



State of Wisconsin
Higher Educational Aids Board

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Scott Walker
Governor

John Reinemann
Executive Secretary

Notice of Proposed Rule-Making Without Public Hearing

Higher Educational Aids Board

October 19, 2012

The Wisconsin Higher Educational Aids Board (HEAB) proposes an order to amend The Wisconsin Higher Educational Aids Board proposes an order to amend HEA 5.04 Talent Incentive Grant Eligibility (2) relating to the Wisconsin Talent Incentive Grant.

Pursuant to s. 227.16 (2) (b), Stats., a public hearing is not required as the proposed amendment brings the existing rule into conformity with a statute.

The scope statement for this rule, SS 019-12, was approved by the Governor on December 2, 2011, published in Register No. 676 on April 14, 2012, and approved by the Executive Secretary of the Higher Educational Aids Board on May 25, 2012.

Analysis Prepared by the Wisconsin Higher Educational Aids Board

Statutes interpreted: s. 39.435(2), Stats.

Statutory authority: s. 39.28 (1), Stats.

Explanation of agency authority: Section 39.28 (1) The board shall administer the programs under this subchapter and may promulgate such rules as are necessary to carry out its functions.

Section 39.435(2) The board shall award Talent Incentive Grants to uniquely needy students enrolled at least half-time as first-time freshmen at public and private nonprofit institutions located in this state and to sophomores, juniors and seniors who received such grants as freshmen. No grant under this subsection may exceed \$1,800 for any academic year. The board may not award a grant to the same student for more than 10 consecutive semesters or their equivalent. The board shall promulgate rules establishing eligibility criteria for grants under this subsection.

Related rule: Chapter HEA 5.04, Wis. Adm. Code, provides eligibility requirements for Talent Incentive Grants. Section 2 of HEA 5.04 provides “Non-traditional student status criteria”.

Plain language analysis: This proposed rule removes from HEA 5.04 the first item (item a) in Section 2 of the rule, which states an eligibility requirement for the Talent Incentive Grant. Item a reads, “The student is a member of one of the minority groups defined in s. 39.44 (1) (a), Stats.”

Summary of, and comparison with, existing or proposed federal regulation: Federal law, Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 CFR Part 100, prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.

The change being sought is proposed at the request of the United States Department of Education – Office for Civil Rights, which notified HEAB in December 2008 that HEA 5.04 is not compliant with Title VI of the Civil Rights Act of 1964. The nature of the noncompliance is based in the lack of justification within HEA 5.04 for use of race and national origin as criteria for determining eligibility for the Talent Incentive Program (TIP).

(This notification resulted from a complaint filed with the Office of Civil Rights in September 2006. The nature of the complaint is that HEA 5.04 discriminates against non-minority students on the basis of race, by denying them an equal opportunity to participate in a financial aid program.)

After discussions with the Office of Civil Rights, HEAB achieved a resolution with the Office of Civil Rights by agreeing to eliminate the use of the race element in its non-traditional student status criteria, beginning in the 2010-2011 school year. The remaining criteria in HEA 5.04 remain in force, allowing the agency to administer the program. In addition, at the suggestion of the Office of Civil Rights, HEAB made changes to its forms, publications and web site which reflected the change in criteria. As an interim measure, HEAB also required that TIP applications submitted for TIP in the 2010-2011 school year include indication of one of the remaining criteria of disadvantage found in HEA 5.04. Finally, HEAB began the process of seeking the change now proposed to HEA 5.04, obtaining a signed statement of scope for the proposed change from the Governor in December 2011.

HEAB submitted documentation of its steps to the Office of Civil Rights and was notified in April 2012 that it is in compliance with the Title VI regulation cited in the complaint of September 2006.

Comparison with rules in adjacent states: The change being sought is proposed at the request of the United States Department of Education – Office for Civil Rights. Because the US Department of Education is a national agency, the standard that is driving the change to HEA 5.04 is applied nationally. The proposed change to the rule is in keeping with HEAB's effort to make its own administrative rules comply with federal law.

All the states adjacent to Wisconsin offer need-based grants or scholarships to post-secondary students, as does Wisconsin; each adjacent state has a program that compares to the Wisconsin Higher Education Grant (WHEG) and the Wisconsin Tuition Grant (WTG) as purely need-based grants.

Like its WHEG and WTG programs, Wisconsin's TIP program offers assistance to students based in part on financial need. The financial-need portion of the TIP program is not at issue and no changes to its criteria are being sought in this proposed rule change.

However, Wisconsin's TIP program also requires students to meet one criteria from a list of non-traditional (non-financial) student classifications that indicate potential disadvantage facing the student in pursuit of higher education. The non-traditional or non-financial criteria for qualifying for TIP could be a handicap, a shortfall in educational preparation, incarceration in (or recent release from) a correctional institution, a lack of family history of higher education, or an environment or academic background that deters the pursuit of educational plans.

