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In-state tuition policies under the Veterans Access, Choice and Accountability Act

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May 15, 2015 UPDATE TO ORIGINAL REPORT: On May 15, 2015, the Secretary of Veterans Affairs [announced](#) that the deadline to comply with the federal Choice Act has been extended from July 15, 2015, to Jan. 1, 2016. States must submit their plans to become compliant by June 15, 2015.

Ensuring access and affordability to a postsecondary education for veterans and their dependents has long been a focus of federal and state education policy. Developing policy to support educational attainment among these individuals has required state policymakers to address residency requirements for veterans to determine eligibility for in-state tuition benefits. Yet recent revisions to federal statute – changes that go into full effect in January 2016 – have shifted the policy landscape in a significant and meaningful way.

Beginning Jan. 1, 2016, the Veterans Access, Choice and Accountability Act (Choice Act) requires that all public postsecondary institutions offer in-state tuition rates to qualified veterans and their dependents, regardless of state residency status. This ECS Policy Analysis provides state and postsecondary leaders with a review of the Choice Act requirements, key information on deadlines, considerations for evaluating state policy for compliance and examples of policy actions.

The 2015 state legislative sessions are a crucial time for governors and state lawmakers to determine state policy compliance with the federal Choice Act.

KEY TAKEAWAYS

By Jan. 1, 2016, the Veterans Access, Choice and Accountability Act will require public postsecondary institutions to offer in-state tuition rates to qualified veterans and their dependents, regardless of state residency status.

Effective Jan. 1, 2016, the Department of Veterans Affairs will deny benefits payment requests for education courses under the Post-9/11 GI Bill and Montgomery GI Bill-Active Duty at public institutions that charge qualifying veterans and dependents tuition and fees in excess of in-state rates.

States that do not ensure all public institutions offer in-state tuition rates will create a disincentive to enrollment and persistence for veteran students and their dependents.



In 2014, the U.S. Congress enacted the Choice Act, which requires public higher education institutions to offer in-state tuition rates to qualified veterans and their dependents regardless of state residency status. The bill, [House Resolution 3230](#), was signed into law in August 2014.

Under Section 702 of the Choice Act, the Department of Veterans Affairs (VA) is required to disapprove benefit payments for education courses under the Post-9/11 GI Bill and Montgomery GI Bill-Active Duty (MIGB-AD) at public institutions that charge qualifying veterans and dependents tuition and fees in excess of in-state rates. In short, higher education institutions that do not meet the Choice Act requirements will no longer receive tuition and fee reimbursement payments for students attending under either of the two federal GI bills. In addition, qualified beneficiaries of the Marine Gunnery Sergeant John David Fry Scholarship are eligible to receive in-state tuition rates under the law.¹

States that do not ensure all public institutions offer in-state tuition rates could increase the cost or complications of attendance for qualified veterans and their dependents to enroll at these campuses, resulting in a disincentive to seeking a postsecondary education. In turn, states would set up barriers to serving veterans and their families, and local communities and businesses would not benefit from their educational advancements.

Key dates for state and postsecondary system leaders

By January 1, 2016, public higher education institutions must offer qualifying veterans and dependents in-state tuition rates to continue receiving benefits payments under the Post-9/11 GI Bill and Montgomery GI Bill-Active Duty programs. The current legislative sessions, therefore, will be a crucial time for governors and state lawmakers to ensure their policies are in compliance. If the authority to adopt or modify in-state tuition policies rests with higher education governing boards, they also must work within the January 2016 deadline.

Although the VA intends to grant temporary waivers to some states that are pursuing steps to comply with the Choice Act, policy and education leaders should aim to meet the deadline to avoid unnecessary confusion over or delays to serving student veterans and their dependents.

