

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 42

TITLE OF RULE BEING AMENDED: West Virginia Higher Education Grant Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2904

SECTION 18B-17-2(j), PASSED ON April 6, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 14, 2009


Authorized Signature

**TITLE 133
LEGISLATIVE RULE
HIGHER EDUCATION POLICY COMMISSION**

FILED

2009 APR 14 PM 4: 09

**SERIES 42
WEST VIRGINIA HIGHER EDUCATION GRANT PROGRAM**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§133-42-1. General.

- 1.1. Scope: This rule establishes guidelines and procedures that will direct the operation of the West Virginia higher education grant program, hereinafter referred to as the higher education grant program or grant program.
- 1.2. Authority: West Virginia Code §18B-1-6, §18C-5-1.
- 1.3. Filing Date: April 14, 2009
- 1.4. Effective Date: May 14, 2009
- 1.5. Repeals and replaces previous Series 42 dated April 2, 2007.

§133-42-2. Purpose and Effect.

- 2.1. The intent of the legislation creating the higher education grant program is to establish a broad-scale state grant program designed to guarantee that the most able and needy students from all sectors of the state are given the opportunity to continue their programs of self-improvement in approved institutions of higher education.
- 2.2. The provisions of this rule that are inconsistent with or different from current administrative procedures and practices will take effect for higher education grant awards for the 2009-2010 academic year.

§133-42-3. Definitions.

- 3.1. Academic Year. A period of time in which a full-time student is expected to complete the equivalent of at least two semesters or other approved academic term.
- 3.2. Commission. West Virginia Higher Education Policy Commission.
- 3.3. Cost of Attendance. The estimated total amount it will cost a student to attend college during an academic year, including tuition and fees; housing and food for the period of enrollment; books and supplies for education; travel costs directly related to attendance; child care expenses; costs related to a disability; and other costs determined by the educational institution to be educationally related.

- 3.4. Council. West Virginia Council for Community and Technical College Education.
- 3.5. Dependent Student. A student who is required to provide parental information on the free application for federal student aid because the student does not meet the criteria to be classified an independent student contained in the Higher Education Act of 1965 as amended and implementing regulations.
- 3.6. Expected Family Contribution (EFC). The amount that a family is expected to contribute toward a student's education costs under the federal need analysis. For an independent student, EFC is the same as student contribution. For a dependent student, EFC is the same as the total of student and parent contributions.
- 3.7. Financial Aid Package. The total amount of financial aid a student receives during an academic year.
- 3.8. Financial Need. The demonstrated need of an applicant for financial assistance to meet the actual costs of attending the eligible institution of choice. It is the calculated difference between a student's cost of attendance and his or her EFC.
- 3.9. Fiscal Year. A state fiscal year begins on July 1 and ends on June 30.
- 3.10. Free Application for Federal Student Aid (FAFSA). An application that students must complete in order to apply for most forms of financial aid, including the West Virginia higher education grant. The filing of a FAFSA by an individual who indicates West Virginia as his or her state of legal residence will be treated as an application for the West Virginia higher education grant.
- 3.11. Full-time Student. A student enrolled in a minimum of twelve undergraduate credit hours per semester or other comparable period at an institution with a non-traditional calendar.
- 3.12. Grant. Financial aid awarded to students that does not have to be paid back. For purposes of this rule, scholarships are included within the definition.
- 3.13. Higher Education Grant Program/Grant Program. Financial aid program described in W. Va. Code § 18C-5-1 et al. that provides grants to needy West Virginia residents.
- 3.14. Independent Student. A student who is not required to provide parental information on the free application for federal student aid because the student meets the criteria to be classified an independent student contained in the Higher Education Act of 1965 as amended and implementing regulations.

- 3.15. Participating Institution. An institution that is eligible to participate in the West Virginia higher education grant program and for which a participation agreement is in place.
- 3.16. Participation Agreement. A document signed by the appropriate institution and Commission officials that specifies the rights and responsibilities of the institution and the Commission as they relate to participation in specific financial aid programs covered by that agreement.
- 3.17. Title IV. The section of the Higher Education Act of 1965, as amended, that pertains to federal student financial aid programs.
- 3.18. Undergraduate Student. A student who has not yet received a bachelor's degree and who is deemed an undergraduate student by the institution.
- 3.18.1. A student who is enrolled in a program that results in the awarding of a bachelor's and master's degree simultaneously and continues to meet the eligibility guidelines for the federal Pell grant program shall be considered an undergraduate student if he or she is in his or her first four years of full-time post-secondary education and has not previously received a bachelor's degree.
- 3.18.2. A student who is enrolled in a doctor of pharmacy program shall be considered an undergraduate student if he or she has not previously received a bachelor's degree and is deemed an undergraduate student by the institution.
- 3.19. Unmet Financial Need. When the combination of a student's financial aid package and expected family contribution do not cover the cost of attendance.
- 3.20. Vice Chancellor for Administration. Commission employee statutorily charged with overseeing the West Virginia higher education grant program or his or her designee. Formerly known as the Senior Administrator.

