

“Choice Act” Frequently Asked Questions (FAQ)

Section 702 of the Veterans Access, Choice, and Accountability Act of 2014, 38 USC 3679(c) (the Choice Act), requires that the U.S. Department of Veterans Affairs (VA) disapprove and withhold funding under programs of education under the Post-9/11 GI Bill (Chapter 33) and Montgomery GI Bill (Chapter 30) at a public institution of higher learning (IHL) if the institution charges qualifying Veterans and other eligible individuals (“covered individuals”) tuition and fees in excess of the rate charged to resident students. On June 23, 2015, Senate Bill 478 was enacted to conform North Carolina law with the Choice Act, thereby creating North Carolina General Statute § 116-143.3A, which, on July 9, 2015, the VA certified as being compliant with the Choice Act.

Q1: Who is a “covered individual” under Section 702 of the Choice Act?

A1: (1) A *veteran*¹ using Chapter 33 or 30 GI Bill benefits, living in the state in which he or she is pursuing a course of education at an IHL (regardless of his/her formal state of residence²), and who enrolls in an IHL within three years of discharge from a period of active duty service of 90 days or more.

(2) Anyone using transferred GI Bill benefits living in the state in which he or she is pursuing a course of education at an IHL (regardless of his/her formal state of residence), and who enrolls in an IHL within three years of the transferor’s discharge from a period of active duty service of 90 days or more.

(3) Anyone using benefits under the Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) to pursue a course of education at an IHL, who lives in the state in which the IHL is located (regardless of his/her formal state of residence) and who enrolls in an IHL within three years of the service member’s death in the line of duty following a period of active duty service of 90 days or more.

¹ N.C.G.S. § 116-143.3A(a)(3) defines “veteran” as a person “who has served active duty for not less than 90 days in the Armed Forces, the Commissioned Corps of the U.S. Public Health Service, or the National Oceanic and Atmospheric Administration and who was discharged or released from such service under conditions other than dishonorable.” This definition covers the groups defined in Section 702.

² “Formal state of residence” for “covered individuals” may be the veteran’s home of record, state of legal residence as reported on federal form DD 2058, and/or last permanent duty station while on active duty. For “formal state of residence” also includes their parents’ permanent legal residence.

Q2: What if the three year period from discharge/retirement expires after the student enrolls, but before they graduate, will the individual still be eligible for in-state tuition?

A2: Yes, with conditions. After the expiration of the three year period following veteran's discharge or retirement or service member's death as described in 38 U.S.C. § 3679(c), any enrolled veteran entitled to federal educational benefits under 38 U.S.C. Chapter 30 or 38 U.S.C. Chapter 33 and any other enrolled individual entitled to federal educational benefits under 38 U.S.C. Chapter 30 or 38 U.S.C. Chapter 33 who is eligible for in-state tuition under this section shall continue to be eligible for the in-State tuition rate so long as the covered individual is using Chapter 30 or 33 benefits or the Fry Scholarship, is living in same state as the public IHL and remains continuously enrolled (other than during regularly scheduled breaks between courses, quarters, terms, or semesters) at that IHL.

Q3: Is a covered individual considered a resident for tuition purposes under North Carolina law?

A3: No. A covered individual may not be charged more than the in-state tuition rate, but is **not** considered a North Carolina resident for tuition purposes unless and until he or she meets all of the criteria necessary to establish residency for tuition purposes as set forth in N.C.G.S. § 116-143.1.

Q4: Does a "covered individual" have to be "living in the state" for a certain period of time in order to eligible for in-state tuition?

A4: No. Section 702 requires that a public institution may not charge more than in-state tuition to a covered individual "pursuing a course of education . . . while living in the State in which the public institution of higher learning is located . . . regardless of the covered individual's State of residence." In other words, covered persons need only show that they live in North Carolina. Under N.C.G.S. § 116-143.3A, the covered individual must have an "abode" in North Carolina. Pursuant to N.C.G.S. § 116-143.3(a)(1), "abode" means "the place where a person actually lives, whether temporarily or permanently."