Eligibility for in-state tuition rates under the Choice Act

The following “covered individuals” are eligible for in-state tuition rates and fees under the Choice Act:

- ◆ A veteran who lives in the state (regardless of formal in-state residence status) in which the higher education institution is located and enrolls 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 (regardless of formal in-state residence status) in which the higher education institution is located and enrolls within three 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 (regardless of formal in-state residence status) in which the higher education institution is located and enrolls within three years of the servicemember’s death in the line of duty following a period of active duty service of 90 days or more.²

DATA SNAPSHOT: Post-9/11 GI Bill Utilization

More than one million veterans, servicemembers and family members have benefited from the Post-9/11 GI Bill since the program was launched in August 2009. Over \$30 billion has been distributed through tuition and other education-related payments to these individuals and the universities and colleges they attend.³

- ◆ 754,229 individuals received education benefits in 2013; a 17 percent increase over 2012 (646,302).
- ◆ \$10,159,780,620 was distributed for the benefits (2013).
- ◆ Top 10 states with beneficiaries: California, Texas, Florida, Virginia, Arizona, Georgia, New York, Colorado, Maryland and North Carolina; Range = 88,609 to 22,841 individuals.
- ◆ Range for all states = 88,609 (California) to 1,609 (Vermont).⁴

Students who are likely to be most affected by the Choice Act are newly discharged veterans planning to attend college in states where they last served on active duty but have not yet established residency. Students also will be impacted if they transfer to a postsecondary institution in another state and do not meet residency requirements. Dependents of veterans are another group that will be able to take advantage of the Choice Act in-state tuition opportunities and may not have been covered under some states' policies.

A more detailed description of the covered individuals is provided in a Veterans Affairs fact sheet that is included in the endnotes section.

Status of in-state tuition policies for student veterans and dependents

More than half of the states or their postsecondary systems have enacted policies that require or encourage institutions to offer in-state tuition rates to student veterans and often their dependents, and several states have pending legislation to provide this benefit.⁵ Many of the states and systems with policies on the books, however, will need to amend – in some cases significantly – to be in compliance with the Choice Act. The remaining states will have to craft legislation or board policies to meet the requirements. A state's approach to ensuring compliance with the Choice Act will depend, in part, on the involvement required by the legislature, state and system boards, and institutional governing bodies.

Examples of states that are addressing the Choice Act requirements

As more state and system leaders become fully aware of the Choice Act requirements and the sense of urgency becomes apparent, ECS anticipates that they will take steps to move toward compliance by the January 1, 2016, deadline. New Jersey, Oklahoma, South Dakota and Washington provide examples of states that are addressing the law's requirements, but through various means or from different starting points. The New Jersey and Oklahoma legislation would establish an in-state tuition policy for veterans and dependents, while Washington lawmakers are attempting to tweak existing statute. South Dakota's Board of Regents has taken a leadership role and drafted language to revise state statute in response to the Choice Act.

New Jersey

Proposed companion bills in New Jersey, *S.B. 849* and *A.B. 3967*, directly address the requirements of the Choice Act and would create a new policy to offer in-state tuition rates to veterans and their dependents. Under the legislation, a veteran or covered individual who is living in New Jersey and is attending a state public institution of higher education would be regarded as a resident for the purpose of determining tuition, regardless of their residence.

Oklahoma

While Oklahoma has allowed certain dependents of active duty military members to be eligible for in-state tuition rates, *S.B. 138* would extend these benefits to veterans and their dependents. Students would receive in-state tuition rates, regardless of their residency, if they are eligible for benefits under the Post-9/11 GI Bill or other federal laws authorizing veterans' educational benefits. Their spouses and dependent children also would be eligible for in-state residency status for tuition purposes.

