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MEMORANDUM

TO: PETER BLAKE,
Director, State Council of Higher Education for Virginia

FROM: ALLEN T. WILSON *ATW*
Senior Assistant Attorney General

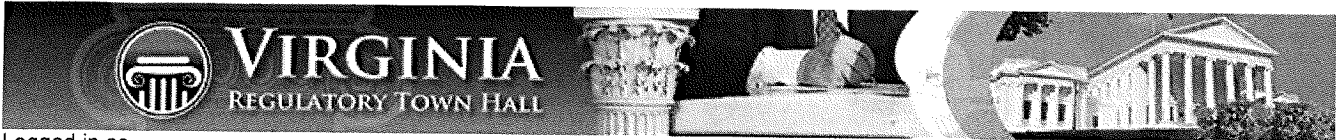
DATE: January 17, 2017

SUBJECT: Virginia Tuition Assistance Grant Program Regulations
Final Regulation 8VAC40-71

I have reviewed the above-referenced final regulation to determine if the State Council of Higher Education for Virginia ("Council") has the statutory authority to promulgate the final regulation and if this action by the State Board is exempt from the Administrative Process Act (APA).

It appears that the Council has the authority to promulgate the regulation, subject to compliance with the provisions of Article 2 of the APA, and has not exceeded that authority. The changes to the regulations are necessary to reflect the changes in Code by the adoption Chapter 588 of the 2016 Acts of Assembly, which recodified the higher education title of the Code. Pursuant to § 2.2-4006(A)(4)(a) of the Virginia Code, this action by the Council is exempt from the requirements of the APA.

If you have any questions, please feel free to call me at 786-0095.



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Allen T. Wilson

Final Text

Action: Amend regulations to incorporate legislative mandate ...

Stage: Final

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8VAC40-71-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Academic year" means the enrollment period that normally extends from late August to May or early June and that is normally comprised of two semesters 15 to 16 weeks in length or three quarters 10 to 11 weeks in length.

"Accredited" means approved to confer degrees pursuant to the provisions of Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 Article 3 (§ 23.1-213 et seq.) of Chapter 2 of Title 23.1 of the Code of Virginia and requirements of the annual appropriation act, as the same are now constituted or hereafter amended. Unless otherwise provided by law, an institution must be accredited by a nationally recognized regional accrediting agency prior to participation in the program.

"Award" means a grant of Virginia Tuition Assistance Grant Program funds given during fall and spring terms at semester institutions and fall, winter, and spring terms at quarter institutions.

"Census date" means the time during a term when a count of enrolled students is made for reporting purposes. For all standard terms, the census date shall be the end of the program add/drop period. For nonstandard terms, the census date shall be determined by council on a program by program basis.

"Cost of attendance" means the sum of tuition, fees, room, board, books, supplies, and other education-related expenses, as determined by an eligible institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"Council" means the State Council of Higher Education for Virginia or its designated staff.

"Domiciliary resident" means a student who is determined by the enrolling institution to be a domiciliary resident of Virginia or deemed as domiciled as specified by § 23-7.4 § 23.1-502 of the Code of Virginia and the council's guidelines for domiciliary status determinations. In cases where there are disputes between students and the enrolling institutions, the council shall make the final determinations (see 8VAC40-71-40 E).

"Eligible institution" means private nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education. Eligible institutions not admitted to this program before January 1, 2011, shall also:

1. Be formed, chartered, established, or incorporated within the Commonwealth;
2. Have their principal place of business within the Commonwealth;

3. Conduct their primary educational activity within the Commonwealth;
4. Be accredited by a nationally recognized regional accrediting agency; and
5. Comply with applicable reporting requirements as:
 - a. Found in the Code of Virginia or supporting administrative code for institutions operating in Virginia or participating in state financial aid programs; or
 - b. Identified by the council as necessary for the administration of the program.

"Eligible program" means a curriculum of courses at the undergraduate, graduate, or first professional level for those institutions eligible under the definition of eligible institution. For those institutions chartered under an act of Congress and admitted to this program prior to January 1, 2011, only a curriculum of courses offered at a campus located in the Commonwealth are eligible programs.

1. Undergraduate programs are those programs that lead to an associate's or baccalaureate degree and that require at least two academic years (minimum 60 semester hours or its equivalent in quarter hours) to complete or an undergraduate teacher certification program.

