



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/24/2023 11:04:57 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-06  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes  
RULE NAME: 133-06 Higher Education Adult Part-Time Student (HEAPS) Grant Program

**PRIMARY CONTACT**

NAME: Cindy L Anderson  
ADDRESS: 1018 Kanawha Boulevard East  
Charleston, WV 25301  
EMAIL: cindy.anderson@wvhepc.edu  
PHONE NUMBER: 304-558-4016

CITE STATUTORY AUTHORITY: 18B-1-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

N/A

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/21/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/21/2023

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

E-mail notification sent to constituents

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Guidelines and procedures for the operation of the Higher Education Adult Part-time Student Grant Program (HEAPS)

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Guidance for the administration and operation of the Higher Education Adult Part-time Student Grant Program (HEAPS)

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	00
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



TITLE 133  
LEGISLATIVE RULE  
HIGHER EDUCATION POLICY COMMISSION

SERIES 6  
HIGHER EDUCATION ADULT PART-TIME STUDENT (HEAPS) GRANT PROGRAM

§133-6-1. General.

1.1. Scope. -- This rule establishes guidelines and procedures which will direct the operation of the Higher Education Adult Part-time Student Grant Program, hereinafter referred to as HEAPS.

1.2. Authority. -- W. Va. Code §18C-5-7(c), ~~§18B-17-6(a)~~

1.3. Filing Date. -- ~~April 6, 2004~~

1.4. Effective Date. -- ~~April 6, 2004~~

1.5. Sunset Provision. – This rule shall terminate and have no further force of effect on August 1, 2029.

§133-6-2. ~~Purpose.~~ Definitions.

~~2.1. Legislation creating the HEAPS Program and subsequent amendments appear to have several purposes. HEAPS provides a vehicle to encourage and enable needy West Virginia students who desire to continue their education on a part-time basis at the postsecondary level to pursue their educational goals. There is also an intent to award grants to needy students who are enrolling in a postsecondary certificate, industry recognized credential, or other skill development programs in a demand occupation in the State. Additionally, the HEAPS Program seeks to further the economic development goals of the State and help meet the training and skill upgrade needs of employers in the State by granting funds to community and technical colleges for non-credit and customized training programs. These HEAPS Grants, by providing an incentive for additional education and training, will improve the workforce of West Virginia.~~

2.1. Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §§ 18B-1-2 and 18C-5-7 apply to this rule in addition to the definitions set forth below:

2.2. “Free Application for Federal Student Aid” or “FAFSA” means the form provided by the U.S. Department of Education and completed by current and prospective college students to determine their eligibility for student financial aid.

2.3. “HEAPS Part-Time program” means the grant awarded to students who demonstrate financial need and who desire to continue their education at the postsecondary level on a part-time basis.

2.4. “HEAPS Workforce program” means the grant awarded to:

2.4.1. Students who demonstrate financial need and who are enrolled in short-term training programs of 12 months or less in a postsecondary certificate, industry-recognized credential, or other skill development programs in a demand occupation in the State; and

2.4.2. Community and technical colleges for noncredit and customized training programs.

2.5. "Part-time," for the HEAPS Part-time Grant, means enrollment for not fewer than three nor more than 11 semester or term hours or the equivalent as determined by the Vice Chancellor. For the HEAPS Workforce Grant, "part-time" means enrollment on such basis as is established for the program in which the student is enrolled.

2.6. "Student Aid Index" (formerly known as Expected Family Contribution) means the number calculated by the U.S. Department of Education for Title IV federal student aid that helps determine how much financial aid a student could receive for the upcoming academic year.

2.7. "Title IV" means Title IV of the federal Higher Education Act of 1965, which covers the administration of the federal student financial aid programs.

2.8. "Vice Chancellor for Administration" or "Vice Chancellor" means the person whose duties and authorities related to the administration of financial aid programs is established by W. Va. Code § 18B-4-2 or his or her designee.