Q5: Must a "covered individual" complete any of the North Carolina state recognized "domiciliary acts"?

A5: No. There is no minimum amount of time during which a covered individual must live in the state, and a covered individual **does not** have to perform any of the typical

domiciliary acts required to establish residency for tuition purposes (e.g., obtain a North Carolina driver's license, register to vote in North Carolina, etc.) in order to be eligible to receive the in-state tuition rate. Under N.C.G.S. § 116-143.3A, however, a covered individual is required to submit a letter indicating an intent to establish permanent residency in North Carolina. In lieu of the letter of intent, the new residency form has a section for covered individuals to indicate they intend to establish residency in North Carolina.

Q6: If a minor student lives on campus in a residence hall during classes but returns to his or her out-of-state parents' home during regularly-scheduled breaks³, does the student "live in the state"?

A6: Yes. According to the VA, the term "living in the State," as it is used in the Choice Act, includes living in the state solely due to attendance at the IHL. Living in North Carolina for the sole purpose of attending a public IHL is also sufficient to establish an "abode" in the state under N.C.G.S. § 116-143.3A. Therefore, a minor student receiving transferred benefits whose parents live out of state, should receive in-state tuition based upon that student living in dormitory housing or in off-campus housing during the school year, even if he or she does not remain in North Carolina over breaks.

Q7: Is a "covered individual" who is a minor student living on campus in the residence hall for the fall and spring semesters, but returns home to another state for summer and takes on-line classes through the public IHL he/she attended fall and spring eligible for the in-state tuition rate for the summer on-line classes?

A7: Institutions should rely upon a student's "covered individual" status for the previous fall and/or spring terms. At any time, if an institution has reason to believe that a student is paying the in-state tuition rate and is not entitled to do so, the institution should ask the student to provide evidence of continued eligibility. The burden of proof is on the student.

Q8: In addition to a residency form, will a "covered individual" have to provide any supporting documents such as proof of abode or proof of eligibility for Chapter 30 or Chapter 33 benefits or the Fry Scholarship?

A8: All "covered individuals" will be required to submit one piece of evidence as proof of abode in North Carolina, which may include, but is not limited to, a copy of their lease, a letter from their landlord, a letter from a relative or friend with whom they are living, a copy of a utility bill that includes the individual's name and address, or verification of dormitory housing. Covered individuals who are veterans will also be required to provide a copy of their DD214 and their GI Bill Certificate of Eligibility or proof they have submitted their application for GI Bill benefits. Other covered individuals, such as

³ A "break" is intended to mean a holiday break during the school term, the period between consecutive school terms (i.e. the period between fall semester and spring semester), and the summer terms. A "break in enrollment" has a different definition with potential consequences for covered individuals.

spouses and dependents, will be required to submit a copy of the veteran's DD214 or service member's death certificate (for Fry Scholarship) and Transfer of Entitlement (for Post 9/11 GI Bill).

Q9: Can an institution request or require additional documentation beyond what is outlined above?

A9: No, the only documentation a student should be required to submit is what is outlined in the response to question #7. However, campuses can accept other documentation as proof of abode beyond those recommended in the response to question #7.

Q10: Are Section 702 of the Choice Act and N.C.G.S. § 116-143.3A applicable to current UNC system students as well as those entering in fall 2015?

A10: Yes, individuals are considered "covered" so long as they enroll within three years of discharge from a period of active duty service of 90 days or more for all terms beginning on or after July 1, 2015. UNC constituent institutions are encouraged to take reasonable steps to determine if any current students are considered "covered individuals" under Section 702 of the Choice Act and provide them with the appropriate materials to have their residency status reconsidered.

Q11: If a student initially enrolls at one public college or university and is given the in-state tuition rate under the Choice Act and N.C.G.S. § 116-143.3A, but then transfers to, or takes another course through, another North Carolina public IHL, could that student be considered a "covered individual" and eligible for in-state status at the second institution?

