (especially if it's the same last name as the School Certifying Official or other member of the ETI's faculty or administration).

(continued)



Full Review of 85/15

(continued)

- b. If the Compliance Survey Specialist has suspicion that the ETI is fraudulently supplying erroneous 85/15 Rule calculations, then the Compliance Survey Specialist will follow the rules outlined in the M22-4 – Part X – Chapter 6 – Section 6.06. The ETI will not be told at this time that the Compliance Survey Specialist believes the 85/15 Rule calculations to be fraudulent.
5. Review that Part-time students were correctly calculated into a full-time equivalent.
6. Review to make sure that the total number of students was calculated correctly.
7. Complete an updated version of Statement of Assurance of Compliance with 85 Percent Enrollment Ratios. This will be included into EFORCE with any other supporting documents the Compliance Survey Specialist may have.
8. Utilize EForce naming conventions for document findings.

Fiscal Year-Facility Code-8515

85/15 Suspensions

An 85/15 suspension is a suspension of payment and should not be confused with a suspension of approval.

Suspension of a program for violating the 85/15 is done by the VA, not the SAA of jurisdiction. The ELR of jurisdiction will make all determinations regarding an 85/15 suspension. 85/15 violations found during a Compliance Survey will be:

- formally referred to the ELR,
- noted in the Compliance Survey Narrative; and
- left the ELR for final resolution.



SPECIAL SITUATIONS



Special Situations

If a program has a total student population of one supported student – the site is **not** in violation of the 85/15 Rule.

The educational institution is not officially in violation of the 85/15 Rule until a second supported student enters the program.



Special Situations

VET TEC Pilot Program

When the facility has a program that is dually approved for both GI Bill® benefits and VET TEC benefits, the facility must count any students receiving GI Bill® benefits or VET TEC benefits as Supported Students.





Special Situations

VET TEC Pilot Program

When the facility has a program that is dually approved for both GI Bill[®] benefits and VET TEC benefits, the facility must count any students receiving GI Bill[®] benefits or VET TEC benefits as Supported Students.

- If the facility is exempt from having to calculate 85/15 compliance (i.e. the facility has the DOD Exemption or the Education Service Waiver, or does not charge tuition, fees, or other charges) then the facility is not obligated to monitor or report 85/15 calculations to the ELR of jurisdiction. This exemption or waiver to 85/15 does not apply to the facility's obligation to monitor and report 85/15 calculations to the Oversight and Accountability Division with approval authority over VET TEC.
- If the facility is exempt from having to calculate 85/15 compliance (i.e. the facility is a Preferred Provider) then the facility is not obligated to monitor or report 85/15 calculations to the Oversight and Accountability Division with approval authority over VET TEC. This exemption to 85/15 does not apply to the facility's obligation to monitor and report 85/15 calculations to their ELR of jurisdiction.

Lesson References

- [38 U.S. Code § 3680A](#)
- [38 CFR § 21.4201](#)
- [M22-4 – Part IX – Chapter 9 – Section 9.15](#)
- [VET TEC 85/15 advisory](#)