### §133-6-3. Funding.

~~3.1. A special revenue fund known as the Higher Education Adult Part-time Student Grant Program Fund will be created in the State Treasury to be administered by the vice chancellor for administration of the Higher Education Policy Commission.~~

~~3.2. Funding received from legislative appropriations and moneys received for this program from all other sources will be deposited into this account.~~

~~3.3. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward to use in the next fiscal year.~~

~~3.4. Fund balances may be invested in the state's consolidated investment fund.~~

~~3.5. For the HEAPS Part-time Grant, Up to sixty-five 65 percent of each year's appropriation shall be allocated to participating eligible institutions as listed in Sections 5.3.1. through 5.3.6. of this rule defined in W. Va. Code § 18C-5-7(b)(4) based on prior year part-time enrollment at said institutions. The Vice Chancellor shall distribute the pro-rated share of funds shall be distributed directly to the individual institution.~~

~~3.5.1. Pro-rated funds may be distributed directly to the community college components of four-year institutions where deemed appropriate by the vice chancellor for administration.~~

~~3.5.2. 3.1.1. The Vice Chancellor for Administration may redistribute to eligible institutions uncommitted funds within an award year.~~

~~3.5.3. 3.1.2. Any funds not expended by the institution at the end of each fiscal year will shall be returned to the Vice Chancellor for Administration for awarding distribution in subsequent years.~~

~~3.6. 3.2. For the HEAPS Workforce Grant, the Vice Chancellor shall reserve Nnot less than twenty-five percent of each year's appropriation shall be reserved for awarding distribution to students enrolled in postsecondary certificate, industry-recognized credential, and other skill development programs of study.~~

~~3.6.1. 3.2.1. Educational entities offering such courses/programs and desiring to Eligible institutions offering eligible programs or courses that would like to participate in the HEAPS Workforce Grant must apply to the Vice Chancellor for Administration.~~

~~3.6.2.~~ 3.2.2. If a determination is made the Vice Chancellor determines that it is not feasible to award twenty-five percent of the appropriation for this purpose to the HEAPS Workforce Grant, the Vice Chancellor for Administration then he or she may allocate less than twenty-five percent of funds for such to the HEAPS Workforce Grants after giving written notice to the Legislative Oversight Commission on Education Accountability.

~~3.7.~~ 3.3. The Vice Chancellor shall reserve ~~ten~~ percent of each year's appropriation ~~shall be reserved~~ for ~~awarding~~ distribution to State community and technical colleges for the delivery of non-credit and customized training programs to assist in meeting training and skills upgrade needs of employers and further the economic development goals of the State.

~~3.7.1.~~ 3.3.1. Eligible programs for funding reimbursement ~~will be~~ are those that provide non-credit skill upgrade programs that complement West Virginia Development Office or West Virginia Department of Commerce initiatives for targeted industries or targeted employers, promote job creation or retention, or assist in developing skills for new economy jobs or high performance workplaces. The West Virginia Council for Community and Technical College Education, with input from the West Virginia Development Office, will annually set programmatic funding priorities. Funding will flow to community and technical colleges for the delivery of programs based on a methodology approved by the West Virginia Council for Community and Technical College Education and will not be utilized for those activities for which funds are available from other sources.

~~3.8.~~ 3.4. Up to four percent of the amount appropriated each year may be used by the Higher Education Policy Commission for administration expenses and HEAPS information dissemination.

#### §133-6-4. Administration.

~~4.1.~~ The HEAPS Program shall be administered by the Vice Chancellor for Administration.

~~4.2.~~ Each participating institution shall determine whether a HEAPS Part-time Grant applicant meets the eligibility criteria set forth in this rule and distribute grant funds to students in accordance herewith.

~~4.2.1.~~ Each institution shall make awards according to criteria set forth in these rules and deliver the grant amount to the student awarded.

