



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Mark R. Herring

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

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: Regulations for the Senior Citizen Higher Education Program
Final Regulation 8VAC40-20

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.



Logged in as

Allen T. Wilson

Final Text

Action: Amend regulations to incorporate legislative mandate ...

Stage: Final

11/3/16 10:54 AM

8VAC40-20-10. Definitions.

~~Section 23-38.55 of the Senior Citizens Higher Education Act defines several words and terms. Unless otherwise noted, they shall have the following meanings ascribed to them: The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:~~

"Course" means any course of study offered in any state institution of higher education including the regular curriculum of any department, or school, or subdivision of any such institution or any special course given for any purpose, including but not limited to, adult education.

"Full-time equivalent student (FTES)" means the statistic used for budgetary purposes by the Commonwealth. It is derived by calculating total credit hours generated by students at a particular level and dividing that number by the number of credit hours generally considered a full-time load at that level.

"Senior citizen" means any person who, before the beginning of any term, semester or quarter in which such person claims entitlement to the benefits of this chapter, (i) has reached 60 years of age, and (ii) has had his legal domicile in this Commonwealth for one year.

"Senior Citizens Higher Education Act" is set forth in ~~Chapter 4.5 (§ 23-38.54 et seq.) of Title 23 Article 7 (§ 23.1-639 et seq.) of Chapter 6 of Title 23.1~~ of the Code of Virginia.

8VAC40-20-20. Eligibility.

A senior citizen may take courses without paying tuition or required fees, except for course materials, under certain conditions. If the senior citizen has taxable income of not more than \$23,850 in the preceding year, the individual may take a course for academic credit free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees. A senior citizen, regardless of income level, may audit a course that is given for academic credit or take a noncredit course free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees.

No limit is placed on the number of terms, quarters, or semesters in which a senior citizen who is not enrolled for academic credit may register for courses, but the individual can take no more than three noncredit courses in any one term, quarter, or semester. There will be no restriction on the number of courses that may be taken for credit in any term, semester, or quarter, or on the number of terms, semesters, or quarters in which an eligible senior citizen may take courses for credit.

The two additional conditions listed below shall be met before a senior citizen may take a course under the provisions of this program:

1. The senior citizen shall meet the appropriate admission requirements of the institution in which the student plans to enroll; and
2. The senior citizen may be admitted to a course only on a space-available basis after all tuition-paying students have been accommodated. State institutions of higher education may make individual exceptions to this procedure when the senior citizen has completed 75% of the requirements for the degree.

An institution has no special obligation to offer courses specifically to meet the needs of senior citizens or to continue to provide a particular course for a senior citizen who has registered for the course if the regular enrollment in the course is not adequate to justify the offering.

Nothing in this regulation exempts a senior citizen enrolled in a course from the requirements for attendance and completion of course assignments.

8VAC40-20-30. Application.

A senior citizen who wishes to take courses under the provisions of the Senior Citizens Higher Education Act shall complete an application at the institution in which the person plans to enroll. The institution shall determine all aspects of the person's eligibility. The application process shall include a determination of income eligibility (review of a state income tax form, for example), if the individual makes application to take courses for academic credit.

8VAC40-20-40. Inclusion of the senior citizen in an institution's FTES count.

Senior citizens shall be included in the FTES count effective July 1, 1986.

8VAC40-20-50. Reporting requirement.

Although the council will not require an institution to submit an annual report on the number of eligible students who receive free tuition and fees under the provisions of this Act, it may periodically request such information in order to respond to executive or legislative inquiries.

An institution should, therefore, be prepared to report the head count and FTES number of senior citizens taking courses for academic credit, the head count and student credit hours of senior citizens who are auditing courses, and the head count of those who are taking noncredit courses.

8VAC40-20-60. Notification to senior citizens.

As required in ~~§ 23-38-59~~ § 23.1-641 of the Code of Virginia, each state-supported institution shall prominently include in its catalogue a statement of the benefits available to senior citizens under this program.