

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions.

- (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.
- (2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.
- (3) "Authority" is defined by KRS 164.740(1).
- (4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.
- (5) "Correspondence course" means a home study course that:
 - (a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution; and
 - (b) Meets the following requirements:
 1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;
 2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and
 3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course.
- (6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.
- (7) "Educational institution" means a participating institution located in Kentucky which:
 - (a) Offers an eligible program of study;
 - (b) As a condition of enrollment as a regular student, requires that the person:
 1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or
 2.
 - a. Be beyond the age of compulsory attendance in Kentucky; and
 - b. Have the ability to benefit from the training offered by the institution;
 - (c) Either:

1. Has its headquarters or main campus in Kentucky; or
 2. If based outside of Kentucky, offers no more than forty-nine (49) percent of the courses offered in Kentucky as online courses; and
- (d)
1. For purposes of the College Access Program, is a public or private participating institution; or
 2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.
- (8) "Eligible institution" is defined by KRS 164.740(4).
- (9) "Eligible noncitizen" means an individual who is:
- (a) Either:
1. A U.S. national;
 2. A U.S. permanent resident with an Alien Registration Receipt Card (I-151 or I-551); or
 3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:
 - a. "Refugee";
 - b. "Asylum granted";
 - c. "Indefinite parole" or "humanitarian parole"; or
 - d. "Cuban-Haitian entrant"; ~~or~~ ~~and~~
4. A citizen of:
- a. The Freely Associated States;
 - b. The Federated States of Micronesia;
 - c. The Republic of Palau; or
 - d. The Republic of the Marshall Islands; and
- (b) Not in the United States on a:
1. F1 or F2 student visa;
 2. J1 or J2 exchange visa; ~~or~~
 3. G series visa; ~~or~~ ~~and~~
 4. Deferred Action for Childhood Arrivals (DACA) status.
- (10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years' duration, offered by an educational institution which:
- (a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or
- (b) For purposes of only the CAP Grant Program:
1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; or
 2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education.
- (11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.
- (12) "Federal act" is defined by KRS 164.740(8) and means 20 U.S.C. 1001 through 1146a.
- (13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:
- (a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;
2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours, but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;
3. Twenty-four (24) clock hours per week for an educational program using clock hours;
4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):
 - a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or
 - b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24), the number of quarter hours per academic year divided by thirty-six (36), and the number of clock hours per week divided by twenty-four (24);
5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or
6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(9).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;
2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and
3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:
 - a. 200 percent for a student enrolled in a two (2) year eligible program of study; or

- b. 400 percent for a student enrolled in a four (4) year eligible program of study.
- (18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.
- (19) "On-ground course" means a course that meets the following criteria:
- (a) Instruction is delivered face-to-face, typically in a lecture-style format, in a setting in which the student and the instructor are in the same physical location on the educational institution's campus; and
 - (b) Is not an online course.
- (20) "Online course" means a course for which any portion of the instruction is transmitted electronically over telecommunication lines or the Internet.
- (21) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.
- (22) "Participating institution" is defined in KRS 164.740(14).
- (23) "Part-time student" means an enrolled student who is carrying an academic workload:
- (a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and
 - (b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:
 - 1. At least six (6) semester hours per semester;
 - 2. Six (6) quarter hours per quarter; or
 - 3. Half of the academic workload of a full-time student as determined by the educational institution.
- (24) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.
- (25) "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be a resident of Kentucky in accordance with the criteria established in 13 KAR 2:045.
- (26) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

CATHE DYKSTRA, Chair KHEAA Board

APPROVED BY AGENCY: October 13, 2022

FILED WITH LRC: November 7, 2022 at 1:40 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, January 26, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation defines terms used in the administration of the College Access Program and Kentucky Tuition Grant programs.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary in order to comply with KRS 164.753(4), which requires the Authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by ensuring that those terms applicable to the KHEAA-administered grant programs are referenced accurately.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by defining those terms pertinent to the KHEAA-administered grant programs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment will change the existing administrative regulation by adding four (4) new categories of non-citizens to the eligibility list for the grant programs administered by KHEAA. It will also add one (1) category of non-citizens to the ineligibility list. These changes are to be consistent with the federal Pell grant eligibility criteria.

(b) The necessity of the amendment to this administrative regulation:

This amendment to the administrative regulation is necessary in order to bring the state grant non-citizen eligibility groups into alignment with the federal Pell grant provisions.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.780 authorizes the Authority to provide grants to assist financially needy undergraduate students to attend educational institutions in Kentucky. This amendment conforms to the content of the authorizing statutes by ensuring that relevant terms applicable to the KHEAA grant programs are accurately defined within the regulation.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will assist in the effective administration of the statutes by ensuring that the definitions of those terms relevant to the KHEAA grant programs are complete and accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

For the 2021-22 academic year, KTG offers were made to 35,125 students. Of those offers, 13,730 students received awards. For the same period, CAP offers were made to 89,315 students. Of those offers, 53,956 students received awards.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The revised definitions contained in the amendment will be applicable to the above-referenced groups.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Four (4) new categories of non-citizens will now be eligible for a grant award while one (1) new categories of non-citizens will specifically be excluded from eligibility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Four (4) new categories of non-citizens will now be eligible for a grant award while one (1) new categories of non-citizens will specifically be excluded from eligibility.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no cost to implement this amended administrative regulation.

(b) On a continuing basis:

Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain

regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 164.748(4), 164.753(4).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year?

No additional costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years?

No additional costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The regulated entities – applicants for KHEAA grant awards - will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Same as 4a above.

(c) How much will it cost the regulated entities for the first year?

The regulated entities – applicants for KHEAA grant awards – will incur no costs for the first year in which this administrative regulation is in effect.

(d) How much will it cost the regulated entities for subsequent years?

Same as 4c above.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

“Major economic impact” means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact on the Authority or regulated entities.