

In our view, to act otherwise based on the allegations alone would be slovenly and inequitable, while issuing an approval with such grave legal allegations unresolved would amount to a dereliction of our duty to protect our veteran students. In either case, a decision on the merits of the application at this time would constitute an impermissible conflict of interest due to litigation being maintained against Ashford by CSAAVE's own legal advisor, the Attorney General of California, on issues germane to Ashford's application. CSAAVE's failure to act also allows Ashford the ability to exercise its right to seek approval by USDVA, as prescribed by law.

Although "failure to act" is supported in regulation, your letter indicates that CSAAVE's options for responding to an application are circumscribed by the terms of Article II of our agreement: "CSAAVE may only approve or disapprove (i.e. deny approval of) a program it has not currently approved according to the terms of the current agreement between VA and CSAAVE." However Title 38 limits "disapproval" to those courses previously approved and where the requirements for approval are not being met (38 U.S.C. 3672(a), 38 U.S.C. 3679, 38 C.F.R. 21.4259, 38 C.F.R. 21.4250(b)(2)). Since Ashford submitted an initial application for approval, CSAAVE is unable to disapprove courses not previously approved. More so, CSAAVE finds no authority within Title 38 to "deny" approval.

It is the position of CSAAVE that our agreement did not purport to curtail legal options granted to state approving agencies in the Code of Regulations. Rather, the agreement serves to facilitate implementation of those governing regulations. This view finds support in the opening line of Article II, section 1 of the agreement, which recognizes the incorporation of all governing laws found in Title 38 by providing: "Except to the extent otherwise provided by law. . ."

If it is the position of the USDVA that the option to refrain from action on an application under 38 C.F.R. § 21.4250(b)(3) has been eliminated by the agreement, please issue CSAAVE a written advisory so that we may eliminate any further misunderstanding.

CSAAVE appreciates your prompt referral of this matter to our attention and stands ready to work toward a mutually agreeable position that will guide our decisions on future applications. I look forward to successful collaboration in this new year.

Sincerely,

KEITH BOYLAN
Deputy Secretary, Veterans Services Division
California Department of Veterans Affairs