

COMMONWEALTH of VIRGINIA
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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

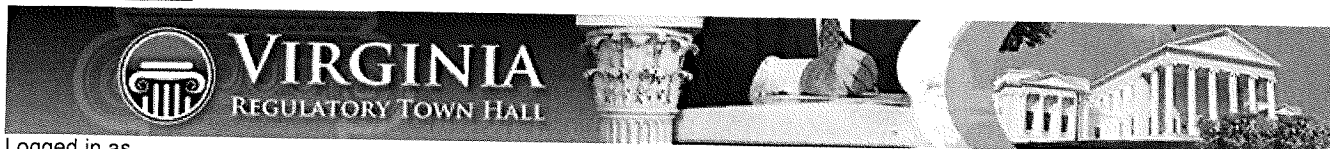
DATE: January 17, 2017

SUBJECT: Virginia Student Financial Assistance Program Regulations
Final Regulation 8VAC40-131

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 10:59 AM

Part I

Definitions

8VAC40-131-10. Definitions.

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

"Academic period" or "semester" means a division of an academic year approximately 15 to 16 weeks in length from the first day of classes through the last day of exams for the fall or spring enrollment periods.

"Academic year" or "regular session" means a division of an award year that normally extends from late August to mid May, consists of the institution's fall and spring semesters, and is exclusive of the institution's summer session.

"Approved program" means a curriculum of courses in a certificate of undergraduate study, diploma, or degree program at the undergraduate, graduate, or first professional level.

"Award" means a grant from state funds appropriated within the item for student financial assistance in the annual Appropriation Act under Virginia Guaranteed Assistance Program or Commonwealth grant eligibility criteria.

"Award schedule" means the table or formula used by institutions to award program funds to full-time students for the academic year; awards for less than full-time students for the academic year shall be reviewed and adjusted according to the institution's awarding policies.

"Award year" means the 12-month enrollment period during which an institution holds classes, comprised of the regular session and the summer session.

"Book allowance" means the cost of attendance allowance for education-related book and supply expenses as determined by an institution.

"Census date" means the point at which a student's credit hour enrollment is locked for financial aid purposes. At this point in the term, credit hours are locked and financial aid for the term is adjusted to reflect the official number of enrolled credit hours.

"Commonwealth Award" means a grant from state funds appropriated within the item for student financial assistance in the annual Appropriation Act under Commonwealth grant eligibility criteria.

"Cost of attendance" means the sum of tuition, required fees, room, board, books, supplies, and other education related expenses, as determined by an 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.

"Domicile Guidelines" means the Domicile Guidelines of the State Council of Higher Education, dated October 15, 2009, and including Addendum A, dated January 12, 2010, and Addendum B, dated October 15, 2009.

"Domiciliary resident of Virginia" means a student who is determined by an institution to meet the eligibility requirements specified by ~~§ 23-7.4~~ § 23.1-502 of the Code of Virginia and augmented by the Domicile Guidelines.

"Expected family contribution" or "EFC" means the amount a student and the student's family is expected to contribute toward the cost of attendance. A student's EFC will be determined by the federal aid need analysis method used for Title IV programs. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors that affect the family's ability to pay. For students eligible for an award but ineligible to receive federal financial aid, the institution shall calculate the student's EFC using the appropriate federal EFC worksheet in cases where the federal processor has not calculated the student's EFC.

"Financial need" means any positive difference between a student's cost of attendance and the student's expected family contribution (see definition of "remaining need").

"Full-time study" means enrollment for at least 12 credit hours per term or its equivalent at the undergraduate level and enrollment for at least nine credit hours per term or its equivalent at the graduate or first professional level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses that normally are not counted toward a degree at the institution. For students enrolled in a dual or concurrent undergraduate and graduate program, full-time study may be met through a combination of total credit hours, providing that the combination totals at least the minimum credit hours for full-time status for the student's institutionally recognized student level.

"Gift assistance" means financial aid in the form of scholarships, grants, and other sources that do not require work or repayment.

"Graduate student" means a student enrolled in an approved master's, doctoral, or first professional degree program.

"Half-time study" means enrollment for at least six credit hours per term or its equivalent at the undergraduate level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses that normally are not counted toward a certificate, diploma, or degree at the institution. For undergraduate students enrolled in a dual or concurrent undergraduate and graduate program, half-time study may be met through a combination of total credit hours, providing that the combination totals at least the minimum credit hours for half-time status for the student's institutionally recognized student level.

