

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

House Bill 400 (Delegate McDonough)  
Ways and Means

---

**Higher Education - Eligibility for Student Financial Assistance - Requirement of Lawful Presence**

---

This bill requires a recipient of financial assistance awarded by the Office of Student Financial Assistance (OSFA) in the Maryland Higher Education Commission (MHEC) to be a citizen or legal permanent resident of the United States and provide proof of lawful presence in the United States. OSFA must compile a list of documents acceptable as proof of lawful presence.

The bill takes effect July 1, 2011.

---

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$162,900 in FY 2012 for MHEC to hire two full-time administrative specialists and update the financial aid database. Future years reflect the elimination of one-time costs after FY 2012, annualization, regular salary increases, and inflation. Modifying *eligibility* requirements for student financial assistance does not affect the State appropriation for these programs. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	162,900	101,200	106,700	112,500	118,600
Net Effect	(\$162,900)	(\$101,200)	(\$106,700)	(\$112,500)	(\$118,600)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** None.

---

## Analysis

**Current Law:** Excluding the Delegate Scholarship, in addition to other award criteria, recipients of financial assistance awarded by OSFA must be a resident of the State. Recipients are not specifically required to be a citizen or legal permanent resident. However, undocumented students are not eligible for federal student aid or loans as well as most State financial aid since they cannot legally establish residency in the State.

**Background:** Arkansas, Illinois, and West Virginia have enacted laws in recent years to limit certain state scholarships to citizens or lawful permanent residents. In other states, scholarships may in effect be limited to U.S. citizens or legal residents because undocumented students are unable to establish state residency, which is a requirement for many states' scholarships.

### *Maryland Student Financial Assistance Programs*

OSFA is responsible for the administration of over 20 different State financial assistance programs that distributed \$105.0 million during fiscal 2010. Financial assistance programs include the following categories: need-based, merit-based, legislative, career/occupational, and unique populations. Although many scholarship programs have criteria in two or more of these categories, each scholarship is grouped according to its most outstanding requirement.

State financial aid programs are primarily funded with general funds. However, approximately \$450,000 in special funds generated from health occupations fees and \$250,000 in federal funds support the Loan Assistance Repayment Program for Primary Care Physicians. Federal funds of about \$1 million annually support need-based aid.

The largest scholarship program, the need-based Delegate Howard P. Rawlings Educational Excellence Award program, accounts for 70% of all the funding. Educational Excellence Award dollars are used to provide low- and moderate-income households with grants of \$400 to \$3,000 (Educational Assistance Grants) and the neediest families with grants of up to \$14,300 (Guaranteed Access Grants) to cover the costs of college attendance. Over two-thirds of award recipients received need-based grants in fiscal 2010, with an average of approximately \$1,900, as shown in **Exhibit 1**.

OSFA reports that it does not currently require applicants to document that they are a citizen or legal permanent resident of the United States in order to apply for and receive State financial aid. However, OSFA does use the processed results of the Free Application for Federal Student Aid (FAFSA) for those State financial aid programs based on financial need. The FAFSA is the federal application that students must complete to apply for most federal financial aid programs. In order to be eligible for

federal financial aid an applicant must be one of the following: (1) a U.S. citizen or national; (2) a U.S. permanent resident; (3) a citizen of the freely associated states, the Federal States of Micronesia, or the Republics of Palau and Marshall Islands; or (4) an eligible non-citizen, including holding a Permanent Resident Card or “Green Card,” a conditional permanent resident, or certain immigration designations from the U.S. Department of Homeland Security. OSFA currently processes over 144,000 FAFSAs each year.