~~4.2.2.~~ Participating institutions shall maintain and retain such records as the Vice Chancellor for Administration may deem necessary to administer this program and track recipients.

~~4.3.~~ 4.2. The Vice Chancellor for Administration shall determine an appropriate process for ~~awarding~~ distribution of funds allocated under Section 3-6. 3.2. of this rule for the HEAPS Workforce Grant. This may include allocations to educational entities or awards to students.

#### §133-6-5. Eligibility Criteria.

~~5.1.~~ A person is eligible for consideration for a HEAPS Grant if the person:

~~5.1.1.~~ Demonstrates that he or she has applied for, accepted, or both, other student financial assistance in compliance with federal financial aid rules, including the federal Pell Grant. To assist an eligible institution in determining whether an applicant meets the eligibility criteria established in W. Va. Code § 18C-5-7(c).

~~5.1.1.1.~~ Applicants must submit a completed FAFSA to the institution the federally approved

~~application for student aid; Provided, That persons applying for HEAPS Workforce Grant funds to enroll in a postsecondary certificate, industry recognized credential, or other skill development program in a demand occupation may apply by completing an abbreviated need analysis be required to submit an application form in addition to the FAFSA as approved by the Vice Chancellor for Administration.~~

~~5.1.2. 5.2. Demonstrates Determination of financial need for funds, as herein defined:~~

~~5.1.2.1. 5.2.1. Financial Need shall be is defined as cost of education as determined by the institution less expected family contribution (EFC) or where an abbreviated need analysis form is accepted, need shall be defined by the vice chancellor for administration. The number of dependents may be a consideration in determining need Student Aid Index (SAI).~~

~~5.1.2.2. EFC as calculated by the U. S. Department of Education for Title IV federal student aid awarding will be used in determining need.~~

~~5.1.2.3. 5.2.2. Institutional financial aid officers, in consultation with the vice chancellor for administration, may determine, using professional judgment under Title IV, whether the applicant has any personal hardship that should be taken into consideration in determining the applicant's eligibility. In the event the institution or other educational provider does not have a financial aid administrator on staff, this determination may be made by the vice chancellor for administration.~~

~~5.1.3. Is a State resident and may not be considered a resident of any other state.~~

~~5.1.3.1. State resident means a student who has lived in West Virginia continuously for a minimum of twelve months immediately preceding the date of application for a HEAPS grant or renewal of a grant and meets the standards of West Virginia domicile as defined by the residency policies of the Higher Education Policy Commission.~~

~~5.1.4. Is a United States citizen or permanent resident thereof;~~

~~5.1.5. Is not incarcerated in a correctional facility;~~

~~5.1.6. Is not in default on a higher education loan;~~

~~5.1.7. Is in compliance with the Military Selective Service Act;~~

~~5.1.8. Is enrolled or accepted for enrollment part time in a program of study at less than the graduate level with a goal of attaining a certificate, an associate degree, a bachelor's degree, or an industry commonly recognized credential; and~~

~~5.1.9. 5.3. Is making Determination of satisfactory progress; at the time of application.~~

~~5.1.9.1. 5.3.1. "Satisfactory progress" for a first time award means being accepted for enrollment by the institution the applicant plans to attend.~~

~~5.1.9.2. 5.3.2. Thereafter, For the HEAPS Part-time Grant, "satisfactory progress" for a student already enrolled in an institution means a recipient must maintain a cumulative grade point average of at least 2.0 on a 4.0 scale or its equivalent for the courses taken after a receipt of the HEAPS Grant has been received and meet the academic progress requirements at of the institution he or she is attending.~~

~~5.1.9.3. 5.3.3. In the case of postsecondary certificate, industry recognized credential, and other skill development programs For the HEAPS Workforce Grant, "satisfactory progress" means continuous advancement toward completion of the program on the normal schedule established for that program.~~