A11: Yes. A student can be eligible for in-state status under the Choice Act and N.C.G.S. § 116-143.3A if they transfer from one institution to another as long as they are living in the state of the second institution, using Chapter 30 or 33 GI Bill Benefits, and enroll in the second institution within three years of discharge from a period of active duty service of 90 days or more.

Q12: What if a student enrolls at a public institution in North Carolina and then moves to another state?

A12: Section 702 of the Choice Act only considers a student to be a "covered individual" while the individual is living in the state in which the public IHL is located. If a person moves out of the state in which the public IHL is located then the person is no longer living in the state in which the public IHL is located and, therefore, is no longer a covered individual. In addition, N.C.G.S. § 116-143.3A requires that the veteran, spouse or dependent have an abode in North Carolina.

Q13: Are other chapters of VA education benefits, such as Montgomery GI Bill - Selected Reserves (10 U.S.C. Chapter 1606), eligible for in-state status under Section 702?

A13: No, only Chapter 30 (Montgomery G.I. Bill Active Duty Education Assistance Program), Chapter 33 (Post-9/11 Educational Assistance), and the Fry Scholarship are eligible.

Q14: How do the provisions of Section 702 impact the VA Yellow Ribbon Program?

A14: For a covered individual the VA Yellow Ribbon Program will be obsolete because they will meet the requirements for in-state tuition. However, the Yellow Ribbon Program will continue to be an option for students attending your school (if your institution participates) if the student does not meet the definition of “covered individual” or fails to maintain covered individual status.

Q15: Does the Veteran have to receive an Honorable Discharge to be eligible?

A15: The Choice Act defines a veteran as a “covered individual,” in part, if he/she is eligible for Chapter 33 or 30 of the GI Bill. In order to be eligible for the GI Bill, a veteran must have an honorable qualifying period of service. However, for those with multiple periods of service, the final discharge need not be fully honorable.

N.C.G.S. § 116-143.3A defines a veteran as one who “was discharged or released from such service under conditions other than dishonorable.” This is in conflict with the federal law (Section 702 of the Choice Act). UNC-GA State Relations is pursuing a technical correction at the state level. If constituent institutions encounter individuals with multiple discharges, including one classified as dishonorable, the institution should begin the three year clock with the most recent discharge regardless of its status. The North Carolina State Approving Agency advises institutions to document these cases until the technical correction is made by the General Assembly.

Q16: What if an active duty service member decides to “top up” their military tuition assistance by using Chapter 30 or Chapter 33 benefits? Does the service member qualify for “covered individual” status?

A16: No. Section 702 does not apply to **active duty** service members and N.C.G.S. § 116-143.3A does not accommodate these students. Refer to N.C.G.S. § 116-143.3 for residency regulations applicable to active duty service members.

Q17: What if a child is using Chapter 33 transferred benefits, but the parent is still an active duty service member and living in a different state? Is the child considered a “covered individual?”

A17: No. Section 702 and N.C.G.S. § 116-143.3A do not apply to transfer recipients while the transferor is still **active duty**. Refer to N.C.G.S. § 116-143.3 for residency regulations applicable to active duty service members and their spouses/dependents.

Q18: Is a veteran or spouse/child of a veteran living in another state but enrolled in an online degree program considered a “covered individual” and eligible for in-state status?

A18: No. Section 702 only considers a student to be a “covered individual” if the individual is living in the state in which the public IHL is located. In addition, N.C.G.S. § 116-143.3A

requires that the veteran or any person using transferred Chapter 33 benefits or the Fry Scholarship have an abode in North Carolina.

Q19: If a “covered individual” moves out of state after enrolling at a UNC institution and wants to continue with that institution through online courses, would they still be eligible to receive the in-state tuition rate?