---

**Exhibit 1**  
**State Financial Aid Funding**  
**Fiscal 2010**

<b><u>Program</u></b>	<b><u>Recipients</u></b>	<b><u>Average Award</u></b>
Need-based Awards		
Educational Assistance (EA)	28,683	\$2,097
Campus-based EA	1,966	1,876
Guaranteed Access	1,380	8,893
Part-time Grant	11,221	527
Graduate and Professional School	543	2,717
<b>Subtotal</b>	<b>43,793</b>	<b>\$1,907</b>
<b>Excluding Guaranteed Access</b>	<b>42,413</b>	<b>\$1,679</b>
Legislative Scholarships	13,773	785
Merit and Career-based Awards	2,620	3,524
Assistance for Unique Populations	271	5,304
<b>Total</b>	<b>60,457</b>	<b>\$1,738</b>

Source: Maryland Higher Education Commission

---

MHEC has a waitlist of approximately 15,800 students for financial assistance as of February 8, 2011.

*Federal Law*

Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept undocumented immigrants. In its decision, the court contended that denying an education to the children of undocumented immigrants would “foreclose any realistic possibility that they will contribute ... to the progress of our

Nation.” However, since 1996, federal immigration law has prohibited undocumented immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain. To get around the federal law, states that have passed in-state tuition benefits for undocumented immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status.

Federal legislation called the Development, Relief and Education for Alien Minors Act of 2009 – or the DREAM Act – would have created a path to citizenship for certain immigrants who entered the United States illegally when they were younger than 16 and would have allowed those students to receive in-state tuition. In December 2010, the U.S. House of Representatives passed the DREAM Act; however, the U.S. Senate failed to get the necessary supermajority of 60 required to force a final vote on the legislation.

Institutions of higher education are responsible for monitoring the processed FAFSA results to determine if a student is eligible for federal aid. A student who is flagged as ineligible may be made eligible if the student is reevaluated and is confirmed as meeting the eligibility requirements.

**State Expenditures:** In order to implement the bill, MHEC will need additional staff as well as one-time costs to reprogram the financial aid database called MD CAPS. General fund expenditures increase by \$162,865 in fiscal 2012, which accounts for a 90-day start-up delay and reflects the cost of hiring two administrative specialists to compile a list of documents acceptable as proof of lawful presence, revise current program guidelines, update program applications, evaluate documentation of citizenship or legal residency, and provide the necessary applicant support. Two full-time salaries, fringe benefits, start-up costs, and ongoing operating expenses, as well as one-time contractual costs associated with changing MD CAPS to meet the new awarding requirements, are included in the estimate. The information and assumptions used in calculating the estimate are stated below.

- The manner in which MD CAPS makes awards will need to be modified to meet the requirements of the bill. MD CAPS is unable to identify which students are citizens or legal permanent residents of the United States. It will cost \$80,000, if not significantly more, to update the system to include a field to document whether an applicant is a citizen or legal permanent resident for each aid program. Based on the bill’s requirement that a student must meet two tests in order to receive State financial aid, be a U.S. citizen or permanent legal resident *and* provide proof of lawful presence, Legislative Services believes that MHEC will not be able to solely use the FAFSA to verify that a student meets the bill’s requirements, since specified non-citizens are eligible for federal aid.

- Two additional full-time staff persons are necessary to evaluate documentation of citizenship or legal residency for over 60,000 scholarship recipients each year, including almost 20,000 who are not required to complete the FAFSA.

	<u><b>FY 2012</b></u>	<u><b>FY 2013</b></u>
New Positions	2	
Salaries and Fringe Benefits	\$73,430	\$100,136
MD CAPS Development	80,000	0
Operating Expenses	765	1,030
Start-up Costs	<u>8,670</u>	<u>0</u>
<b>Total State Expenditures</b>	<b>\$162,865</b>	<b>\$101,166</b>

Future year expenditures reflect the elimination of one-time costs after fiscal 2012, two full-time salaries with 4.4% annual increases and 3% employee turnover, as well as 1% annual increases in ongoing operating expenses.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Maryland Higher Education Commission, [fafsa.ed.gov](http://fafsa.ed.gov), Department of Legislative Services

**Fiscal Note History:** First Reader - March 15, 2011  
mlm/rhh

---

Analysis by: Caroline L. Boice

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510