~~5.2. Part-time means enrollment for not less than three nor more than eleven semester or term hours or its equivalent as determined by the vice chancellor for administration;~~

~~5.2.1. For postsecondary certificate, industry recognized credential, and other skill development programs in demand occupations in the State, part-time means enrollment on such basis as is established for the program.~~

~~5.3. Eligible institution of higher education means an institution of a type listed in this section that is eligible to participate in the Federal Pell Grant Program. This eligibility requirement may be waived by the vice chancellor for administration if, after thorough investigation and proper documentation, he or she determines that an institution has the staff and capability to properly administer HEAPS. Types of eligible institutions of higher education include:~~

~~5.3.1. community college as defined in W. Va. Code §18B-1-2;~~

~~5.3.2. community and technical college, as defined in W. Va. Code §18B-1-2;~~

~~5.3.3. adult technical preparatory education program or training, as that term is defined in W. Va. Code §18B-2C-2(e);~~

~~5.3.4. state college or university as defined in W. Va. Code §18B-1-2;~~

~~5.3.5. approved institution of higher education as defined in W. Va. Code §18C-5-2;~~

~~5.3.6. any approved distance education, including world wide web based courses;~~

~~5.3.6.1. Approved distance education is defined as a course of study offered via electronic access that has been approved for inclusion in the applicant's program of study by the eligible institution at which the applicant is enrolled or accepted for enrollment.~~

~~5.3.6.2. Approved distance education classes must be authorized by an eligible institution with course credits transferred back to that institution. The vice chancellor for administration shall establish appropriate disbursement procedures for distance education classes.~~

~~5.3.6.3. HEAPS grants shall be available for approved distance education throughout the calendar year, subject only to the availability of funds and provisions of this rule.~~

~~5.4. Each HEAPS grant is eligible for renewal until the program of study is completed but not to exceed an additional nine years beyond the first year of the award. Renewal:~~

~~5.4.1. For the HEAPS Part-time Grant, the institution may renew the grant until the student completes the program of study, but may not exceed an additional nine years beyond the first year of the award.~~

~~5.4.2. For the HEAPS Workforce Grant, the institution may renew the grant up to four years so long as the renewed grant is for the student to complete a different program than the program for which the grant was originally awarded.~~

#### **§133-6-6. Additional Programs and Courses.**

~~6.1. These courses and programs may be offered by the eligible institutions listed in Section 5.3 and by other educational entities and include: In addition to the eligible programs and courses described in W.~~

Va. Code § 18C-5-7, the Council for Community and Technical College Education may approve additional courses or programs for grant funding based on industry need.

~~6.1.1. Programs and courses offered by any nationally accredited, degree-granting institution of higher learning permitted pursuant to W. Va. Code §18B-3-5;~~

~~6.1.1.1. These courses and programs must be approved by the West Virginia Council for Community and Technical College Education (WVCCTCE).~~

~~6.1.2. Postsecondary Certificate Program which means an organized program of study, approved by WVCCTCE, with defined competencies or skill sets that may be offered for credit or non-credit and which culminate in the awarding of a certificate.~~

~~6.1.3. Industry Recognized Credential Program which means an organized program that meet nationally recognized standards in a particular industry, is approved by WVCCTCE, and which earn a certificate or other credential commonly recognized in that industry.~~

~~6.1.4. Demand Occupation which means any occupation having documented verification from employers that job opportunities in that occupation are currently available or are projected to be available within a year in West Virginia or regions of the State.~~

~~6.1.4.1. 6.2. For the HEAPS Workforce Grant, the Council shall identify “demand occupations”, shall be identified by the WVCCTCE. The Council shall as that term is defined in W. Va. Code § 18C-5-7, and prepare and update annually a list of occupations that they it determines meet the requirements of this definition.~~

