

## VETERAN'S ACCESS, CHOICE, AND ACCOUNTABILITY ACT Frequently Asked Questions

This document is designed to provide source information and answer frequently asked questions to assist in the administration a federal provision for in-state tuition benefits.

On August 7, 2014, the **Veteran's Access, Choice, and Accountability Act (the Veteran's Choice Act – or VCA)** which requires institutions to provide the in-state tuition rate to certain students utilizing certain federal veteran's education benefits was signed into law. The Veteran's Choice Act was improved upon by both the **Department of Veterans Affairs Expiring Authorities Act of 2018** and the **Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020**.

The in-state tuition provision under the **Veteran's Choice Act** [38 U.S. Code § 3679 - Disapproval of courses, section (c)] can be accessed at:  
<https://www.law.cornell.edu/uscode/text/38/3679>

- (c) (1) Notwithstanding any other provision of this chapter and subject to paragraphs (3) through (6), the Secretary shall disapprove a course of education provided by a public institution of higher learning if the institution charges tuition and fees for that course for covered individuals who are pursuing the course with educational assistance under chapter [30](#), [31](#), or [33](#) of this title while living in the State in which the institution is located at a rate that is higher than the rate the institution charges for tuition and fees for that course for residents of the State in which the institution is located, regardless of the covered individual's State of residence.
- (2) For purposes of this subsection, a covered individual is any individual as follows:
- (A) A veteran who was discharged or released from a period of not fewer than 90 days of service in the active military, naval, or air service less than three years before the date of enrollment in the course concerned.
  - (B) An individual who is entitled to assistance under—
    - (i) [section 3311\(b\)\(8\) of this title](#); or
    - (ii) [section 3319 of this title](#) by virtue of the individual's relationship to—
      - (I) a veteran described in subparagraph (A); or
      - (II) a member of the uniformed services described in [section 3319\(b\) of this title](#) who is serving on active duty.
  - (C) An individual who is entitled to rehabilitation under [section 3102\(a\) of this title](#).
- (3) If after enrollment in a course of education that is subject to disapproval under paragraph (1) by reason of paragraph (2)(A), (2)(B), or (2)(C) a covered individual pursues one or more courses of education at the same public institution of higher learning while remaining continuously enrolled (other than during regularly scheduled breaks between courses, semesters or terms) at that institution of higher learning, any

- course so pursued by the covered individual at that institution of higher learning while so continuously enrolled shall also be subject to disapproval under paragraph (1).
- (4) It shall not be grounds to disapprove a course of education under paragraph (1) if a public institution of higher learning requires a covered individual pursuing a course of education at the institution to demonstrate an intent, by means other than satisfying a physical presence requirement, to establish residency in the State in which the institution is located, or to satisfy other requirements not relating to the establishment of residency, in order to be charged tuition and fees for that course at a rate that is equal to or less than the rate the institution charges for tuition and fees for that course for residents of the State.
- (5) The Secretary may waive such requirements of paragraph (1) as the Secretary considers appropriate.
- (6) Disapproval under paragraph (1) shall apply only with respect to educational assistance under chapters [30](#), [31](#), and [33](#) of this title.

Amendments to the Veteran's Choice Act via section 1005 (page 9) of the **Johnny Isakson and David P. Roe. M.D. Veterans Health Care and Benefits Improvement Act of 2020** can be accessed at:

<https://www.govinfo.gov/content/pkg/PLAW-116publ315/pdf/PLAW-116publ315.pdf>

#### **SEC. 1005. REQUIREMENTS FOR IN-STATE TUITION (Effective August 1, 2021)**

- (a) IN GENERAL.—Section 3679(c) of title 38, United States Code, is amended—
- (1) in paragraph (2)(A), by striking “less than three years before the date of enrollment in the course concerned”; and
- (2) in paragraph (4)—
- (A) by striking “It shall” and inserting “(A) It shall”; and
- (B) by adding at the end the following new subparagraph:
- “(B) To the extent feasible, the Secretary shall make publicly available on the internet website of the Department a database explaining any requirements described in subparagraph (A) that are established by a public institution of higher learning for an individual to be charged tuition and fees at a rate that is equal to or less than the rate the institution charges for tuition and fees for residents of the State in which the institution is located. The Secretary shall disapprove a course of education provided by such an institution that does not provide the Secretary—
- “(i) an initial explanation of such requirements; and
- “(ii) not later than 90 days after the date on which any such requirements change, the Updated requirements.”
- (b) APPLICATION.—The amendments made by this section shall apply with respect to a quarter, semester, or term, as applicable, commencing on or after August 1, 2021.