DATA SNAPSHOT: Description of Federal Tuition and Fee Reimbursement Programs for Veterans and Dependents

Post-9/11 GI Bill

Under the program, full or partial costs for tuition, fees (including textbooks) and housing at four-year campuses, community colleges and other postsecondary institutions are paid directly to institutions or reimbursed to eligible Veterans and their dependents.

http://www.benefits.va.gov/gibill/higher_learning.asp

Montgomery GI Bill-Active Duty (MGIB-AD)

Active duty members of the military who enroll in the MGIB-AD program and pay \$100 per month for 12 months are entitled to receive a monthly education benefit once they complete a minimum service obligation.

http://www.benefits.va.gov/gibill/montgomery_bill.asp

Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship)

The scholarship program pays eligible dependents up to 36 months of the full level of the Post-9/11 GI Bill. This includes the tuition and fee payment, a housing allowance, and a books and supplies stipend. The scholarship is available for children and surviving spouses of servicemembers who died in the line of duty after September 10, 2001.

http://www.benefits.va.gov/GIBILL/Fry_scholarship.asp

South Dakota

In December 2014, the South Dakota Board of Regents approved [proposed legislative language](#) to revise existing statute during the 2015 session, which would bring the state into compliance with the Choice Act. The recommended language focuses primarily on the residency status for spouses or children of veterans that would allow them to qualify for in-state tuition rates and fees. In 2012, South Dakota passed legislation to exempt veterans from a 12-month residency requirement, which would not be permitted under the Choice Act.

Washington

Lawmakers in Washington have introduced legislation, [H.B. 5355](#), that would modify the definition of a resident student to comply with the federal Choice Act. The bill would define a resident student as a person who has separated from the military with honorable service after at least 90 days of active duty service, and who enters a higher education institution in Washington within three years of the date of separation. Existing [statute](#) requires at least two years of service to receive in-state tuition rates, places certain residency requirements for veterans and requires them to enroll in an institution within one year of the date of discharge. The proposed legislation also revises state statute to expand in-state tuition benefits to the spouses and dependents of veterans.

Key questions for state and postsecondary system leaders

The following questions are intended to help state and system leaders evaluate their existing, pending or newly drafted in-state tuition policies with respect to the Choice Act requirements.

Do in-state tuition and fee policies:

- ◆ **Cover all the eligible veterans and their dependents specified in the Choice Act?**

Under the Choice Act, qualifying veterans are eligible for in-state tuition rates and fees, as are their spouses (to include same-sex spouses) and children (biological, adopted, pre-adoptive and stepchildren of same-sex spouses). While over half of the states have taken steps to offer in-state tuition rates to veterans and active members of the military, the policies may not include their dependents, or at least not as required by the new federal law. Moreover, some of the policies that apply to veterans may impose restrictions or include provisions that would render them out of compliance. Most importantly, state, system or institutional in-state tuition policies should not exclude any of the covered individuals.

- ◆ **Apply to all public state institutions that accept Post-9/11 GI Bill and Montgomery GI Bill-Active Duty benefit payments?**

The Choice Act is clear that any public higher education institution that accepts payments under the two federal GI bills must offer in-state tuition rates and fees to qualifying veterans and dependents. In some instances, state policies explicitly or implicitly exclude particular postsecondary systems or campuses from offering in-state tuition rates to veterans. In a similar vein, a postsecondary system tuition policy might apply only to its institutions, while the state's other system has yet to craft an in-state tuition policy for veterans and dependents. In addition, institutions that are not part of a higher education system will have to ensure they are in compliance with the federal law.

- ◆ **Apply to the timeframe for qualified individuals to enroll in higher education institutions and receive in-state tuition rates?**

In general, eligible individuals can enroll at a postsecondary institution within three years of discharge from a period of active duty service of at least 90 days or of a servicemember's death in the line of duty under the Choice Act. Some state and system policies place limits on the time periods for which veterans or their dependents can take advantage of in-state tuition rates. For example, a state policy may indicate that eligibility for in-state tuition benefits expires one year after a veteran is discharged from active duty, or veterans must have been on active duty for a time period longer than 90 days before in-state tuition benefits are offered. In these cases, state or system policies will need to be adjusted to remain eligible for participation in the Choice Act covered education benefit programs.

