



TENNESSEE BOARD OF REGENTS

Office of General Counsel

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To: Student Affairs, Academic Affairs, & Faculty Affairs

From: Mary G. Moody
General Counsel

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Date: 8/14/2015

RE: Guidance Re: Eligibility Verification for Entitlements Act (EVEA)

The Tennessee Eligibility Verification for Entitlements Act ("EVEA" or "the Act") requires state public institutions of higher education to verify that persons seeking a "state public benefit" are either a "United States citizen", a "qualified alien", or otherwise "lawfully present" in the United States. This memorandum updates and replaces all previously issued guidance for compliance with the requirements of the EVEA, based on field experience, differences in law/practices outside Tennessee, and refined understanding regarding the appearance of certain DHS issued documents. While there are some changes, it is not expected that TBR institutions will be required to alter their compliance procedures in any significant way as a result of this updated guidance document.

WHO IS COVERED BY THE EVEA'S VERIFICATION REQUIREMENTS?

The Act requires TBR institutions to verify that all students seeking "state benefits" are eligible to receive such benefits. The term "state benefit" includes in-state tuition, lottery scholarships, academic scholarships, common market, or any other form of tuition assistance or waiver supported **with funds from a Tennessee government entity**. The term "state benefit" does not include tuition assistance funded privately, such as a scholarship from the institution's foundation or a privately endowed scholarship.

HOW TO VERIFY APPLICANTS AS U.S. CITIZENS, QUALIFIED ALIENS, OR LAWFULLY PRESENT?

Students Excluded From the EVEA Process

Your institution does **not** have to verify the citizenship or lawful presence of students who:

- Are under 18 years of age **and** have not graduated from high school **and** are applying as dual enrollment students, joint enrollment students, or academically talented/gifted students.

- Have **not** applied to receive in-state tuition, or a scholarship, grant, loans, tuition or fee waiver, or other financial assistance which is subsidized or paid in whole or in part with state funds.

- Are employed by the institution and have had their lawful presence verified through the federal E-Verify program or have completed a valid I-9.

- Have had their lawful presence verified through the federal Student and Exchange Visitor Information System (SEVIS) (e.g., M-1 and F-1 Student Visa Holders)

Verification Procedures

For all other students seeking a "state benefit", U.S. citizenship, qualified alien status, or lawful presence shall be verified in one of the following ways:

1. Completing a Free Application for Federal Student Aid (FAFSA) form for which the student's U. S. citizenship or eligible non-citizenship status is confirmed by the federal government.
2. Presenting a valid regular Tennessee driver license or Identification (ID Only) License. **A Temporary Driver TN License, Temporary Identification License, or Out of State License is NOT acceptable.**
3. Presenting a valid, unexpired, Permanent Resident Card (Form I-551) with ID picture;
4. A valid, unexpired, U.S. passport;
5. A certificate of citizenship (N560 or N561);
6. A certificate of naturalization (N550, N570, or N578);
7. A U.S. citizen identification card (I-197, I-179);
8. Valid, unexpired Foreign Passport with visa stamped "Processed for I-551";
9. Non-Resident Alien Canadian Border Crossing Card;
10. Permanent Resident Re-Entry Permit (I-327);
11. Refugee Travel Document (I-571);
12. Valid, unexpired Foreign Passport with valid visa in a category that permits study at an institution of higher education (see attached chart);
13. Any other document determined by the U.S. Department of Homeland Security to be acceptable through the Systematic Alien Verification for Entitlements (SAVE) program created pursuant to the federal Immigration Reform and Control Act of 1986.

OR

One of the following documents together with a valid, government issued picture ID including a regular driver license, temporary driver license, government issued DL/ID card from any U.S. state, Employment Authorization Document (Form I-766);

1. Valid, unexpired Permanent Resident Card (Form I-551) without ID picture;
2. An official birth certificate issued by a U.S. state, jurisdiction, or territory; except for Puerto Rican birth certificates issued before July 1, 2010;
3. A U.S. government-issued certified birth certificate;
4. A U.S. certificate of birth abroad (DS-1350 or FS-545);
5. A reprint of birth abroad of a citizen of the U. S. (FS-240);
6. Arrival/Departure Record (Form I-94);
7. Notice of Approval of Status with bottom I-94 portion attached (Form I-797)

If a student who has claimed to be a qualified alien or otherwise lawfully present in the United States is unable to present the documents or a combination of documents as described above, establishing support her/his claim, then your institution shall verify the student's lawful presence through the SAVE program before approving the award of any "state benefit". More information on the SAVE program can be found at www.uscis.gov/SAVE.