"Institution" or "home institution" means any public institution of higher education in Virginia participating in the Virginia Student Financial Assistance Program.

"Program" or "VSFAP" means the Virginia Student Financial Assistance Program, a financial aid program authorized within the item for student financial assistance in the annual Appropriation Act.

"Remaining need" means any positive difference between a student's financial need and the sum of federal, state, and institutionally-controlled gift assistance known at the time of awarding.

"Satisfactory academic progress" means:

1. Acceptable progress towards completion of an approved program, as defined by the institution for the purposes of eligibility for federal student financial aid under the Code of Federal Regulations (Subpart C, 34 CFR Part 668 - Student Assistance General Provisions); and
2. For a student receiving a Virginia Guaranteed Assistance Program award, acceptable progress towards completion of an approved program in which a student earns not less than 24 credit hours, which is the minimum number required for full-time standing in each award year and maintains a cumulative minimum grade point average of 2.0.

"Summer session" means a division of an award year that normally extends from late May to mid August and consists of one or more summer enrollment periods, exclusive of the institution's fall and spring semesters.

"Term" means an academic period or summer session.

"Undergraduate student" means a student enrolled in an approved program leading to a certificate of undergraduate study, diploma, associate's degree, or bachelor's degree.

"VGAP" means a grant from state funds appropriated for the Virginia Guaranteed Assistance Program, as authorized by the laws of the Commonwealth of Virginia including ~~§§ 23-38-53:4, 23-38-53:5, and 23-38-53:6~~ §§ 23.1-636, 23.1-637, and 23.1-638 of the Code of Virginia.

Part II Use of Funds

8VAC40-131-20. Use of funds.

An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Funds appropriated for undergraduate awards may not be used for graduate awards, and funds appropriated for graduate awards may not be used for undergraduate awards.

8VAC40-131-30. Types of assistance.

A. Funds allocated to institutions within the item for student financial assistance in the annual Appropriation Act may be used for:

1. Awards to undergraduate students enrolled for at least half-time study;
2. Awards to graduate students enrolled for full-time study. No more than 50% of the institution's graduate grants shall be awarded to students not classified as a domiciliary resident of Virginia;
3. Awards to students enrolled for full-time study in a dual or concurrent undergraduate and graduate program;
4. Assistantships to graduate students, funds for which must be transferred to the education and general account;

5. Providing the required matching contribution to federal or private student grant aid programs, except for programs requiring work; and

6. Supporting institutional work-study programs, funds for which must be transferred to the education and general account.

B. A student may receive either a VGAP award, an undergraduate Commonwealth Award, or a graduate Commonwealth Award during any one term (i.e., a student may not receive two or more different types of awards during the same term).

C. The provisions of this chapter shall not apply to:

1. Soil scientist scholarships authorized by ~~§ 23-38.3~~ § 23.1-615 of the Code of Virginia;

2. Foster children grants authorized by ~~§ 23-7.4:5~~ § 23.1-601 of the Code of Virginia;

3. Nongeneral funds allocated to institutions within the item for student financial assistance in the annual Appropriation Act, except for the satisfactory academic progress requirement; or

4. General funds allocated to institutions within the item for student financial assistance in the annual Appropriation Act that are used to support a work-study program, except for the financial need requirement.

Part III

Undergraduate Financial Assistance

Article 1

General Information

8VAC40-131-40. Priority for awards.

A. Priority for awards will be given to those students who file an application as required by the institution for need-based financial aid by the institutional priority filing date or deadline. Those students who file an application after the institutional priority filing date or deadline may receive an award; however, the award will be based on the funds available at the time the award is made and may be based on a new award schedule.

B. Awards shall not be made to students seeking a second or additional baccalaureate degree until the financial aid needs of first-degree-seeking students are fully met.

8VAC40-131-50. Award schedule and award amount restrictions.

A. Institutions shall construct award schedules to determine priority for and amount of awards, ensuring that the schedule conforms to the conditions and restrictions listed in this subsection.

1. The institution:

a. Must define its neediest students;

b. Must use the same award schedule for all students whose awards are packaged at the same time;

c. Must ensure that students eligible for Commonwealth Awards and students eligible for VGAP awards are packaged at the same time using the same award schedule;

d. Shall not include the assessed tuition and fee surcharge when calculating the remaining need and financial need of students exceeding 125% of their program length, pursuant to ~~subsection F of § 23-7.4~~ § 23.1-509 of the Code of Virginia;

e. For students enrolled at multiple institutions or in study abroad programs, shall include as the tuition and required fee component of the cost of attendance the lesser of the amount that would be charged by the home institution for the student's combined enrollment level and the sum of actual tuition and required fees assessed by each institution;

f. May include minimum award amounts for VGAP and Commonwealth Awards; and

g. May construct a new award schedule based on the time of packaging and available funds; however, for students whose awards are packaged at the same time, the same schedule shall be used.