2. Graduate programs are those programs leading to a degree higher in level than the baccalaureate degree and that require at least one academic year (minimum 30 semester hours or its equivalent in quarter hours) to complete. Only graduate programs in a health-related professional program classified in the National Center for Education Statistics' Classification of Instructional Programs (CIP) Code 51-series programs are eligible graduate programs.

3. First-professional programs are those post-undergraduate programs leading to a degree in dentistry, medicine, veterinary medicine, or pharmacy. Only professional programs in a health-related professional program classified as CIP Code 51-series programs are eligible first-professional programs.

4. Programs that provide religious training or theological education, classified as CIP Code 39-series programs, are not eligible programs.

5. Students enrolled in a declared double-major that includes an ineligible degree program may receive an award only for those terms in which the student's enrollment includes an equal or greater number of courses required for an eligible major or concentration than the number of courses enrolled for an ineligible major or concentration (excludes general education or elective courses). Exceptions may be made by council based on circumstances beyond the control of the student.

"First-professional student" means a student enrolled and program placed in any of the following post-undergraduate programs: dentistry, medicine, veterinary medicine, or pharmacy.

"Fiscal year" means the period extending from July 1 to June 30.

"Formed, chartered, established, or incorporated within the Commonwealth" means the institution is, and continues to be, recognized as a domestic or in-state institution under the council's certification to operate in Virginia and under state law.

"Full-time student" means a student who is enrolled for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level or nine credit hours per semester or its equivalent in quarter hours at the graduate or first-professional level. The total hours counted do not include courses taken for audit, but may include required developmental, remedial, or prerequisite courses and other elective for-credit courses that normally are not counted toward a degree at the institution. For students enrolled in:

1. Nonstandard terms: the full-time enrollment requirement, as approved by council, will be proportionate based on the length of the terms, the number of contact hours, or other measures of comparability with the institution's normal academic year.
2. Concurrent undergraduate, graduate, or first-professional courses: the full-time enrollment requirement may be met by a combination of the total credit hours, providing that the combination totals at least the minimum credit hours for full-time status, as described above, for the student's institutionally recognized student level.
3. Programs leading to a doctoral degree: the full-time enrollment requirement may be met by enrollment in nine credit hours per semester or its equivalent in quarter hours or the minimum full-time enrollment as defined by the institution, whichever is less.

"Graduate student" means a student enrolled and program-placed in a master's or doctoral program.

"Nonprofit institution" means an educational institution operated by one or more nonprofit corporations, and said institution's earnings are applied solely to the support of said institution and its educational programs and activities.

"Nonstandard degree program" means a degree program where the terms of the program do not conform to the standard terms of the institution's academic year. Nonstandard programs must be approved by council before students enrolled in the programs can receive awards.

"Participating eligible institution" means an eligible institution that has been approved to participate in the program by council.

"Principle place of business" means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the institution as a whole primarily exercise that function considering the following factors:

1. The state in which the primary executive and administrative offices of the institution are located. The primary executive and administrative offices are those most often physically used in the performance of the executive and administrative functions of the institution;
2. The state in which the principal office of the chief executive officer of the institution is located. The principal office of the chief executive officer is the location that is most often physically occupied by the chief executive officer when in performance of official institution duties;
3. The state in which the board of trustees or similar governing person or persons of the institution conducts a majority of its meetings; and
4. The state from which the overall operations of the institution are directed in that the institution is not subject to control or directives from an office, agency, or board located within another state.

"Program" means the Virginia Tuition Assistance Grant Program.

"Term" means the fall semester or quarter, winter quarter, or the spring semester or quarter.

"Undergraduate student" means a student in a program leading to an associate's or baccalaureate degree or a student enrolled in an undergraduate teacher certification program.

8VAC40-71-20. Institutional participation in the program: application procedures.

In order to participate in the program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term awards would first be available to students.

Applications shall be addressed to the council and shall include:

1. Estimates of the number of students who would be eligible to receive awards in the first and second years of participation;
2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP) if participating in federal Title IV programs; and
3. Certifications from the institution's chief executive officer that the institution:
 - a. Meets each aspect of the definition of an eligible institution as defined in this chapter;
 - b. Offers academic programs that meet the definition of an eligible program and provides a list of such programs, including the officially recognized CIP codes for each program;
 - c. Will furnish whatever data the council may request in order to verify its institutional eligibility claims;
 - d. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution;
 - e. By its governing body, has authorized its adherence to the requirements of this chapter, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the program; and
 - f. Will comply with the council's reports requirements and deadlines.

Applications must be approved and all documents must be on file before any funds are disbursed.