§133-42-4. Administration.

- 4.1. The Vice Chancellor for Administration shall administer the higher education grant program under the general direction of the Chancellor for Higher Education and the Commission and in consultation with the Chancellor for Community and Technical College Education and the Council.
- 4.2. The Higher Education Student Financial Aid Advisory Board shall provide financial aid expertise and policy guidance to the Vice Chancellor for Administration.
- 4.3. The Vice Chancellor for Administration may use no more than three (3) percent of the amount appropriated each year for the higher education grant

program for financial aid administration, award processing, and information dissemination.

§133-42-5. Institution Eligibility.

- 5.1. Students who attend the following types of institutions are eligible to receive a higher education grant:
 - 5.1.1. Any public higher education institution identified in West Virginia Code §18B-1-2 and §18C-5-2; and
 - 5.1.2. The following not-for-profit private higher education institutions in West Virginia: Alderson-Broadus College, Appalachian Bible College, Bethany College, Mountain State University, Davis & Elkins College, Ohio Valley University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University; and
 - 5.1.3. Any other regionally or nationally accredited institution of higher education in West Virginia, public or private, approved by the Vice Chancellor for Administration that has been licensed by the Commission or Council for a minimum of fifteen (15) years; and
 - 5.1.3.1. Salem International University shall be considered as an accredited institution that has been licensed by the Commission or Council for a minimum of fifteen (15) years.
 - 5.1.4. Any non-West Virginia institution of higher education that is included within a reciprocal agreement with another state's grant program agency.
- 5.2. An institution otherwise eligible to participate in the higher education grant program under section 5.1 of this rule shall be excluded from participating by the Vice Chancellor for Administration if:
 - 5.2.1. The institution does not have a signed participation agreement in place; or
 - 5.2.2. The institution has been deemed ineligible to participate in federal student financial aid programs by the United States Department of Education; or
 - 5.2.3. The Commission determines, based upon audits and/or administrative site visits by Commission staff, that the institution has seriously mismanaged higher education grant or other state financial aid funds or lacks adequate institutional controls to manage such funds properly.
 - 5.2.3.1. Any institution deemed ineligible to participate in the higher education grant program may appeal the decision in writing

within fifteen (15) days of receiving notification to the Vice Chancellor for Administration. The Vice Chancellor for Administration, whose decision is final, shall issue a written decision upholding or reversing the initial decision within twenty (20) days of receipt of the appeal.

§133-42-6. Student Eligibility.

- 6.1. To be eligible for a higher education grant award, an applicant must:
 - 6.1.1. Be a citizen of the United States; and
 - 6.1.2. Have been a resident of West Virginia for one year immediately preceding the date of application for a grant or renewal of a grant; and
 - 6.1.3. Have earned a high school or general educational development (GED) diploma; and
 - 6.1.4. Plan to enroll at a participating Title IV-eligible institution as a full-time undergraduate student in a degree or certificate-producing program; and
 - 6.1.5. Demonstrate academic promise (for new awards) or achievement (for renewal awards); and
 - 6.1.6. Demonstrate financial need.
- 6.2. Until June 30, 2010, an applicant who attended a public or private high school outside the state is eligible for a grant, even if he or she does not meet the requirement contained in section 6.1.2, if the applicant meets all other eligibility requirements for the grant and:
 - 6.2.1. Resided in West Virginia while attending high school in another state; and
 - 6.2.2. Resided with his or her parent or legal guardian who was a resident of West Virginia for at least two years immediately preceding the student's attendance at the school; and
 - 6.2.3. Commuted during the school term on a daily basis from this state to the school; and
 - 6.2.4. Is a dependent of the parent or legal guardian upon which eligibility is based and has not established domicile outside the state; and
 - 6.2.5. The school is fully accredited in that state to the degree acceptable to the State Superintendent of Schools and the school's curriculum requirements for graduation are equivalent to the curriculum

requirements for graduation in this state, or sufficiently similar to those requirements, as determined by the State Superintendent of Schools.

6.3. Until June 30, 2010, an applicant who resided and attended high school in another state or a United States territory, United States possession or foreign country is eligible for a grant, even if he or she does not meet the requirement contained in section 6.1.2, if the applicant meets all other eligibility requirements for the grant and:

6.3.1. The applicant resided with his or her parent or legal guardian who served in the United States armed forces while the applicant attended high school in such state, territory, possession or country; and

6.3.2. The parent or legal guardian was stationed for military purposes in such state, territory, possession or country; and

6.3.3. The parent or legal guardian maintained legal residence in West Virginia while the applicant attended high school in such state, territory, possession or country.