2. Award amounts must be:

a. Based on remaining need; and

b. Proportional to remaining need (i.e., students with greater remaining need receive larger award amounts than students with lesser remaining need).

3. VGAP-eligible students:

a. Must receive award amounts greater than Commonwealth Award-eligible students with equivalent remaining need;

b. Who fall into the neediest category must receive an award amount of at least the tuition charged to the individual student; and

c. Who fall into the neediest category may receive an award amount of up to tuition, required fees, and book allowance.

4. Commonwealth Award-eligible students who fall into the neediest category may receive an award amount of up to tuition and required fees.

5. Two-year colleges electing to modify their award schedules must:

a. Define "remaining need" as (i) any positive difference between a student's cost of attendance and the student's expected family contribution or (ii) the financial need determined by the U.S. Department of Education and reflected in its payment schedule of EFC ranges for the Federal Pell Grant program;

b. Construct an award schedule that is based on remaining need and the combination of federal and state grant aid; and

c. Include a minimum award amount for the neediest VGAP-eligible student.

B. The following award amount restrictions apply to awards:

1. An award under the program, when combined with other gift assistance applied to the student's institutional account, shall not exceed the student's financial need. For purposes of the over financial need calculation, only the tuition and fee portion of veterans education benefits and national service education awards or post-service benefits (e.g., AmeriCorps) shall be included.

2. An undergraduate Commonwealth Award, when combined with tuition-only assistance such as a tuition waiver, tuition scholarship or grant, or employer tuition reimbursement, shall not exceed the student's actual charges for tuition and required fees; a VGAP award, when combined with tuition-only assistance such as a tuition waiver, tuition scholarship or grant, or employer tuition reimbursement,

shall not exceed the student's actual charges for tuition, required fees, and standard book allowance.

8VAC40-131-60. Summer session awards.

Institutions may elect to award during summer sessions; however, an award made to assist a student in attending an institution's summer session shall be prorated according to the size of comparable awards for students with similar financial needs made in that institution's regular session.

8VAC40-131-70. Refund of awards.

A student who receives an award and who, during a term, withdraws from the institution that made the award must surrender the balance of the award. In determining the earned portion of the award that the student may retain, the institution shall apply the percentage of earned aid resulting from the federal Return to Title IV formula to the student's award amount.

Article 2

Commonwealth Awards

8VAC40-131-80. Undergraduate eligibility criteria for an initial award.

In order to participate, an undergraduate student shall:

1. Be enrolled for at least half-time study as of the term's census date;
2. Be a domiciliary resident of Virginia;
3. Be a United States citizen or eligible noncitizen as described in ~~§ 23-7.4~~ § 23.1-502 of the Code of Virginia and augmented by the Domicile Guidelines;
4. Demonstrate financial need for federal Title IV financial aid purposes; and
5. Have complied with federal selective service registration requirements, unless the following apply:
 - a. The requirement to register has terminated or become inapplicable to the student; and
 - b. The student shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.

8VAC40-131-90. Renewability of awards.

Awards may be renewed provided that the student:

1. Maintains satisfactory academic progress; and
2. Continues to meet all of the requirements of 8VAC40-131-80.

8VAC40-131-100. Enrollment at multiple institutions and in study abroad programs.

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

1. The home institution is a VSFAP participating institution;
2. A formal consortium agreement is in place; and
3. The student's combined enrollment is at least half time.

B. A student enrolled in a study abroad program may receive an award if:

1. The student is enrolled for at least half-time study;

2. The student remains on record as a student in an approved program at the home institution for the term in which the award is received;
3. The program funds are disbursed through the home institution; and
4. The study abroad program is a formal agreement arranged by the institution.

Article 3

Virginia Guaranteed Assistance Program Awards

8VAC40-131-110. VGAP eligibility criteria for an initial award.