Council retains the prerogative to issue conditional approval to participate in the program if deemed necessary and provide a timeframe in which a follow-up review will be conducted before issuing final approval.

All subsequent new programs or site locations must be reported to the council by no later than August 1 of the calendar year preceding the calendar year in which fall term awards would first be available to students in the program or at the new site location.

8VAC40-71-30. Disbursement of funds.

A. Advancement of funds. A percentage of an institution's estimated allocation of funds for a term will be forwarded to the institution at the beginning of the term. The allocation will be based primarily on the projected award for the term and each institution's prior academic year's enrollment unless the institution makes a convincing case by presenting new enrollment factors.

After the census date for each term, the institution will certify that recipients are enrolled as full-time students and are meeting other eligibility requirements established for the program. After enrollment is verified, additional funds, if needed, may be disbursed to the institution. Funds for recipients reported as not

enrolled full time or not meeting other eligibility requirements shall not be disbursed to students, and funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be returned to the council no later than the end of the fiscal year unless otherwise requested, in which case the deadline is within 30 days of the request.

B. Notification to students. The private institutions that participate in this program shall, during the spring semester previous to the commencement of a new academic year or as soon as a student is admitted for that academic year, whichever is later, notify their enrolled and newly admitted Virginia students about the availability of tuition assistance awards under the program. The information provided to students and their parents must include information about the eligibility requirements, the application procedures, and the fact that the amount of the award is an estimate and is not guaranteed. The number of students applying for participation and the funds appropriated for the program determine the amount of the award. Conditions for reduction of award amount and award eligibility are described in these regulations. The institutions shall certify to the council that such notification has been completed and shall indicate the method by which it was carried out.

Further, the institutions shall make students aware that the award is state funded. Evidence of such notification may include award letters or other formal procedures used by the institution for student notification of financial aid awards.

C. Restriction on use of funds. An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest-bearing account established and maintained exclusively for that purpose. Funds shall be disbursed only to student accounts receivable or returned to the council. The institution shall not hold program funds in the account for more than 20 working days before transferring funds to student accounts.

Funds received by the institutions under the program shall be used only to pay awards to students. The funds are held in trust on behalf of the Commonwealth of Virginia by the institutions for the intended student beneficiaries and shall not be used for any other purpose.

8VAC40-71-40. Student eligibility.

A. Receipt of application.

1. Applications submitted in person, by facsimile, or by other electronic means, or postmarked by carrier mail by the applicable deadline (July 31, September 14, and December 1) of the academic year may be deemed as meeting the deadline.

2. If the deadline occurs on a weekend or nonbusiness day as recognized by the institution or carrier, the application will be deemed as meeting the respective deadline if the application is received by the institution by the first business day following the deadline or postmarked by carrier mail by the carrier's first business day following the deadline.

3. Students who submit an application to one institution but enroll into another may still be considered to have met the respective deadline if the initial institution can verify receipt of the application by the deadline.

B. Priority for award. Because funds may not be sufficient to award all eligible students, students are prioritized based on prior eligibility (returning students) and date of application (new students). Below are descriptions of the students in priority order for receiving an award. Priority students will receive a full award before students in a subsequent priority order.

1. Category 1 and 2 students receive priority for an award.
 - a. Category 1 students: returning students who received an award in the previous fiscal year, including:
 - (1) Students returning to their original institution;
 - (2) Students transferring from another participating eligible institution; and
 - (3) Students moving from one degree level to another within an institution or from another participating eligible institution.
 - b. Category 2 students: students submitting a completed program application by July 31 of the fiscal year who were:
 - (1) New and readmitted students who were not enrolled in the previous fiscal year; or
 - (2) Returning students who met the domicile requirements in the previous fiscal year but did not receive an award due to insufficient funding (Category 3 and 4 students) or because they were not enrolled full time or otherwise did not meet other award criteria.
 2. Category 3 students will be considered for an award if funds are available after Category 1 and 2 students are fully funded. Category 3 students are those who submit a completed application after July 31 but no later than September 14, including:
 - a. New and readmitted students who were not enrolled in the previous fiscal year; or
 - b. Students enrolled but who did not apply for an award in the previous fiscal year.
 3. Category 4 students will be considered for an award if funds are available after Category 1, 2, and 3 students are fully funded.
 - a. Category 4 students are those who submit a completed program application after September 14 but no later than December 1 of the fiscal year and include new and readmitted students who were not enrolled in the previous fiscal year.
 - b. Category 4 students receive spring term only awards.
 4. Exceptions are made for students who break enrollment for military purposes. Students reentering their degree program within one year of completion of military responsibilities shall be granted priority, along with Category 1 students. This exception is for priority purposes only as the student still must meet all eligibility criteria.
- C. Eligibility criteria. In order to be eligible to receive an award, the student must:
1. Be a domiciliary resident of Virginia, as defined by ~~§ 23-7.4~~ § 23.1-502 of the Code of Virginia, for at least one year prior to the date of entitlement (first day of classes for the program in which the student is enrolled) or eligible under ~~§ 23-7.4~~ § 23.1-505 of the Code of Virginia.
 2. Enroll in the academic year for which the award is to be received as a full-time student in an eligible program at a participating eligible institution.
 - a. A student's enrollment status shall be determined at the census date. If a student falls below full time by dropping or withdrawing from individual courses or withdraws from the institution after the census date, he shall receive a prorated award based on the tuition refund policy in effect at the institution.
 - b. A graduating student enrolled less than full time for a term in his final academic year may be eligible to receive an award if:

