

July 7, 2015

TO: Residency Officers

FROM: Jim West, Associate Director of Academic Affairs and Policy

SUBJECT: Implementation of ESSB 5355, modifying the definition of resident student to comply with federal requirements established by the Veterans Access, Choice, and Accountability Act of 2014

ESSB 5355, an act modifying the definition of resident student to comply with federal requirements established by the Veterans Access, Choice, and Accountability act of 2014 (Choice Act), was signed into law and is effective July 24, 2015. This act amends **RCW 28B.15.012: Classification as Resident or Nonresident Student - Definitions**. The Washington Student Achievement Council (WSAC), in consultation with the U.S. Department of Veterans Affairs, the Governor's office and the Washington Attorney General's office, developed this memo to assist campuses in implementing these revisions to resident student definitions.

Background

In June 2014 Washington removed the one-year waiting period for veterans for purposes of receiving resident tuition rates at Washington higher education institutions. In July of 2014 the Federal Government passed the Veterans Access, Choice and Accountability Act of 2014 (Choice Act). The Choice Act requires states to charge in-state tuition and fees to "covered individuals" in order for the Department of Veterans Affairs (DVA) to approve programs of education for everyone training under the Post-9/11 GI Bill[®] and the Montgomery GI Bill[®].

A "covered individual" is defined in the Choice Act as

- A Veteran who lives in the state in which the institution of higher learning is located (regardless of his/her formal state of residence) and enrolls in the school within three years of discharge from a period of active duty service of 90 days or more.
- A spouse or child using transferred benefits who lives in the state in which the institution of higher learning is located (regardless of his/her formal state of residence) and enrolls in the school within 3 years of the transferor's discharge from a period of active duty service of 90 days or more.
- A spouse or child using benefits under the Marine Gunnery Sergeant John David Fry Scholarship who lives in the state in which the institution of higher learning is located (regardless of his/her formal state of residence) and enrolls in the school within three years of the service member's death in the line of duty following a period of active duty service of 90 days or more.

Individuals who initially meet the requirements above will maintain "covered individual" status as long as they remain continuously enrolled at the institution of higher learning, even if they are outside the 3-year window or enroll in multiple programs.

If states do not offer in-state tuition and fees to all "covered individuals" The Choice Act requires the Department of Veterans Affairs to disapprove programs of education for everyone training under the Post-9/11 GI Bill[®] and the Montgomery GI Bill[®].

Changes to RCW 28B.15.012 to align with requirements of the Choice Act of 2014

Revised Statutory Language

Section (2) – The term “resident student” shall mean

Subsection (2) (k)

A student who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service; is eligible for benefits under the federal all-volunteer force educational assistance program (38 U.S.C. Sec. 3001 et seq.), the federal post-9/11 veterans educational assistance act of 2008 (38 25 U.S.C. Sec. 3301 et seq.), or any other federal law authorizing educational assistance benefits for veterans; and enters an institution of higher education in Washington within three years of the date of separation;

Subsection (2) (l)

A student who is entitled to veterans administration educational assistance benefits based on the student’s relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member’s date of separation;

Subsection (2) (m)

A student who is entitled to veterans administration educational assistance benefits based on the student’s relationship with a deceased member of the uniformed services who completed at least ninety days of active duty service and died in the line of duty, and the student enters an institution of higher education in Washington within three years of the service member's death;

Section (3)

- (a) A student who qualifies under subsection (2) (k), (l), or (m) of this section and who remains continuously enrolled at an institution of higher education shall retain resident student status.
- (b) Nothing in subsection (2) (k), (l), or (m) applies to students who have a dishonorable discharge from the uniformed services, or to students who are the spouse or child of an individual who has had a dishonorable discharge from the uniformed services, unless the student is receiving veterans administration educational assistance benefits.