In order to participate, an undergraduate student shall:

1. Be enrolled for full-time study as of the term's census date. Exceptions to the full-time study requirement due to documented disability or other documented medical reasons, as applicable under the federal Americans with Disabilities Act, 42 USC § 12101 et seq., will be considered on a case-by-case basis by the institution; supporting documentation must include a physician's note specifying the full-time equivalent for the student. Such students shall receive an adjusted award amount determined according to the institution's awarding policies;
2. Be a domiciliary resident of Virginia;
3. Be a United States citizen or eligible noncitizen as described in ~~§ 23-7.4~~ § 23.1-502 of the Code of Virginia and augmented by the Domicile Guidelines;
4. Demonstrate financial need for federal Title IV financial aid purposes;
5. Be a graduate from a Virginia high school; students obtaining a General Educational Development (GED) certificate are not eligible. Exceptions are granted for students who:
 - a. Are dependent children of active-duty military personnel residing outside the Commonwealth of Virginia pursuant to military orders and claiming Virginia on their State of Legal Residence Certificate and satisfying the domicile requirements for such active duty military personnel pursuant to ~~subsection B of § 23-7.4~~ § 23.1-502 of the Code of Virginia;
 - b. Have completed a program of home school instruction in accordance with § 22.1-254.1 of the Code of Virginia; or
 - c. Have been excused from school attendance pursuant to subsection B of § 22.1-254 of the Code of Virginia.
6. For a high school graduate, have at least a cumulative 2.5 grade point average (GPA) on a 4.0 scale, or its equivalent, at the time of admission to the institution or according to the latest available high school transcript. In the absence of a high school transcript indicating the grade point average, the institution must have on file a letter from the student's high school certifying the student's high school GPA;
7. For a student meeting the high school graduate exception in subdivision 5 b or 5 c of this subsection, have earned SAT math and verbal combined scores of 900 or above or have earned ACT composite scores of 19 or above;
8. Be classified as a dependent student for federal financial aid purposes; and
9. Have complied with federal selective service registration requirements, unless the following apply:
 - a. The requirement to register has terminated or become inapplicable to the student; and

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

8VAC40-131-120. Renewability of awards.

A. Awards for students attending two-year colleges may be renewed for one award year while awards for students attending four-year colleges may be renewed for three award years. Students shall be limited to a cumulative total of four award years of eligibility.

Awards may be renewed annually provided that the undergraduate student:

1. Continues to be enrolled for full-time study as of the term's census date;
2. Maintains domiciliary residency in Virginia;
3. Continues to be a United States citizen or eligible noncitizen as described in ~~§ 23-7.4~~ § 23.1-502 of the Code of Virginia and augmented by the Domicile Guidelines;
4. Demonstrates continued financial need for federal Title IV financial aid purposes;
5. Maintains at least a 2.0 grade point average on a 4.0 scale, or its equivalent;
6. Maintains satisfactory academic progress;
7. Maintains continuous enrollment from the time of receipt of the initial award unless granted an exception for cause by the council.

a. Continuous enrollment shall be recognized as enrollment for full-time study in each academic period; lack of enrollment in the summer session or other special sessions offered by the institution does not disqualify the student.

b. A student participating in a cooperative education program or internship that is part of his academic program and a student whose college education is interrupted by a call to military service shall be deemed to have maintained continuous enrollment if he reenrolls no later than the following fall semester after completion of such employment or military service; and

8. Has complied with federal selective service registration requirements, unless the following apply:

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

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

B. VGAP renewal awards are subject to the following special considerations:

1. Students who transfer to an institution shall be considered renewal students if they received or were eligible for an award during the prior academic period provided they meet renewal criteria.

2. Students who do not initially receive a VGAP award may be considered for renewal awards provided that they meet initial eligibility criteria and continue to meet renewal criteria. Once a student loses his classification as VGAP-eligible, the student cannot reestablish such eligibility. However, the student may qualify for a Commonwealth Award the following term.

8VAC40-131-130. Enrollment at multiple institutions and in study abroad programs.

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

1. The home institution is a VSFAP participating institution;
2. A formal consortium agreement is in place; and
3. The student's combined enrollment meets full-time study requirements.

B. A student enrolled in a study abroad program may receive an award if:

1. The student is enrolled for full-time study;
2. The student remains on record as a student in an approved program at the home institution for the term in which the award is received;
3. The program funds are disbursed through the home institution; and
4. The study abroad program is a formal agreement arranged by the institution.

Part IV

Graduate Financial Assistance

8VAC40-131-140. Graduate eligibility criteria for an initial award.

A. In order to receive a Commonwealth Award, the graduate student must be enrolled for full-time study as of the term's census date.

B. An individual award may be based on financial need but may, in addition to or instead of, be based on other criteria determined by the institution making the award.

8VAC40-131-150. Amount of awards.