Finally, regardless of documentation presented, TBR institutions should contact assigned legal counsel before taking action on an application for "state benefits", if they have actual knowledge that an applicant is not a "qualified alien" or otherwise not "lawfully present".

WHEN IS THE DOCUMENTATION SUBMITTED BY A STUDENT CONSIDERED SUFFICIENT TO ESTABLISH THAT U.S. CITIZENSHIP, QUALIFIED ALIEN STATUS, OR LAWFUL PRESENCE HAS BEEN VERIFIED?

Submission of the Citizenship-Confirmed FAFSA or receipt of other documentation listed above shall be presumed to be proof of a student's eligibility. An institution shall not delay award of benefits based only on pendency of final verification.

WHAT IF A STUDENT'S U.S. CITIZENSHIP, QUALIFIED ALIEN STATUS, OR LAWFUL PRESENCE CANNOT BE VERIFIED?

Upon receipt of a final verification that indicates a student who is receiving state benefits is not a US Citizen, qualified alien, or lawfully present, an institution must:

1. Terminate any recurring state funded benefit, **and**
2. Notify the Office of the General Counsel or your University Counsel in writing if your institution has a good faith belief that either:
 - a. An applicant has knowingly and willfully made a false, fictitious, or fraudulent statement or representation concerning his/her citizenship or lawful presence on the United States; or
 - b. A person has conspired to defraud the institution by securing a false claim allowed or paid to an applicant.

A complaint will be filed with the Tennessee Attorney General and with the United States Attorney, as required by the EVEA.

WHAT DOCUMENT RETENTION REQUIREMENTS DOES THE EVEA IMPOSE?

Your institution shall retain a copy of all documentation submitted by a student for verification for at least as long as applications for in-state tuition or financial aid are kept.

WHAT OTHER CHANGES ARE MANDATED BY THE EVEA?

Language must be added to all applications for in-state tuition (e.g., admissions applications for institutions that do not have a separate application for in-state tuition) and any applications for scholarships, grants, loans, tuition or fee waivers, or other financial assistance which are subsidized or paid in whole or in part with state funds, except for employment applications containing the applicant's attestation that he or she is a United States citizen or an alien lawfully present in the United States.

The following language is provided to be added to the electronic application for admission:

I understand that withholding information requested on this application, including attendance at any other institution, or giving false information may make me ineligible for admission to the university or subject to dismissal. I have read this application and certify that the statements I have made on this application

are correct and complete, including a report of all college work attempted or completed.

In addition to the forgoing, the Tennessee Eligibility Verification for Entitlements Act requires an applicant for in-state tuition or state financial aid to attest under penalty of perjury that he or she is either a United States citizen or alien lawfully present in the United States. By submitting this application, I am attesting that I am either a United States citizen or alien lawfully present in the United States or I am not requesting any state benefits including in-state tuition.

I understand that this attestation is required by Tennessee law if I have applied for a state public benefit. I understand that Tennessee law requires me to provide documentation verifying the status indicated above prior to receipt of this state public benefit. I understand that knowingly and willfully making a false, fictitious, or fraudulent statement or representation shall subject me to liability under the Tennessee False Claims Act, Tennessee Code Annotated 4-18-101 et seq. I understand that if I am found to have made a false or misleading statement my admission may be rescinded or I may be disciplined by the college.

The following language may be used for applications for other state benefits not covered by the application for admission:

The Tennessee Eligibility Verification for Entitlements Act requires an applicant for state financial aid to complete and sign the following statement:

I, _____, swear or affirm under penalty of perjury under the laws of the state of Tennessee that: (check one)

I am a United States citizen; or

I am an alien lawfully present in the United States Upon admission to _____, and subsequent issuance of Form I-20 by that institution, I will apply for a visa to enter the U.S. in F-1 or J-1 status. If my application for a visa is granted, I will be lawfully present in the United States.

I understand that this statement is required by Tennessee law because I have applied for a public benefit. I understand that Tennessee law requires me to provide documentation verifying the status indicated above prior to receipt of this public benefit. I

understand that knowingly and willfully making a false, fictitious, or fraudulent statement or representation shall subject me to liability under the Tennessee False Claims Act, Tennessee Code Annotated 4-18-101 et seq. I understand that if I am found to have made a false or misleading statement my admission may be rescinded or I may be disciplined by [Insert College or University Name].