- ◆ **Avoid residency requirements for individuals covered under the Choice Act that would prevent eligibility for in-state tuition rates?**

The Choice Act indicates that qualifying veterans and dependents are eligible for in-state tuition rates and fees regardless of their formal state of residency at the time of enrollment. The law does create an exception for education courses to be approved for reimbursement at institutions that require a covered individual to demonstrate intent to establish residency to receive in-state tuition. Some current policies, however, require individuals to previously have been residents of or have lived in the state to receive in-state tuition rates.

- ♦ ***Avoid requiring a waiting period before veterans or their dependents are eligible for in-state tuition rates?***

The federal law allows qualifying individuals to enroll at campuses and receive in-state tuition as soon as they become eligible. Under some existing state or system policies, veterans may have to wait a year after being discharged from active duty to be eligible for in-state tuition rates and fees or their dependents may face barriers to receiving tuition benefits within the timeframe specified by the Choice Act.

Roles for state, postsecondary system and institutional leaders

State, postsecondary system and institutional leaders should review the requirements of the Choice Act and determine whether they will have to revise their existing or pending in-state tuition policies or draft new policies to be in compliance with federal law.

For their part, states must ensure all public postsecondary institutions that accept funding under the two Department of Veterans Affairs programs charge in-state tuition and fees to the covered individuals by the January 2016 deadline. The VA recommends that, “to ensure compliance, states should consider offering in-state tuition and fees to all individuals eligible for benefits under the Post-9/11 and MGIB-AD programs.”⁶

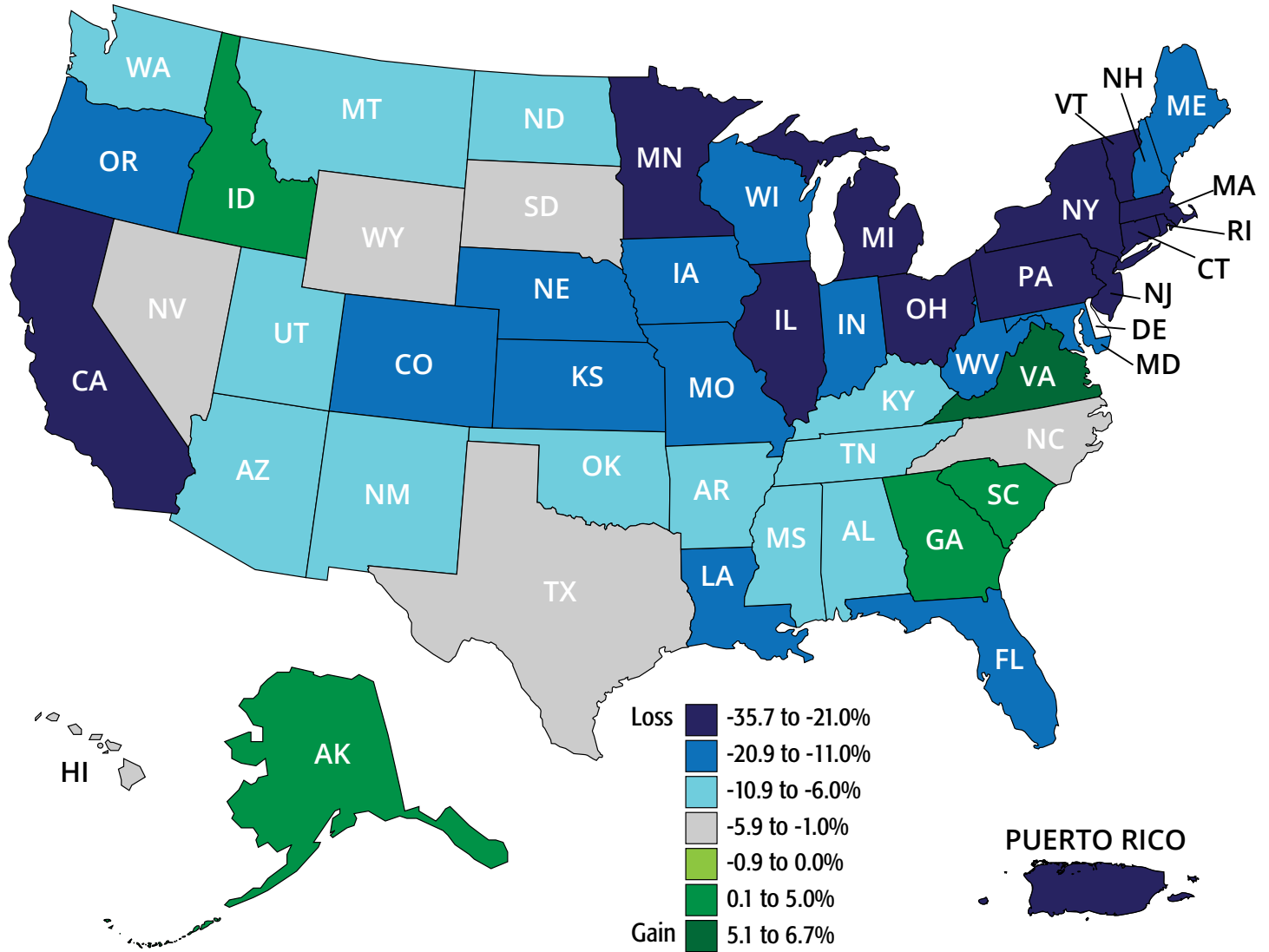
Well before the January deadline, state policymakers and higher education agencies should clearly communicate the Choice Act requirements and provide necessary guidance to system and institutional leaders and staff.