(1) The student was enrolled full time and accepted for or received an award in the immediate preceding academic year;

(2) The course credits available in the current term needed to complete degree requirements total less than a full-time course load; and

(3) The maximum number of years of eligibility has not been exceeded.

c. Exceptions to the full-time requirement due to a documented disability or other medical reasons, as applicable under the federal American's with Disabilities Act, will be considered on a case-by-case basis.

3. Have complied with federal selective service registration requirements unless the following apply:

a. The requirement to register has terminated or become inapplicable to the person; and

b. The person shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.

4. Complete and submit an application for an award by the published deadline.

5. Not participate in the Virginia Women's Institute for Leadership at Mary Baldwin College.

D. Limitations on awards. For administrative purposes, each academic year shall be comprised of six units of program eligibility; accordingly, a semester is equivalent to three units and a quarter is equivalent to two units.

1. If a student receives a partial payment for a semester or quarter, the student's total eligibility shall be reduced by one semester (three units) or quarter (two units).

2. Undergraduate students:

a. Students pursuing an associate's degree shall be limited to a maximum of two academic years (12 units), or its equivalent, of support.

b. Students pursuing degrees at the undergraduate level shall be limited to a combined life-time maximum of four academic years (24 units), or its equivalent, of support, inclusive of enrollment in any combination of associate's or baccalaureate degrees.

c. Students enrolled in teacher certification programs at the undergraduate level may receive awards if the student is enrolled full time and has not exhausted eligibility.

3. Post-undergraduate students:

a. Students pursuing degrees at the graduate level shall be limited to a combined life-time maximum of three academic years (18 units), or its equivalent, of support.

b. Students pursuing degrees at the first-professional level shall be limited to a life-time maximum of three academic years (18 units), or its equivalent, of support, except for students pursuing medical or pharmacy degrees who are limited to four academic years (24 units), or its equivalent, of support.

c. In no case should any combination of post-undergraduate programs exceed four years of support.

4. A student enrolled at multiple institutions may receive an award if:

a. The home institution is an eligible institution;

b. A formal consortium agreement is in place; and

c. The student's combined enrollment is full time.

If the consortium agreement includes a Virginia public institution, the award will be prorated based on the courses for the term not attempted at the Virginia public institution as a percentage of minimum full-time enrollment.

5. A student may receive an award under a study abroad program if:

a. The student is enrolled full time;

b. The student remains on record as an enrolled student in an otherwise eligible program at a participating eligible institution for the term in which the award is received;

c. The program funds are disbursed to the participating eligible institution; and

d. The overseas program is a formal agreement arranged by the participating eligible institution.

E. Appeals process.

1. The participating institution makes the student's initial eligibility determination. If the institution determines that the student does not meet the domicile requirements, the institution must notify the student in writing of the outcome and the availability of the appeals process.

2. Council shall make final decisions on domicile eligibility disputes between students and the enrolling institutions. The appeal process for resolving eligibility disputes shall consist of a review of the institution's initial determination by a council staff member. Further student appeals are subject to a final review by a committee comprised of three council staff members. No person who serves at one level of the appeals process shall be eligible to serve at any other level of review. Timing for completion of the review is heavily dependent upon the response time to staff information requests for both the student and the institution, but typically council staff will respond within two weeks.

3. Student appeals must be filed in writing with the council within 30 days of the institution's written notification. If the outcome of the appeal upholds the institution's initial determination, the student may file a final appeal within 30 days of the council's written notification.