**FREQUENTLY ASKED QUESTIONS**  
*Subject to revision following federal rulemaking*

**Are the institutions required to comply?**

There is no state or federal law requiring compliance, rather the federal statute describes the conditions that must be met for an institution to participate in federal chapter 30, 31, or 33 veteran's education benefits for an approved educational program.

**Does the institution have the authority to comply?**

There is no Virginia state law prohibiting an institution from complying with this federal mandate.

**What are the requirements for the underlying qualifying veteran?**

A qualifying veteran must:

1. Be a former member of:
  - a. the regular components of Army, Navy, Air Force, Marine Corps, and Coast Guard or performed certain full-time service in, or was called up from, the reserve components or the National Guard or
  - b. the commissioned corps of the Public Health Service (PHS) or National Oceanic and Atmospheric Administration (NOAA).
2. Have had active service for at least 90 days and have separated from service within 3 years of initial enrollment. **(Effective August 1, 2021, the veteran is no longer required to enroll within a 3 year period from separation)**
3. Be eligible for either of the [chapter 30 \(Montgomery G.I. Bill – Active Duty Program\)](#), [chapter 31 \(Veteran Readiness and Employment\)](#) or [chapter 33 \(Post-9/11 G.I. Bill\)](#) military education benefits.

**What documents are required to verify the veteran's status?**

The conditions placed upon the veteran can be verified using the individual's DD-214 discharge document. This form indicates the following:

1. Net Active Service – must be at least 90 days of service Separation Date – must be within 3 years of the first day of the term. **(3 year requirement no longer required, effective August 1, 2021)**
2. Character of Service – cannot be "Dishonorable." A veteran can have a period of service that is dishonorable and another period of service that is honorable; this veteran is eligible for federal education benefits. Furthermore, there are exceptions that a veteran may fall under and qualify for federal education benefits and have been issued a discharge that was neither dishonorable nor honorable. For purposes of this provision, the institution needs only verify that the veteran or student is receiving federal education benefits described above.

**Which students are covered?**

A student is entitled to pay tuition and fees at an institution of higher learning at the rates provided for state residents if they are:

1. A veteran:
  - a. using educational assistance under either [chapter 30 \(Montgomery G.I. Bill – Active Duty Program\)](#), [chapter 31 \(Veteran Readiness and Employment\)](#) or [chapter 33 \(Post-9/11 G.I. Bill\)](#), of title 38, United States Code,
  - b. who lives in the state in which the institution is located (regardless of his/her formal State of residence) and
  - c. enrolls in the institution within three years of discharge or release from a period of active duty service of 90 days or more. **(3 year requirement no longer required, effective August 1, 2021)**
  
2. Any student:
  - a. using transferred Post-9/11 GI Bill benefits (38 U.S.C. § 3319)
  - b. who lives in the state in which the institution is located (regardless of his/her formal State of residence) and
  - c. enrolls in the institution within three years of the transferor's discharge or release from a period of active duty service of 90 days or more. **(3 year requirement no longer required, effective August 1, 2021)**
  
3. Any student described above while he or she remains continuously enrolled (other than during regularly scheduled breaks between courses, semesters, or terms) at the same institution.
  
4. Any student using benefits under the Marine Gunnery Sergeant John David Fry Scholarship (38 U.S.C. § 3311(b)(9)) who lives in the state in which the institution is located (regardless of his/her formal State of residence).
  
5. Any student using transferred Post-9/11 G.I. Bill benefits (38 U.S.C. § 3319) who lives in the state in which the institution is located (regardless of his/her formal state of residence) and the transferor is a member of the uniformed service who is serving on active duty.

**What is meant by “living in the state” or “physical presence”?**

“Living in the state” and “physical presence” as used in the federal statute, are considered to mean the student is not commuting from another state during periods of enrollment and not enrolled into a distance learning program while physically residing in another state.

