

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**
Form #7

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2003 JUN -9 P 3:44

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: West Virginia Code § 18C-5-7

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 6

TITLE OF RULE BEING AMENDED: HIGHER EDUCATION ADULT PART TIME STUDENT
(HEAPS) GRANT PROGRAM

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

West Virginia Code § 18C-5-7 as amended in H.B. 2051 states: "The Legislature hereby declares that an emergency situation exists and , therefore, the policy commission may establish, by emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this section, after approval of the legislative oversight commission on education accountability."

Use additional sheets if necessary


Authorized Signature

Summary

Higher Education Adult Part-time Student (HEAPS) Grant Program

House Bill 2051 passed March 8, 2003, modified the Higher Education Adult Part-time Student (HEAPS) Grant Program and required the Policy Commission to file with the Legislative Oversight Commission on Education Accountability (LOCEA), on or before September 1, 2003, a proposed legislative rule to implement the changes. The Legislature declared that an emergency situation existed and also authorized the Policy Commission to file an emergency rule following LOCEA approval to implement the provisions of House Bill 2051.

The most notable changes made in the law and addressed by this rule include:

- Otherwise qualified students may now enroll for as few as three semester hours per term.
- Whereas formerly only financially independent students could be considered for HEAPS assistance, students financially dependent upon parents or a spouse may now qualify if they demonstrate financial need and are otherwise qualified.
- Qualified traditional college age students may now be considered for HEAPS grant assistance whereas before HB 2051 was passed there was a requirement that students be out of high school for at least two years before receiving assistance.
- A new component of the HEAPS Program is created where 10 percent of the annual appropriations would be directed to community and technical colleges for non-credit and customized training programs which further the economic development goals of the state and help meet training and skill upgrade needs of employers in the state.
- HEAPS grants are to be available for approved distance education throughout the calendar year, subject to the availability of funds.

Changes to the existing policy are shown by strike-throughs for deleted language and underscoring for new language.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Higher Education Adult Part-time Student (HEAPS) Grant Program

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Higher Education Policy Commission

Address: 1018 Kanawha Boulevard, East
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST			\$3,000,000		*
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

*Dependent upon legislative appropriations.

3. Objectives of These Rules:

To provide student financial assistance to part-time adult students enrolled on a part-time basis at the postsecondary level or in a postsecondary certificate, industry recognized credential or other skill development programs in a demand occupation in the State

Rule Title: Higher Education Adult Part-time Student (HEAPS) Grant Program

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:
N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: Grants should facilitate a better prepared workforce and economic development throughout the State.

C. Economic Impact on Citizens/Public at Large.
These grants will improve the economic development goals of the State and help meet the training and skill upgrade needs of employers in the State.

Date: June 9, 2003

Signature of Agency Head or Authorized Representative:

Jorge W. Daniel
Executive Assistant to the Chancellor



EMERGENCY RULE QUESTIONNAIRE

DATE: June 9, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Charleston, WV 25301
558-0699

EMERGENCY RULE TITLE: Higher Education Adult Part-time Student (HEAPS) Grant Progr

1. Date of filing June 9, 2003

2. Statutory authority for promulgating emergency rule:
18C-5-7

3. Date of filing of proposed legislative rule: June 9, 2003

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopts new language and amends current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
Through House Bill 2051, passed March 8, 2003, effective July 1, 2003, the Legislature declared an emergency situation exists.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

18C-5-7

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

To implement the provisions of House Bill 2051 which becomes effective July 1, 2003.

TITLE 133
LEGISLATIVE EMERGENCY RULE
HIGHER EDUCATION POLICY COMMISSION

FILED

2003 JUN -9 P 3:45

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§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.

1.3. Filing Date. -- ~~April 9, 2002.~~

1.4. Effective Date. -- ~~April 9, 2002.~~

§133-6-2. Purpose.

2.1. ~~The intent of the~~ Legislation creating the HEAPS Program and subsequent amendments appear to have several purposes. HEAPS provides a vehicle is to encourage and enable needy West Virginia students, who have been out of high school for at least two years and who desire to continue their education on a part-time basis at the postsecondary level, to pursue their educational goals. The There is also an intent also is to award grants to needy students who have graduated from high school within the past two years and 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 work force of West Virginia.

§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. ~~Seventy-five~~ Up to sixty-five percent of each year's appropriation shall be allocated to

participating institutions as listed in Sections 5.3.1. through 5.3.6. of this rule based on prior year part-time enrollment at said institutions. 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. The vice chancellor for administration may redistribute uncommitted funds within an award year.