6.4. A new higher education grant applicant may satisfy the academic promise requirement in one of the following ways:

6.4.1. An applicant who has earned college credit after high school graduation or since passing the general educational development (GED) test demonstrates academic promise if he or she has earned a cumulative college grade point average (GPA) of 2.0 or higher on a 4.0 scale as determined by the participating institution. The applicant must meet the institution's satisfactory academic progress standards.

6.4.2. An applicant who graduated from high school or received a GED diploma more than five years before enrollment or who has completed active military service and has not earned college credits after high school graduation or receipt of the GED diploma before the date of enrollment demonstrates academic promise if he or she meets the admission requirements of the participating institution.

6.4.3. An applicant who has earned a GED diploma within the last five years prior to enrollment and has not earned college credits after receipt of the GED diploma demonstrates academic promise if his or her score on the GED test was at least 2250.

6.4.4. An applicant who does not fall within the categories described in sections 6.4.1, 6.4.2, or 6.4.3 demonstrates academic promise if he or she meets the admission requirements for a degree or certificate program of the participating institution and has a cumulative high school GPA of 2.0 or higher.

6.5. A renewal higher education grant applicant satisfies the academic achievement requirement if the student has maintained a minimum overall grade point average of 2.0, is meeting institution's academic progress requirement, and

6.5.1. If the student received a two-semester award, the student must have earned twenty-four or more hours of academic credit in advance of a future award (excluding summer school for immediate prior year recipients); or

6.5.2. If the student received a single-semester award, the student must have earned twelve or more hours of academic credit in advance of a future award (excluding summer school for immediate prior year recipients).

Institutions shall be responsible for determining whether renewal students have satisfied academic achievement requirements.

6.6. An applicant demonstrates financial need if:

6.6.1. He or she has a completed FAFSA on file with the United States Department of Education by a date to be determined by the Vice Chancellor for Administration in consultation with the Commission and Council; and

6.6.2. His or her cost of attendance is greater than the total of his or her EFC, as calculated from the FAFSA, and other financial aid; and

6.6.3. His or her expected family contribution does not exceed an amount set by the Commission and Council.

6.7. A student is not eligible to receive a higher education grant award if he or she:

6.7.1. Previously has earned a bachelor's degree; or

6.7.2. Previously has received eight semesters of higher education grant awards; or

6.7.3. Is not deemed to be an undergraduate student by the institution; or

6.7.4. Owes the institution or the Commission for a higher education grant or other state financial aid overpayment unless the student has a written reimbursement plan in place.

6.8. Higher education grant awards shall be made without regard to the applicant's race, color, gender, religion, national origin, veteran's status, age or disability.

§133-42-7. Awards.

7.1. Maximum Award.

7.1.1. No higher education grant award may exceed the amount of tuition and required fees at the institution.

7.1.1.1. For purposes of this rule, West Virginia University's undergraduate health sciences students shall be treated as paying the same amount of tuition and required fees as all other West Virginia University undergraduate students.

7.1.2. For a student attending an institution identified in section 5.1.4 of this rule, no higher education grant award may exceed the maximum grant award provided for in the reciprocity agreement.

7.2. Award Cycles.

7.2.1. The initial award cycle will occur preferably in April preceding the beginning of each academic year.

7.2.2. Additional award cycles may be made throughout the year as funds become available.

7.2.3. Any award cycle made after November 1 will be for second semester awards only.

7.3. Award Selection.

7.3.1. The Commission and the Council shall establish criteria to be used in award selection each year based on the amount of funding expected to be available to use for awards. In determining to whom to award and the size of awards, the Commission, Council and Vice Chancellor for Administration may consider applicants' relative levels of financial need, application filing dates, relative differences in tuition rates across institutions, and/or state policy priorities.

7.4. Award Use.

7.4.1. A student may use a higher education grant award to cover any part of his or her cost of attendance at an eligible higher education institution.

§133-42-8. Coordination of Higher Education Grant Program and Other Aid Programs.

8.1. All students seeking assistance through the higher education grant program must apply for assistance through the federal Pell grant program.

8.2. In no instance may a combination of the higher education grant and any other grants, including tuition and fee waivers, exceed demonstrated financial need as determined by the institution.

8.3. Funding Priorities.

8.3.1. To the extent permissible under federal law, grant resources available through federal student financial aid programs shall be utilized before a higher education grant award.

8.3.2. Grant resources available through other state student financial aid programs shall be utilized before a higher education grant award.

8.4. Students may not receive funding from both the higher education grant program and any component of the higher education adult part-time student (HEAPS) grant program during the same payment period.