“Living in the state” could be satisfied via off-campus housing within Virginia, on-campus housing, temporary housing, rental or ownership housing, and even documented confirmation of a non-contract residence with another individual. The student must demonstrate to the institution’s satisfaction that he or she is maintaining housing within the Commonwealth during the terms of enrollment. The student is not disqualified for leaving

the state during weekends, breaks, or other periods of time when courses are not in session.

**What is meant by “State of residence”?**

A “State of residence” is deemed to be consistent with Virginia’s definition of domicile or a person’s home state. A person can have a “State of residence” in one state while residing temporarily in another state. Per the federal statute, the student cannot be rejected for in-state tuition solely due to their “state of residence” or “domicile” being in another state.

**Must the veteran also live in Virginia?**

Only the student is required to live in Virginia during the terms of enrollment. Unless the veteran is the student, the veteran’s physical presence is immaterial to the eligibility review.

**What documents are required in order to verify the non-veteran’s eligibility?**

The institution must verify that the veteran meets the criteria under the federal statute, that the student is utilizing the veteran’s federal education benefits (as verified by the appropriate institution office), and that the student is physically residing within the Commonwealth (verified to the institution’s satisfaction).

**What programs of study are affected?**

Compliance is only necessary for those academic programs that have been approved for use of federal veteran’s education benefits.

**Is in-state tuition granted regardless of whether the student is actually utilizing the military education benefit?**

No, the federal statute describes a “covered individual” as someone who is “entitled to assistance” but states that the in-state tuition benefit is required for those “...pursuing a course of education with educational assistance...” To fall under the federal statute, the student must be actually utilizing the benefit, not merely be eligible for the benefit. A student not using military education assistance is not covered by this provision.

**What happens if the benefit expires before the student completes their degree?**

If the student is eligible as of their initial enrollment, the student is deemed to maintain eligibility even as their enrollment extends beyond the three-year anniversary of the veteran’s separation from active service as long as the student remains continuously enrolled (at least one course each term: fall / spring / fall / spring, et cetera) and the student continues to use and receive federal veteran’s education benefits. Once a student’s eligibility for federal veteran’s education benefits expires, the student is no longer addressed under the federal statute.

**What happens if there is a break in enrollment?**

If the student breaks enrollment and then attempts to reenroll after the three-year timeframe, the student is no longer covered by the Veteran’s Choice Act. **(Effective August 1, 2021, the 3-year timeframe will no longer be required; therefore, the student can continue to be reviewed for eligibility under the VCA.)**

**What happens if the student is receiving a partial benefit, such as expiration of the benefit prior to completion of the term or a split benefit with other beneficiaries?**

The statute stipulates the benefit is for “a covered individual pursuing a course of education with educational assistance.” As long as the student is utilizing any portion of the educational assistance upon their enrollment, the student is covered by the federal provision.

**Is the institution now barred from conducting a domicile review?**

Not necessarily. The federal statute does not prohibit a domicile review. The institution may conduct a domicile review to determine whether the student is eligible for other state benefits, such as state financial aid. Additionally, students determined to meet in-state tuition requirements pursuant to state domicile law or established exception provisions will have reduced risk of losing in-state tuition due to expiration of the federal education benefits.

**Should the covered individual be reported in-state or out-of-state?**

If the student receives in-state rates under this provision but is otherwise legally domiciled in another state, then the student is “out-of-state” for reporting purposes.

**Should the institution charge the capital fee?**

The federal statute requires that the eligible student be charged in-state tuition but does not address other charges. Since the students are considered as “out-of-state” for reporting purposes, they would be subject to financial policies associated with out-of-state students, such as charging the capital fee.

**May the institutions require that the covered individual meet any other eligibility criteria?**

Section (c)(4) permits the institutions to require that a covered individual “demonstrate a (future) intent to establish residency” or implement other requirements “not relating to establishment of residency.”

**What happens if a student's status of “covered individual” is corrected by the VA after the term has begun and after the student has been charged in-state tuition?**

Such students are not covered by federal statute and may be subject to out-of-state tuition charges unless they meet another in-state provision.