Two of the states adjacent to Wisconsin do offer assistance to students based on potential disadvantages that go beyond simple financial need.

- Iowa offers an “All Iowa Opportunity Foster Care Grant” for students between the ages of 17-24 who age out of Iowa's foster care system or State Training School and students who are adopted after age 16.
- Michigan offers a “Tuition Incentive Program” or TIP that encourages eligible students to complete high school by providing tuition assistance for the first two years of college and beyond; eligibility requires a history of eligibility for Medicaid. Michigan has also created federally-funded GEAR UP scholarship programs exclusively for qualifying graduates of high schools in three specific urban school districts (Detroit, Flint and Muskegon).

None of the states adjacent to Wisconsin employ race or ethnic minority status as a criteria or consideration for any of their educational-assistance programs, including those programs listed above.

In addition to the programs listed above, Wisconsin, Minnesota, and Michigan all offer scholarships or tuition waivers for students who are of at least ¼ American Indian ancestries. In each state, these programs are distinct from the above-listed programs and eligibility for the American Indian scholarships and tuition waivers depends upon a student's status as an enrolled member of a federally-recognized tribe or band. These programs are therefore not directly comparable to Wisconsin's TIP program; further, Wisconsin's Indian Student Assistance program is separate from TIP (and is not subject to the rule being proposed for change).

Summary of factual data and analytical methodologies: The change being sought was arrived at as part of a series of administrative steps taken by HEAB in consultation with the US Department of Education, Office of Civil Rights.

HEAB has determined that neither eligible nor participating students would be appreciably affected by this proposed change. HEAB arrived at this determination through review of the criteria for the TIP program, and a comparison of demographic data of TIP participants and of successive classes of TIP students over several years.

Analysis and supporting documents used to determine effect on small business: HEAB anticipates no appreciable effect on small businesses as a result of this proposed change.

Anticipated costs incurred by private sector: This proposed rule does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed rule does not have a significant effect on small business.

Agency Contact Person: John Reinemann, Executive Secretary, Wisconsin Higher Educational Aids Board, 131 West Wilson Street, Suite 902, Box 7885, Madison WI 53707-7885, telephone 608-267-2206, email john.reinemann@wi.gov

Place Where Comments are to be Submitted and Deadline for Submission: A public hearing and notice are not required under s. 227.16 (2) (b), Stats., however, written comments may be submitted by **4:00 pm on December 7, 2012** to John Reinemann at the Wisconsin Higher Educational Aids Board, 131 West Wilson Street, Suite 902, Box 7885, Madison WI 53707-7885, or by email to john.reinemann@wi.gov with a subject line of HEA 5.04.

Effective Date: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Final Regulatory Flexibility Analysis: Not Applicable.

Fiscal Estimate: Attached.

Text of Rule:

SECTION 1. HEA 5.04 is amended to read:

HEA 5.04 Talent incentive grant eligibility. To be eligible for an initial grant award, a uniquely needy student shall be a Wisconsin resident, a first-time freshman and meet at least one criterion under sub. (1) and one criterion under sub. (2). The minimum award a freshman can receive will be \$600 with the maximum being \$1,800.

(1) FINANCIAL NEED CRITERIA.

(a) A dependent student whose expected academic year parent contribution is \$200 or less, or an independent student whose academic year contribution is \$200 or less.

(b) The family of a dependent student or the student, if independent, is receiving Temporary Assistance for Needy Families or Wisconsin Works benefits.

(c) The parents of dependent students or the student, if independent, are ineligible for unemployment compensation and have no current income from employment.

(2) NON-TRADITIONAL STUDENT STATUS CRITERIA.

~~**(a)** The student is a member of one of the minority groups defined in s. 39.44 (1) (a), Stats.~~

(b) (a) The student is or will be enrolled in a special academic support program due to insufficient academic preparation.

~~**(c)**~~ **(b)** The student is a first-generation post-secondary student, neither of whose parents graduated from a 4 year college or university.

~~**(d)**~~ **(c)** The student is handicapped according to department of workforce development, division of vocational rehabilitation records or according to the Special Needs or Disabilities Office on Wisconsin college or university campuses which use the Americans with Disabilities Act definition under 42 USC 12102 (2).

~~**(e)**~~ **(d)** The student is currently or was formerly incarcerated in a correctional institution.

~~**(f)**~~ **(e)** The student's environment or academic background is such that it deters the pursuit of educational plans.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

HIGHER EDUCATIONAL AIDS BOARD

Dated: _____ By: _____

John Reinemann
Executive Secretary