

Veteran's Access, Choice, and Accountability Act

On August 7, 2014, President Obama signed the Veteran's Access, Choice, and Accountability Act (the Veteran's Choice Act) which requires institutions to provide the in-state tuition rate to certain students utilizing certain federal veteran's education benefits.

The **Veteran's Choice Act** can be accessed at:

<http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt564/pdf/CRPT-113hrpt564.pdf>

SEC. 702. APPROVAL OF COURSES OF EDUCATION PROVIDED BY PUBLIC INSTITUTIONS OF HIGHER LEARNING FOR PURPOSES OF ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM AND POST-9/11 EDUCATIONAL ASSISTANCE CONDITIONAL ON IN-STATE TUITION RATE FOR VETERANS.

(a) IN GENERAL.—Section 3679 of title 38, United States Code, is amended by adding at the end the following new subsection:

- (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 to a covered individual pursuing a course of education with educational assistance under chapter 30 or 33 of this title while living in the State in which the public institution of higher learning is located if the institution charges tuition and fees for that course for the covered individual 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 section 3311(b)(9) or 3319 of this title by virtue of such individual's relationship to a veteran described in subparagraph (A).
- (3) If after enrollment in a course of education that is subject to disapproval under paragraph (1) by reason of paragraph (2)(A) or (2)(B) 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 and 33 of this title."

(b) EFFECTIVE DATE.—Subsection (c) of section 3679 of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to educational assistance provided for pursuit of a program of education during a quarter, semester, or term, as applicable, that begins after July 1, 2015.

Frequently Asked Questions:

Subject to revision following federal rulemaking

Are the institutions required to comply?

There is no state or federal requirement that the institutions comply, rather the federal statute describes the conditions that must be met for an institution to participate in federal chapter 30 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.
3. Be eligible for the Post-9/11 GI Bill or Montgomery GI Bill.

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.
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:

1. The student is living in this State, even though not a legal resident; and
2. The student is utilizing educational assistance under chapter 30 or chapter 33 of title 38, United States Code; and
3. The person from whom the entitlement to educational assistance arose has served at least 90 days active duty in the Uniformed Services of the United States (the person from whom the entitlement arose may or may not be the student utilizing the educational assistance); and
4. The person from whom the entitlement to educational assistance arose is not currently on active duty in the Uniformed Services of the United States; and
5.
 - a. Either, the student is enrolled in the course within three years of discharge of the person from whom the entitlement to the education assistance arose; or
 - b. If enrollment in the course occurs more than three years after discharge, the student is enrolling at the same institution of higher learning that he or she has been enrolled continuously (other than during regularly scheduled breaks between courses, semesters, or terms) since before the expiration of the three year period following discharge.
6. Children or Surviving Spouses qualified for the Marine Gunnery Sergeant John David Fry Scholarship who enrolls within 3 years of an active duty Service member's death in the line of duty after serving 90 days or more are also eligible.

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 source 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 entitled to the student as long as they are “entitled to assistance,” regardless of whether they are actually utilizing the 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.

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.

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 institution should conduct a domicile review in order to determine whether the student is eligible to be considered 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. Finally, institutions may opt to verify Virginia domicile in order to accurately report their enrollment characteristics. The federal statute does not prohibit a domicile review; it prohibits charging out-of-state tuition to certain students based on failure to meet state domicile law.

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 would be subject to out-of-state tuition charges unless they meet another in-state provision.