Signature

Date

HOW WILL STUDENTS BE ADVISED OF THE EVEA REQUIREMENTS?

This memorandum does not address how your institution should communicate the EVEA's requirements to applicants. This decision is to be made by each TBR institution. Your institution may want to add language to the application concerning the specific documentation a student is required to provide to verify the legal status the student indicated on the application, how to send the documentation, to whom to send the documentation, and/or by when the documentation must be received by the institution.

HOW DOES THE "DEFERRED ACTION FOR CHILDHOOD ARRIVALS" AFFECT THE EVEA?

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and who meet several key requirements may request deferral of any action to deport them for a period of two years, subject to renewal ("DACA"). Those who are granted "deferred action" status are eligible for work authorization. They can also obtain social security cards, work authorization cards and, in some states, driver licenses. This deferred action status does NOT confer "lawful presence" status" under federal law or Tennessee state law. Specifically, "deferred action status" does NOT satisfy the requirement of "lawful presence" under the EVEA.

Driver licenses, photo identification cards or work authorization cards issued on the basis of an individual's deferred action status are NOT sufficient to satisfy EVEA requirements. Tennessee grants Temporary Driver Licenses and Temporary Identification Licenses to persons in deferred action status. Those licenses, by themselves, do NOT satisfy EVEA requirements because they are not supported by adequate documentation to establish lawful presence.

In short, students in "deferred action" status are NOT "qualified aliens" or "lawfully present" and DO NOT qualify for any state benefits, including in-state tuition.

DOES THE EVEA APPLY TO NON-DEGREE SEEKING STUDENTS?

The EVEA requires TBR institutions to verify the U.S. citizenship or lawful presence of students who have applied for in-state tuition, a lottery scholarship, an academic scholarship, common market, or any other form of tuition assistance or state benefit.

Any non-degree seeking student who applies for any such state benefit in conjunction with their attendance at a TBR institution will be subject to the requirements of the EVEA.

Aliens with Visas that Allow them to Domicile in the United State

In addition to U.S. citizens and permanent residents, certain non-immigrants who hold visas from particular categories are eligible to establish domicile in the U.S. and in Tennessee, and thus become eligible for in-state tuition rates. In the table that follows, a “Yes” in the third column indicates a visa classification that is eligible to establish a domicile in the US. Such persons are eligible for in-state tuition upon proof that they have initiated proceedings to become a permanent resident or become naturalized, thus establishing the intent to remain permanently in the U.S., coupled with standard evidence of “domicile”.

Visa Type	Appendix 2 Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
A-1	Ambassadors, public ministers or career diplomats and their immediate family members	Yes
A-2	Other accredited officials or employees of foreign governments and their immediate family members	Yes
A-3	Personal attendants, servants or employees and their immediate family members of A-1 and A-2 visa holders	Yes
B-1	Business Visitors	No
B-2	Tourist Visitors. Tourists from certain countries are permitted to come to the U.S. without B-2 visa under the visa waiver program	No
C-1	Non-diplomatic foreign travelers in immediate and continuous transit through the United States	No
C-2	Aliens in transit to and from United Nations Headquarters District	No
C-3	Alien diplomats in transit through the United States	No
D-1	Crewmen who need to land temporarily in the United States and who will depart aboard the same ship or plane on which they arrived	No
E-1	Treaty traders	Yes
E-2	Treaty investors	Yes
F-1	Academic or language students	No
F-2	Immediate family members of F-1 visa holders	No
G-1	Designated principal resident representatives of foreign governments coming to the United States to work for an international organization, their staff members and immediate family members	Yes
G-2	Other accredited representatives of foreign governments coming to the United States to work for an international organization and their immediate family members	Yes
G-3	Representatives of foreign governments, and their immediate family members who would ordinarily qualify for G-1 or G-2	Yes