A19: No. Section 702 only considers a student to be a “covered individual” while the individual is living in the state in which the public IHL is located. If a person moves out of the state in which the public IHL is located then the person is no longer living in the state in which the public IHL is located and, therefore, is no longer a covered individual, even if they remain continuously enrolled. In addition, N.C.G.S. § 116-143.3A requires that the veteran or any person using transferred Chapter 33 benefits or the Fry Scholarship have an abode in North Carolina in order to be eligible for the in-state tuition rate.

Q20: Section 702 of the Choice Act states that the VA shall disapprove a course of education if the IHL “charges tuition and fees for that course for the covered individual at a rate that is higher than the rate the institution charges for tuition and fees for that course for residents of the State in which the institution is located.” What if an individual academic program at a public IHL charges a flat tuition rate to all students, regardless of state of residence, which is higher than the in-state rate for other programs? Must they charge “covered individuals” the lower in-state rate?

A20: “Covered individuals” must be charged the in-state tuition rate for the program in which the student is enrolled unless the program does not differentiate between in-state and out-of-state for tuition. For example, the MBA@UNC program does not have an in-state or out-of-state rate, but instead charges all students the same “flat rate.” If a “covered individual” is enrolled in the MBA@UNC program the individual will pay the tuition charged of all MBA@UNC students. All programs, inclusive of Baccalaureate, Graduate, and Professional degree programs, must bill “covered individuals” at the in-state tuition rate unless a degree program bills a “flat rate” to all individuals enrolled in the program.

Q21: Will a special residency code be created by UNC-GA to be used across the institutions to track 702-eligible students?

A21: UNC-GA Institutional Research will provide a universal code to report those covered individuals who are enrolled and are granted the in-state tuition rate. Given logistic constraints for ERP and information systems, implementation and use of this code will not be required for the 2015-16 reporting cycle. Any campus-specific code used to identify these students can be mapped to the GA universal code.

Q22: Both chambers of the General Assembly have included funds in their proposed budgets to “offset an education in tuition receipts as a result of granting certain non-resident veterans resident status for tuition purposes.” Will these student credit hours be isolated in the funding formula in the same manner as the full-scholarship non-

resident undergraduates per G.S. 116-143.6, such that campuses will receive appropriation to fund the tuition differential?

A22: It is our goal is to incorporate this change into the enrollment model the same way as G.S. 116-143.6 scholarships. However, for the upcoming FY 2016-17 adjustments to the biennial enrollment change request, we may need to treat these student credit hours and FTE differently to account for the appropriation that may be provided by the General Assembly. Guidance to campuses for the enrollment change cycle will include specific instructions about how to handle these students' credit hours and FTE for FY 2016-17 projections.

Q23: Reservists who continued service after discharge from an active period of service are Post 9/11 GI Bill eligible and will have a DD214 showing discharge from active duty and another document, such as retirement orders for their reserve duty. Which date should we use to establish covered individual status in terms of enrolling in a public IHL within three years of discharge from a period of active duty service?

A23: According to VA guidance, the discharge date from active duty on the DD-214 should be used to determine when the three-year window of eligibility for covered individual status started.

Q24: If a student's benefits are exhausted mid-way through a semester, are we required by the Choice Act to extend in-state tuition to the end of semester?

A24: Yes. According to VA guidance, an institution may not charge pro-rated in-state tuition only for the portion of the semester for which the student is using benefits and then charge pro-rated out-of-state tuition for the remaining weeks. A student who qualifies as a covered individual at the beginning of a semester retains that classification for the entirety of that semester.

Q25: Do we have an obligation to ensure that all individuals who are eligible are charged the in-state rate regardless of when the request is made in order to be compliant with the Choice Act?

A25: Yes. According to VA guidance, an institution has an obligation to ensure that all individuals who are covered individuals are charged the in-state rate for all semesters and terms beginning after the effective date of July 1, 2015.

Q26: If a student has exhausted their GI Bill benefits but applies for a retroactive waiver (was using GI Bill benefits for a portion of the semester for which they are requesting the waiver), would they be eligible as long as it was for a term after July 2015?