4. The appeals process is contained in this subsection and available to the institutions and students online or in print upon request.

8VAC40-71-50. Award amount.

A. Maximum annual award.

1. Section ~~23-38-14~~ 23.1-630 of the Code of Virginia specifies that no annual award shall exceed the annual average appropriation per full-time equivalent student for the previous year from the general fund for operating costs at two-year and four-year public institutions of collegiate education in Virginia.

2. Council determines the amount of the annual award based on the number of eligible students and available funds. In no event shall the actual annual award amount exceed the maximum limit set forth in the annual appropriation act or in ~~§ 23-38-14~~ § 23.1-630 of the Code of Virginia.

B. An award received by a student under the program shall not be reduced by the institution unless:

1. Council authorizes a uniform reduction of the award for all students because it is determined that the number of priority students multiplied by the projected annual award amount exceeds available funds.
 2. The award, when combined with all other financial assistance from any source, including, but not limited to, a scholarship, grant, tuition waiver, veteran benefits, or employer reimbursement, exceeds the estimated cost of attendance at the institution the student attends.
 3. The student is enrolled less than the minimum credit hours as defined under "full-time student" but falls under one of the following exceptions:
 - a. The individual student falls under the enrollment provisions listed under 8VAC40-71-40 C 2; or
 - b. The student is a doctoral student taking less than 9 credit hours but declared full-time via institutional policy.
 4. In such cases as described in this subsection, the student would receive an award prorated on a percentage basis based on the student's actual tuition charges as compared to the tuition typically charged by the institution to a full-time student.
- C. When a reduced award is appropriate, all awards should be rounded to the nearest whole dollar.
- D. For purposes of calculating federal Chapter 33 (Post-9/11 GI Bill) veteran's benefits, this award is not considered to be solely for the purpose of defraying tuition and fees.

8VAC40-71-60. Administration.

A. The council. The council retains the right to periodically review institutional administrative practices to determine compliance with this chapter. If the council determines that an institution has failed to rectify substantial compliance errors after an opportunity to do so is provided by the council, or otherwise no longer meets the definition of an eligible institution, the council may, after a written notice of pending action to the institution, suspend or terminate its future participation in the program. In all instances, the council will require the institution to recover and refund to the council any state funds that were expended improperly. An institution that is suspended or terminated from the program may ask for reconsideration by submitting a written appeal within 30 days of the council's decision.

The council shall provide assistance, interpretation of policy and regulations, and guidance to the institution in their handling of administrative matters. The assistance may be in the form of information about the program and preparation of the student application.

If an institution wishes to do so, it may prepare its own application, as long as it is approved by the council.

B. Participating institutions. Institutions shall:

1. Certify student eligibility in all respects;
2. Notify, in writing, students whose applications are rejected that they are not eligible for awards, the reason they are not eligible, and the deadline date for submitting appeals to the council;
3. Use the program Units Web Tool, if available, to verify units used by students prior to making new awards;

4. Secure and provide to the council such information regarding student applicants and award recipients as the council deems necessary for the proper administration of the program;
5. Act, with the student's authorization, as the student's agent to receive and hold program funds for the student's use as tuition assistance;
6. Furnish periodic reports and other pertinent information as may be required by the council. The reports shall include, but not be limited to, copies of institutional financial aid audit reports and audited financial statements;
7. Ensure that each application bears a timestamp indicating the date the application was received by the institution;
8. Retain all records regarding the application and award process for at least three years after the last award year for the student unless directed otherwise by the Library of Virginia's Virginia Records Retention and Disposition, Schedule GS-111; and
9. Withdraw from the program only upon a 60-day written notice to both its student body and the council. Withdrawal shall be effective at the conclusion of the academic year designated by the withdrawing participant.

The institution's chief executive officer shall designate one individual at the institution to act as the primary representative of the institution in all matters pertaining to the administration of the program. The chief executive officer shall, in addition, indicate whether the primary institutional representative may designate a single subordinate who may act as an alternate representative for routine administrative operational matters at the campus. At multi-campus institutions, an alternate representative may be designated for each branch campus if the chief executive officer authorizes the appointment of alternate representatives. If there is a change in the primary representative, the chief executive officer shall designate another individual and notify the council in writing within 30 days of the change. It is the responsibility of the primary representative to advise the council in a similar fashion of changes in alternate representatives, if any.

C. Responsibility of recipients. A recipient of an award under the program shall notify the institution in writing of any name or permanent address change.