Section (8)

The term "active duty service" means full-time duty, other than active duty for training, as a member of the uniformed service of the United States. Active duty service as a national guard member under Title 32 U.S.C. for the purpose of organizing, administering, recruiting, instructing, or training and active service under 32 U.S.C. Sec. 502(f) for the purpose of responding to a national emergency is recognized as active duty service.

Section (9)

The term "uniformed services" is defined by Title 10 U.S.C.; subsequently structured and organized by Titles 14, 33, and 42 U.S.C.; consisting of the United States Army, United States Marine Corps, United States Navy, United States Air Force, United States Coast Guard, United States Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

Clarification

The Washington State Administrative Code (WAC) is being revised to reflect updates to residency statutes, including those included in this memorandum. WAC revisions will be available later in 2015. Until that work is completed, the following provides further clarification.

Subsection (2) (k)

A student who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service; is eligible for benefits under the federal all-volunteer force educational assistance program (38 U.S.C. Sec. 3001 et seq.), the federal post-9/11 veterans educational assistance act of 2008 (38 25 U.S.C. Sec. 3301 et seq.), or any other federal law authorizing educational assistance benefits for veterans; and enters an institution of higher education in Washington within three years of the date of separation;

“Uniformed Services” are defined in new Section (9) of the statute (see further down in this memorandum). Each member of the Uniformed Services receives a Form DD 214 and Certificate of Eligibility as indicated below.

Eligibility for Post 9/11 GI Bill® Benefits (Chapter 30) or Montgomery GI Bill® Benefits (Chapter 33) are the relevant assistance programs identified in new Subsection (2) (k). This eligibility does not apply to active duty service members. The Department of Veterans Affairs issues a **Certificate of Eligibility** to covered individuals approved for a program of education or training under these Acts that authorizes each student’s eligibility and indicates length of service dates.

Although the Form DD 214 indicates periods of service and characterization of service at discharge, it might not reflect clear eligibility for benefits. For example, service members may have several periods of service with the last being ‘other than honorable.’ As long as one of these periods was characterized as honorable, the individual could be eligible for benefits.

The Veteran must live in the state in which the institution of higher learning is located (regardless of his/her formal state of residence). If the student lives in Washington, and if the student presents a Certificate of Eligibility for Post 9/11 or Montgomery GI Bill Benefits, they will be eligible for resident tuition.¹

“Enters” refers to the first day of the term the student will be using authorized benefits, not the application date.

“Institution of Higher Education” means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate state education authority under state law to grant an associate or higher degree.

¹ Information on 38 U.S.C. Sec. 3001 et seq., the federal post-9/11 veterans educational assistance act of 2008 (38 25 U.S.C. Sec. 3301 et seq.), or any other federal law authorizing educational assistance benefits for Veterans, is available through your Veterans Office.

“Within three years of the date of separation” also is based on the first day of the term of enrollment. For example, if the member separates from service October 1, 2012, they must enroll prior to October 1, 2015 to be considered a resident for tuition purposes under this new section.

This new section applies to eligible service members who live in and attend a college or university located in Washington, (regardless of his/her formal state of residence). Although eligible students are not required to take steps to establish Washington as their permanent domicile they may want to do so if they plan to stay in Washington, especially if they plan to attend college after they exhaust their benefits. Note: colleges will not be asked to track eligible students’ future establishment of a domicile in Washington.

Subsection (2) (l)

A student who is entitled to veterans administration educational assistance benefits based on the student’s relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member’s date of separation;

In addition to the eligible service member, any student issued a Department of Veterans Affairs Certificate of Eligibility as a covered individual approved for a program of education or training under these Acts is a resident for tuition purposes if they meet the criteria outlined above, regardless of their formal state of residence. This includes:

“A Spouse” - those wedded through both same-sex and opposite-sex marriages.

“A Former Spouse” - may be a divorced spouse (including same-sex spouses) who retains eligibility, even if they remarry, as long as the Veteran chooses not to revoke the transfer.