A26: Yes. A student who qualifies as a covered individual at the beginning of a semester retains that classification for the entirety of that semester. As a result, a waiver would not be needed because a student would be charged the resident rate for the entirety of the semester even if the student exhausted the entitlement prior to the semester ending.

Q27: What if parent revokes transferred benefits part way through a semester? Are we required by the Choice Act to extend in-state tuition to the end of the semester?

A27: Yes. If a transferred benefit has been processed for an award for a term and the student has used the benefit, then it is not possible for the parent to revoke the transferred benefit during the term. For example, if the parent transferred four months of benefits to a student and the student used two months of benefits, the parent can revoke the remaining two months of benefits to the extent that the student has not used the benefit and a debt would not be created for the student. If a student in this situation had been qualified as a covered individual at the beginning of the semester, then the student would be entitled to maintain covered individual status through the end of the semester.

Q28: Possible case scenario: A current student veteran, who is out-of-state for tuition purposes, is using Chapter 33, Post 9/11 GI Bill benefits and originally enrolled within three years of discharge from a period of active duty service of 90 days or more. The student has had no break in enrollment and will be continuing his/her studies in the fall 2015 semester using his/her GI Bill benefits, but at that point it will be more than three years since he/she was discharged. Is this student eligible to be considered for in-state tuition under the Choice Act and N.C.G.S. § 116-143.3A?

A28: According to Section 702 of the Choice Act "EFFECTIVE DATE – Subsection (c) of section 3679 of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to educational assistance provided for pursuit of a program of education during a quarter, semester, or term, as applicable, that begins after July 1, 2015." Therefore, the student must meet all of the requirements to be considered a "covered individual" on or after July 1, 2015. This includes being within three years of discharge from a period of active duty service of 90 days or more.

Q29: Possible case scenario: The campuses are encouraged to make every effort to identify current students who may be eligible for in-state status under the Choice Act and N.C.G.S. § 116-143.3A. However, it is possible someone may be missed. If a student comes forward after the posted deadline for residency status changes should he/she still be allowed to submit the paperwork and, if eligible have their residency status changed and receive a refund of the difference between in-state and out-of-state tuition?

A29: In order to be fully compliant with the Choice Act a public institution of higher learning should allow the student to submit the appropriate paperwork for review at any point in the academic year. If the student is then determined to be a "covered individual" he/she should be changed to in-state for tuition and refunded the difference between in-state and out-of-state tuition for that term.

Q30: Possible case scenario: Bills for fall 2015 were mailed and are due to be paid by the end of July. Some students have already paid their bills at the out-of-state rate and will need to be refunded the difference if they are determined to be in-state under the new legislation. However, if a student has not yet paid their bill and would prefer not to do so in light of the possible change in residency status, should the campus place a hold on the account pending a residency decision, or require payment and refund the difference after a decision is made?

A30: If a student has not yet paid their fall bill and would prefer not to do so in light of the new legislation, then the campus is encouraged to work with that student to place a hold on their account pending a residency decision. The student's classes should not be dropped for non-payment and the student should not be charged any type of interest or fee on the unpaid balance until a residency decision is made.

Q31: Possible case scenario: The dependent child of a veteran will be using transferred Post 9/11 GI Bill benefits to attend a public institution of higher learning. The dependent is considered a "covered individual" under the Choice Act and will be in-state for tuition. The veteran is not living in North Carolina and only transferred 12 months of benefits to his/her dependent child. Does the student maintain in-state status beyond the 12 months of benefits or should he/she be changed to out-of-state for tuition at the end of 12 months?

A31: To be considered a "covered individual" under the Choice Act, a spouse or child of a veteran must be eligible for and using transferred GI Bill benefits or the Fry Scholarship to attend a public IHL. If the student is no longer eligible for or using GI Bill benefits or the Fry Scholarship then he/she is no longer eligible for in-state tuition under the Choice Act or N.C.G.S. § 116-143.3A.