Higher education systems and institutions must be in full compliance with the Choice Act by January 2016 before the VA will issue payments under the Post-9/11 GI Bill and the MGIB-AD programs. The agency will begin making payments for terms, quarters or semesters that begin on or after the date that the institution’s policy takes effect. System and institutional leaders also should ensure that all current and future student veterans and their dependents are aware of and can easily take advantage of the in-state tuition benefits, if they are eligible.

While state and education leaders have an incentive to ensure their policies meet the requirements under the Choice Act of 2014, the law also offers a potential avenue to expand educational opportunities for the nation’s veterans and their families, and to help achieve a state’s college attainment and economic development goals.

Percent Change in Veteran Population by State

The total veteran population decreased 17% between 2000 and 2014



Source: U.S. Department of Veterans Affairs, Table 6L: "Percent Change in Veteran Population by State" (Washington, D.C., October 2014), http://www.va.gov/vetdata/docs/Maps/VetPop11_PercentChange2000_2014.pdf.

ENDNOTES

- 1 U.S. Department of Veterans Affairs, *Veterans Access, Choice and Accountability Act of 2014*: Section 702 of the Choice Act (Washington, D.C.) http://www.benefits.va.gov/GIBILL/docs/factsheets/Section_702_Factsheet.pdf.
- 2 Ibid.
- 3 U.S. Department of Veterans Affairs, *One Million Now Benefit from Post-9/11 GI Bill* (Washington, D.C.: U.S. Department of Veterans Affairs, November 8, 2013), <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2490>.
- 4 U.S. Department of Veterans Affairs, *Benefits for Veterans Education* (Washington, D.C.: U.S. Department of Veterans Affairs, September 2014), <http://www.benefits.va.gov/REPORTS/abr/ABR-Education-FY13-09262014.pdf>.
- 5 Education Commission of the States, *State Policy Database—Postsecondary Students—Military* (Denver, CO: Education Commission of the States, January 2015) <http://b5.caspio.com/dp.asp?AppKey=b7f93000695b3d0d5abb4b68bd14&id=a0y70000000yLmYAAU>.
- 6 Ibid. Access, *Choice and Accountability Act of 2014*: Section 702 of the Choice Act.

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