“Child” – refers to biological children, adopted children, pre-adoptive children, and stepchildren. A child does not have to be financially dependent on the parent or have been listed on the current or previous tax return. Children may use benefits up to the age of 26, and a child’s marital status has no effect on benefit eligibility. “Child” also includes a former child - a service member’s stepchild (child of the service member’s spouse) at the time of the transfer of entitlement. A stepchild (including the child of a same-sex spouse) retains eligibility if the Veteran divorces the child’s biological parent, even if the parent remarries, as long as the Veteran chooses not to revoke the transfer.

Subsection (2) (m)

A student who is entitled to veterans administration educational assistance benefits based on the student’s relationship with a deceased member of the uniformed services who completed at least ninety days of active duty service and died in the line of duty, and the student enters an institution of higher education in Washington within three years of the service member’s death;

This refers to any individual using benefits under the Marine Gunnery Sergeant John David Fry Scholarship who lives in the state in which the institution of higher learning is located (regardless of his/her formal state of residence) and enrolls in the school within three years of the service member’s death in the line of duty following a period of active duty service of 90 days or more. The covered individual will be issued a Department of Veterans Affairs Certificate of Eligibility as an individual approved for a program of education or training under these Acts and is therefore a resident for tuition purposes.

Section (3)

- (a) *A student who qualifies under subsection (2) (k), (l), or (m) of this section and who remains continuously enrolled at an institution of higher education shall retain resident student status.*
- (b) *Nothing in subsection (2) (k), (l), or (m) applies to students who have a dishonorable discharge from the uniformed services, or to students who are the spouse or child of an individual who has had a dishonorable discharge from the uniformed services, unless the student is receiving veterans administration educational assistance benefits.*

The term “**continuously enrolled**” means being in an enrolled status at an educational institution for each day during the school year, and for consecutive school years. Continuity of enrollment is not broken by holiday vacations; vacation periods; periods during the school year between terms, quarters, or semesters; or by non-enrollment during periods of enrollment outside the school year (e.g., summer sessions). It is not necessary for the student to take steps to establish Washington as their permanent domicile although they may want to do so if they plan to stay in Washington, especially if they plan to attend college after they exhaust their benefits.

“**Unless the student is receiving veterans administration educational assistance benefits.**” The Department of Veterans Affairs issues a Certificate of Eligibility to covered individuals approved for a program of education or training under these Acts. Although the Form DD 214 indicates discharge characterization of service, it might not reflect clear eligibility for educational assistance benefits. If in doubt, ask for the Certificate of Eligibility.

Section (8) *The term "active duty service" means full-time duty, other than active duty for training, as a member of the uniformed service of the United States. Active duty service as a national guard member under Title 32 U.S.C. for the purpose of organizing, administering, recruiting, instructing, or training and active service under 32 U.S.C. Sec. 502(f) for the purpose of responding to a national emergency is recognized as active duty service.*

This definition clarifies who is a “covered individual” under this statute. The Department of Veterans Affairs Certificate of Eligibility verifies if the individual meets this requirement and is approved for a program of education or training and therefore should be classified as a resident for tuition purposes if meeting all other requirements of this section.

Section (9) *The term "uniformed services" is defined by Title 10 U.S.C.; subsequently structured and organized by Titles 14, 33, and 42 U.S.C.; consisting of the United States Army, United States Marine Corps, United States Navy, United States Air Force, United States Coast Guard, United States Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps.*

This section defines uniformed services as described in this statute. Covered individuals within these service units will receive a Certificate of Eligibility and therefore, if meeting all other requirements of the statute will be classified a resident for tuition purposes.

Conclusion

The 2015 amendments to RCW 28B.15.012 align state residency requirements with eligibility for federal veteran education benefits. Thus, if a student demonstrates that they both live in the state of Washington and possess a current Certificate of Eligibility for federal veteran education benefits, the student qualifies as a resident for tuition purposes. Once an individual is classified as a resident pursuant to RCW 28B.15.012(2)(k), (l), or (m), that status shall remain unchanged so long as the individual is continuously enrolled at an institution of higher education.

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