§133-42-9. Post-Award Changes.

9.1. If a higher education grant recipient transfers from one participating institution to another participating institution, the grant is transferable with the approval of the Vice Chancellor for Administration or his or her designee.

9.2. If a higher education grant recipient's EFC increases after an award has been made, the award shall be withdrawn if the new EFC exceeds the maximum EFC set by the Commission and Council in any given year.

9.3. If a higher education grant recipient terminates enrollment during the fall semester, the scheduled spring award will be reserved for the student by the grant program staff unless notified otherwise by the institution.

9.4. If a higher education grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the Commission by the institution in accordance with the Commission's rule for issuing refunds pursuant to the provisions of W.Va. Code § 18C-5-1 et seq. If the recipient also received federal financial aid, the institution must abide by the refund policy associated with Title IV funds. The institution is responsible for returning the unused portion of the grant even if the student does not request a refund from the institution.

§133-42-10. Payments.

10.1. Payment of higher education grant awards shall be made directly to the institution.

10.2. An institution may not receive a payment unless the institution has completed the previous year's reconciliation process and returned any prior-year balance payable to the Commission.

§133-42-11. Waivers.

- 11.1. A recipient may request a waiver of academic progression if the recipient withdrew from all courses during the semester as a result of:
 - 11.1.1. Serious illness or major injury involving the student or an immediate family member; or
 - 11.1.2. Death of an immediate family member; or
 - 11.1.3. Other comparable extenuating circumstance.
- 11.2. All waiver requests must be submitted to the Director of State Financial Aid Programs for approval.

§133-42-12. Appeals.

- 12.1. An applicant or institution may appeal in writing the decline of an initial award or renewal award or any other decision within fifteen (15) days of receiving notification to the Director of State Financial Aid Programs. The Director may consult with the appeals committee comprised of financial aid staff, and the Director shall issue a written decision upholding or reversing the initial decision within fifteen (15) days of receipt of the appeal.
- 12.2. An applicant or institution may further appeal in writing the decision of the Director of State Financial Aid Programs within fifteen (15) days of receipt of notification of the decision to the Vice Chancellor for Administration. The Vice Chancellor for Administration shall issue a written decision upholding or reversing the Director's decision within twenty (20) days of receipt of the appeal.
- 12.3. Any applicant appeal of a decision concerning satisfactory academic progress that relates to credit hour completion shall be referred to the institution for resolution consistent with institution procedures established for this purpose.
- 12.4. Any appeal made should set forth in detail the grounds for the appeal. The decision rendered at each level shall address in writing each ground raised.

§133-42-13. Accounting, Reporting, and Auditing Requirements.

- 13.1. Before the end of each fiscal year, each institution's financial aid office must reconcile its higher education grant records with:
 - 13.1.1. The Commission's records of higher education grant awards and disbursements; and
 - 13.1.2. The institution's business office records of state grant disbursements.

- 13.2. All participating institutions may be required to provide reports to the Commission from time to time, including the United States Department of Education's Fiscal Operations Report and Application to Participate (FISAP) and the West Virginia Higher Education Policy Commission's Annual Student Financial Aid Survey.
- 13.3. Participating institutions under sections 5.1.2, 5.1.3, and 5.1.4 of this rule shall provide the Vice Chancellor for Administration with an audited financial statement annually. These statements shall be treated as confidential trade secrets and shall not be subject to Freedom of Information Act requests.
- 13.4. All participating institutions may be subject to financial aid audits.

§133-42-14. Authority of Vice Chancellor for Administration to Enter into Reciprocal Agreements with Other States Concerning Grants.

- 14.1. The Vice Chancellor for Administration may enter into reciprocal agreements with state grant and grant program agencies in other states that provide financial assistance to their residents attending institutions of higher education located in West Virginia.
- 14.2. The Vice Chancellor for Administration may permit West Virginia residents to use the higher education grant under section 14.1 of this rule to attend institutions of higher education in such other states.
- 14.3. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such states must meet all of the eligibility standards set forth in section 6 of this rule.

SUMMARY

**TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 42
WEST VIRGINIA HIGHER EDUCATION GRANT PROGRAM**

This rule promulgates policy and procedure regarding the West Virginia Higher Education Grant Program.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-42 - West Virginia Higher Education Grant Program

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: Attention: Mr. Dennis Taylor
1018 Kanawha Boulevard, East, Suite 700, Charleston, WV 25301

Phone Number: 304-558-4016 Email: dtaylor@hepc.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule has no fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: 133-42 - West Virginia Higher Education Grant Program

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The rule has no fiscal impact.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: April 14, 2009

Signature of Agency Head or Authorized Representative

Linda Anderson