3.5.3. Any funds not expended by the institution at the end of each fiscal year will be returned to the vice chancellor for administration for awarding in subsequent years.

3.6. Not less than Twenty-five percent of each year's appropriation shall be reserved for awarding to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study.

3.6.1. Educational entities offering such courses/programs and desiring to participate in HEAPS must apply to the vice chancellor for administration.

3.6.2. If a determination is made that it is not feasible to award twenty-five percent of the appropriation for this purpose, the vice chancellor for administration may allocate less than twenty-five percent of funds for such grants after giving written notice to the Legislative Oversight Commission on Education Accountability.

3.7. Ten percent of each year's appropriation shall be reserved for awarding 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 Eligible programs for funding reimbursement will be those that provide non-credit skill upgrade programs that complement West Virginia Development Office 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.

3.7. 3.8. Up to four percent of the amount awarded 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 applicant meets the eligibility criteria.

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. The vice chancellor for administration shall determine an appropriate process for awarding funds allocated under Section 3.6. of this rule. 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.

5.1.1.1. Applicant must submit the federally approved application for student aid; provided, that persons applying for 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 form as approved by the vice chancellor for administration.

~~5.1.2. Qualifies as an independent student according to current federal financial aid criteria unless he or she is enrolling in a postsecondary certificate, industry recognized credential or other skill development program in a demand occupation in the State.~~

~~5.1.2.1. Number of dependents may be a consideration.~~

5.1.3.2. Demonstrates financial need for funds, as herein defined;

5.1.3.2.1. Need shall be 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.

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

5.1.3.2.3. Institutional aid officers, in consultation with the vice chancellor for administration, may determine 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.

~~5.1.4. Has not been enrolled in a high school diploma program, other than general education development (GED), for at least the two preceding years unless the person applies the grant toward the cost of enrolling in a postsecondary certificate, industry recognized credential or other skill development program in a demand occupation in the State;~~

5.1.5. 5.1.3. Is a state resident and may not be considered a resident of any other state;

5.1.5.3.1. 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.

5.1.6.4. Is a United States citizen or permanent resident thereof;

5.1.7.5. Is not incarcerated in a correctional facility;

5.1.8.6. Is not in default on a higher education loan;

5.1.9.7. Is in compliance with the Military Selective Service Act;

5.1.10.8. 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

5.1.11.9. Is making satisfactory progress at the time of application.

5.1.11.9.1. Satisfactory progress for a first time award means being accepted for enrollment by the institution the applicant plans to attend.

5.1.11.9.2. Thereafter, 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 HEAPS Grant has been received and meet the academic progress requirements at the institution he or she is attending.

5.1.11.9.3. In the case of postsecondary certificate, industry recognized credential, and other skill development programs, 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 ~~six~~ three nor more than eleven semester or term hours or its equivalent as determined by the vice chancellor for administration; ~~Provided, that for no more than two semesters during the recipient's ten years of eligibility, the recipient may be considered to be enrolled part time if he or she is enrolled for three or more semester or term hours or its equivalent.~~

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-2eC-2(c);

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.

§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:

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. Demand Occupations shall be identified by the WVCCTCE. The Council shall prepare and update annually a list of occupations that they determine meet the requirements of this

definition.

6.1.5. Skill Development Program which means a structured sequence or set of courses, approved by WVCCTCE, 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 award for a student enrolled in an institution operated under the jurisdiction of an agency of the state or a political subdivision thereof 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 award shall be no greater than the average amount charged for comparable training at institutions designated in Item 7.1.

7.3. Total aid, including the HEAPS award, may not exceed the recipient's total cost of education as defined by the institution being attended.

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

8.1. In order for an institution to participate in the HEAPS Program, the president or the chief executive officer and the financial aid officer must 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 Program, covering at a minimum:

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

8.1.1.2. Guidelines for student awarding when funds are insufficient to award all eligible applicants;

8.1.1.3. Delivering awards to eligible students;

8.1.1.4. Reporting the number of part-time students in a course of study leading to the certificate or degree program and enrolled for ~~six~~ three to eleven hours or its equivalent (for determining fund distribution for the coming year). This information will be reported on a form and within a deadline designated by the vice chancellor for administration;

8.1.1.5. Reporting annually the number of HEAPS awards made, the total amount of dollars awarded, and such other information as is requested by the vice chancellor for administration. This information will be made on a form and within a deadline designated 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 to the Legislative Oversight Commission on Education Accountability no later than December 1 of each year.

§133-3-9. Audits.

9.1. Participating institutions shall be subject to such audits and program reviews as may be required by the vice chancellor for administration.