~~6.1.5. 6.3. The Council shall also approve “skill development programs,” which means a structured sequence or set of courses, approved by WVCCTCE as defined in W. Va. Code § 18C-5-7, with defined competencies that are designed to meet the specific skill requirements of an occupation and which culminates in the awarding of a certificate of completion that specifically lists the competencies or skills mastered.~~

~~6.1.6. Eligible institutions listed in Sections 5.3.1. through 5.3.6. do not need WVCCTCE approval for Postsecondary Certificate Programs, Industry Recognized Credential Programs, or Skill Development Programs but all other institutions must have Council approval for such programs.~~

### **§133-6-7. Amount of Grant.**

7.1. The HEAPS Part-time Grant award for a student enrolled in an approved institution operated under the jurisdiction of an agency of the state or a political subdivision thereof of higher education as defined in W. Va. Code § 18C-5-2 shall be based upon the actual cost of tuition and fees.

7.2. For students enrolled in any other eligible institution, program, or course, the HEAPS Part-time award shall be no greater than the average amount charged for comparable training at institutions designated in ~~Item~~ Section 7.1.

7.3. The maximum amount of the HEAPS Workforce Grant shall be set by the Higher Education Policy Commission and based upon available funding and the workforce demands of the State.

~~7.3.~~ 7.4. For the HEAPS Part-time Grant, Total aid, including the HEAPS award, may not exceed the recipient’s total cost of education as defined by the institution being attended.

7.5. For the HEAPS Workforce Grant, total aid shall not exceed the direct cost of the student’s

academic program.

**§133-6-8. Agreement to Participate and Reports.**

8.1. In order for an institution to participate in the HEAPS Grant Programs, the president or ~~the chief executive officer~~ the president's designee and the financial aid officer of the institution must shall sign an agreement to participate. This agreement will outline duties of the institutions, including, but not limited to:

8.1.1. Developing policies and procedures for the operation of the HEAPS Grant Programs, covering at a minimum:

~~8.1.1.1.~~ 8.1.1.a. Methods to determine if students meet the eligibility criteria for a HEAPS award;

~~8.1.1.2.~~ 8.1.1.b. Guidelines for distribution of grant funds student awarding when such funds are insufficient to ~~award~~ make distributions to all eligible applicants;

~~8.1.1.3.~~ 8.1.1.c. Delivering awards to eligible students;

~~8.1.1.4.~~ 8.1.1.d. Reporting the number of part-time students in a course of study leading to the certificate or degree program and enrolled for three to eleven hours or its equivalent who participated in the HEAPS-Part-time program and who participated in the HEAPS Workforce program (for determining fund distribution for the coming year). The institutions shall report ~~†this information will be reported~~ on a form and within a deadline ~~designated~~ prescribed by the Vice Chancellor for Administration;

~~8.1.1.5.~~ 8.1.1.e. Reporting annually the number of HEAPS Part-time and HEAPS Workforce awards made, the total amount of dollars awarded, and such other information as is requested by the Vice Chancellor for Administration. The institutions shall report ~~†this information will be made~~ on a form and within a deadline ~~designated~~ prescribed by the Vice Chancellor for Administration.

8.2. The Vice Chancellor for Administration shall prepare an annual report on the status of the HEAPS Grant Program. ~~This report shall be presented~~ and present it to the Legislative Oversight Commission on Education Accountability no later than December 1 of each year.

**§133-~~36~~-9. Audits; Grant Withdrawal and Penalty; Unexpended Funds.**

9.1. Participating institutions ~~shall be~~ are subject to such audits and program reviews as may be required by the Vice Chancellor for Administration.

9.2. The Vice Chancellor reserves the right to withdraw a grant from an institution or deny future grant applications upon determination of the institution's unsatisfactory compliance with either this rule or the specifications of the grant application.

9.3. An institution shall reimburse to the Vice Chancellor the total sum of a grant not properly used or accounted for pursuant to this rule.

9.4. An institution shall return any unexpended funds remaining at the end of the academic year to the Vice Chancellor.