The amount of an award shall be determined by the institution making the award; however, the institution shall annually notify the council of the maximum size of a graduate award that is paid from funds in the appropriation.

8VAC40-131-160. Renewability of awards.

Awards may be renewed provided that the graduate student:

1. Maintains satisfactory academic progress; and
2. Continues to be enrolled for full-time study.

8VAC40-131-170. Enrollment at multiple institutions and in study abroad programs.

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

1. The home institution is a VSFAP participating institution;
2. A formal consortium agreement is in place; and
3. The student's combined enrollment meets full-time study requirements.

B. A student enrolled in a study abroad program may receive an award if:

1. The student is enrolled for full-time study;
2. The student remains on record as a student in an approved program at the home institution for the term in which the award is received;
3. The program funds are disbursed through the home institution; and
4. The study abroad program is a formal agreement arranged by the institution.

Part V
Administration

8VAC40-131-180. Responsibility of the council.

The council shall collect such student specific information for both graduate and undergraduate students as is necessary for the operation of the program and other information deemed necessary by the council.

8VAC40-131-190. Responsibility of institutions.

Institutions shall:

1. Provide reports to the council that will include, but not be limited to, information describing the students served, the awards received, and the number and value of awards. Each institution shall annually report to the council its definition of "neediest" students;
2. Maintain documentation necessary to demonstrate that students' awards calculated during the same packaging cycle used the same award schedule;
3. Provide the council with the initial award schedule or formula that will be used to package on-time applications when submitting an annual report; and
4. Upon request by a student transferring to another institution, send to the other institution information about the student's VGAP eligibility.

8VAC40-131-200. Program reviews.

The council periodically will review institutional administrative practices to determine institutional program compliance with the Appropriation Act, the Code of Virginia, and this chapter. If a review determines that an institution has failed to comply with the Appropriation Act, the Code of Virginia, and this chapter, the council may withhold approval of expenditure plans for the program until the end of the next session of the General Assembly. No attempt to determine compliance with the Appropriation Act, Code of Virginia, and this chapter should be solely based on information from the financial aid data file submitted annually by institutions.

Part VI
Discontinued Student Loan Program

8VAC40-131-210. Terms and conditions of the loans.

An institution with a loan program established from previous general fund appropriations may continue the loan program, under such terms and rules as the governing board of the institution may prescribe, but shall not expand the loan program with currently appropriated funds. The loan program shall meet the following requirements:

1. In any one award year no student shall receive a loan or loans from the fund of an institution that would result in that student owing a net outstanding amount at the end of that award year in excess of the tuition and required fees charged by the institution;
2. The annual interest rate charged on loans to students from a fund shall be 3.0%;
3. An institution shall make every effort to collect each loan made from its student loan fund using the provisions of the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia); and

4. The Auditor of Public Accounts shall at least biennially audit and exhibit the account of student loan funds at each institution.

8VAC40-131-220. Eligibility criteria.

In order to be eligible for the student loan program, a student shall meet the criteria of 8VAC40-131-80, 8VAC40-131-90, 8VAC40-131-110, 8VAC40-131-120, 8VAC40-131-140, and 8VAC40-131-160.

8VAC40-131-230. Discontinuing student loan programs.

A. If any federal student loan program for which the institutional contribution was appropriated by the General Assembly is discontinued, the institutional share of the discontinued loan program shall be repaid to the fund from which the institutional share was derived unless other arrangements are recommended by the council and approved by the Department of Planning and Budget. Should the institution be permitted to retain the federal contributions to the program, the funds shall be used according to arrangements authorized by the council and approved by the Department of Planning and Budget.

B. An institution may discontinue its student loan program established pursuant to ~~Chapter 4.01 (§ 23-38.10:2 et seq.)~~ of Title 23 §§ 23.1-618 through 23.1-621 of the Code of Virginia. The full amount of cash in the discontinued loan fund shall be paid into the state treasury into a nonrevertible nongeneral fund account. Prior to such payment, the State Comptroller shall verify its accuracy, including the fact that the cash held by the institution in the loan fund will be fully depleted by such payment. The loan fund shall not be reestablished for that institution.

C. The cash paid into the state treasury shall be used only for awards to undergraduate students in the Virginia Student Financial Assistance Program according to arrangements authorized by the council and approved by the Department of Planning and Budget. Payments of any promissory notes held by the discontinued loan fund shall continue to be received by the institution and deposited to the nonrevertible nongeneral fund account and to be used for the VGAP awards and undergraduate Commonwealth Awards.