	visas except that their governments are not members of an international organization	
G-4	Officers or employees of international organizations and their immediate family members	Yes
G-5	Attendants, servants and personal employees of G-1 through G-4 visa holders and their immediate family members.	Yes
H-1B	Persons working in specialty occupations requiring at least a bachelor's degree or its equivalent in on-the-job experience, and distinguished fashion models	Yes
H-1C	Permits temporary entry and employment as an RN (category currently expired)	N/A
H-2A	Temporary agricultural workers coming to the United States to fill positions for which a temporary shortage of American workers has been recognized by the United States Department of Agriculture	No
H-2B	Temporary workers of various kinds coming to the United States to perform temporary jobs for which there is a shortage or available qualified American workers	No
H-3	Temporary Trainees	No
H-4	Immediate family members of H-1, H-2 or H-3 visa holders	H-4 dependents of H-1B Yes, all other H-4 dependents, No
I	Bona fide representatives of the foreign press coming to the United States to work solely in that capacity and their immediate family members	Yes
J-1	Exchange visitors coming to the U.S. to study, work or train as part of an exchange program officially recognized by the United States Information Agency.	No
J-2	Immediate family member of J-1 visa holders	No
K-1	Fiancée of U.S. citizens coming to the United States for the purpose of getting married	Yes
K-2	Spouse of a U.S. citizen	Yes
K-3	Minor, unmarried children of K-1 visa holders	Yes
K-4	Child of a U.S. citizen	Yes
L-1 L1-a L1-b	Intra-company transferees who work in positions as managers, executives of persons with specialized knowledge	Yes
L-2	Immediate family member of L-1 visa holders	Yes
M-1	Vocational or other nonacademic students, other than language students	No
M-2	Immediate families of M-1 visa holders	No
N	Children of certain special immigrants	No
NATO 1,2,3,4,5	Associates coming to the United States under applicable provisions of the NATO Treaty and their immediate family members	Section 54.057 designates these individuals as

		residents for tuition purposes
NATO 6	Members of civilian components accompanying military forces on missions authorized under the NATO Treaty and their immediate family members	Yes
NATO 7	Attendants, servants or personal employees of NATO-1 through NATO-6 visa holders and their immediate family members	Yes
O-1	Persons of extraordinary ability in the sciences, arts, education, business or athletics	Yes
O-2	Essential support staff of O-1 visa holders	No
O-3	Immediate family members of O-1 and O-2 visa holders	O-3 dependents of O-1 holders Yes; O-3 dependents of O-2 holders, No
P-1	Internationally recognized athletes and entertainers and their essential support staff	Yes
P-2	Entertainers coming to perform in the United States through a government-recognized exchange program	Yes
P-3	Artists and entertainers coming to the United States in a group for the purpose of presenting culturally unique performances	Yes
P-4	Immediate family members of P-1, P-2 and P-3 visa holders	Yes
Q-1	Exchange visitors coming to the United States to participate in international cultural-exchange programs	No
Q-2 & Q-3	Immediate family members of Q-1 visa holders	No
R-1	Ministers and other workers of recognized religions	Yes
R-2	Immediate family member of R-1 visa holders	Yes
S-5	People coming to the United States to supply critical information to federal or state authorities where it has been determined that their presence in the United States is essential to the success of a criminal investigation	No
S-6	People coming to the United States to provide critical information to federal authorities or court regarding a terrorist organization or operation, who will be in danger as a result of providing such information, and are eligible to receive a reward for the information	No
S-7	Immediate family members of S-1 or S-2 visa holders	No
T-1	Victims of international (human) trafficking	Yes
T-2, T-3, & T-4	Dependents of victims of international (human) trafficking	Yes
TC	Professional under the Free Trade Agreement. Available only to Canadians under the Free Trade Agreement, prior to the passage of the North Atlantic Free Trade Agreement	No
TN	Professional under the North American Free Trade Agreement. Is available only to citizens of Mexico and	No

	Canada. Professional under the North American Free Trade Agreement. Is available only to citizens of Mexico and Canada. Under the North American Free Trade Agreement a citizen of a NAFTA country may work in a professional occupation in another NAFTA country.	
TD	Dependents of Professionals here under the North American Free Trade Agreement. Is available only to citizens of Mexico and Canada. Professional under the North American Free Trade Agreement. Is available only to citizens of Mexico and Canada. Under the North American Free Trade Agreement a citizen of a NAFTA country may work in a professional occupation in another NAFTA country.	No
U-1	Alien suffering substantial physical/mental harm as victim of certain enumerated crime(s) and has been helpful to Fed/State/local law enforcement, prosecutor, or judge.	No
U-2	Spouse of U-1	No
U-3	Child of U-1	No
U-4	Parent of U-1	No
U-5	Sibling of U-1	No
V	Spouse or minor child of a legal permanent resident or US citizen whose application for permanent resident is part of the massive backlog of immigration work	Yes