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# Regulatory Analysis Form

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REGULATORY REVIEW COMMISSION

(1) Agency  
State Board of Education

(2) I.D. Number (Governor's Office Use)  
006-263

IRRC Number: 1947

(3) Short Title  
Program Standards and Eligibility Criteria for the Higher Education Equal Opportunity Act

(4) PA Code Cite  
22 Pa. Code Chapter 44

(5) Agency Contacts & Telephone Numbers  
Primary Contact: Peter H. Garland  
787-3787  
Secondary Contact: Evelyn Mayer  
787-5041

(6) Type of Rulemaking (check one)  
Proposed Rulemaking  
Final Order Adopting Regulation  X  
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?  
No  X  
Yes: By the Attorney General  
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.  
  
This regulation establishes the rules under which campuses operate programs to support educationally- and economically-disadvantaged students and defines and eligibility criteria for student participation in the program. The Higher Education Equal Opportunity Act (24 P.S. 2510-303, 2510-304) is commonly referred to as Act 101 and campus programs are commonly referred to as Act 101 Programs. The final-form regulation revises eligibility criteria to more accurately reflect changes in poverty level income and yield a sufficient pool of potential program participants.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  
  
The Act of August 31, 1971 (P.L. 423, No. 101), § 3 and 4 (24 P.S. 2510-303, 2510-304). There are no relevant state or federal court decisions.

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

see #9

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Prior to adopting this regulation in 1992, program standards and eligibility criteria were issued as guideline by the Department. It was determined that the guidelines were regulatory in nature and needed to be promulgated as such.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

N/A

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Changes in the eligibility criteria will benefit a larger number of students who will now become eligible for participation in the program while continuing to satisfy the legislative intent to provide counseling and tutorial support to educationally- and economically-disadvantaged students.

### Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effect is anticipated. It is expected that current students participating in campus programs will continue their eligibility.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All institutions of higher education under contract with the Department to provide counseling and tutorial programs under the appropriation for such purpose and current and prospective students eligible to participate in the program.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Revisions to the eligibility criteria were developed by campus-based Act 101 program directors and are unanimously supported by them. Revised eligibility criteria were discussed over a period of months in public meetings of the Board. Persons and organizations interested in the proposal were able to offer comments during the public meetings. Supporting materials were developed and provided to the Board by various persons and organizations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs or savings are anticipated by this final-form regulation.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs or savings are anticipated to the institutions of higher education who provide counseling and tutorial services under this program with this final-form regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

No costs or savings are anticipated to state government in the implementation of this final-form regulation.

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Changing the criteria used in the determination of eligibility will not have a direct cost impact on the Commonwealth since funding for the program is determined by annual appropriations. Nor will it have any cost impact on local governments, colleges and universities or the general public.

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
ACT 101 Program	\$7.827 million	\$7.827 million	\$7.827 million	\$8.828 million

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Since there are no anticipated costs or savings associated with this final-form regulation, its effects will be neutral. Changing the method to determine income eligibility to one that more accurately reflects the economics of poverty and low income families from one that is used as a general measure of consumer economics will benefit the operation of the program.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered since this is a revision of existing regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N/A

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Because there are no federal standards, these regulations are not more stringent.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Several other states have comparable programs. The final-form regulation will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

In addition to opportunities for comment on the proposed rulemaking, additional opportunities for public comment were held during the course of regularly scheduled meetings of the Board.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The final-form regulation will not change existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Effective upon publication.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of Chapter 44 will be reviewed by the State Board of Education every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board.



ALL PUBLIC COMMENTATORS RECEIVED A COPY OF THE FINAL FORM CH44

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**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

June 8, 2000

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of the final-form of State Board of Education regulations Chapter 44 (Program Standards and Eligibility Criteria for the Higher Education Equal Opportunity Act) (#6-263) for review by the Commission pursuant to the provisions of section 5(c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of these final-form regulations.

Please let me know if there is anything that you need.

Sincerely,

A handwritten signature in cursive script, reading "Peter H. Garland".

Peter H. Garland  
Executive Director

Enclosure

cc: Gregory E. Dunlap, Esquire  
Linda C. Barrett, Esquire

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

RECEIVED  
2000 JUN -8 PM 4:04  
REVIEW COMMISSION

1947

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>State Board of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>6-263</u></p> <p>DATE OF ADOPTION: <u>September 10, 1998</u></p> <p>BY: <u>[Signature]</u></p> <p>TITLE: <u>Executive Director</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: <u>[Signature]</u></p> <p><u>6/16/00</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (<del>Chief Counsel, Independent Agency</del>) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 3 days after submission.</p>
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Final-Form

State Board of Education  
Title 22 - Education  
Chapter 44

Program Standards and Eligibility Criteria  
for the Higher Education Equal Opportunity Act

PREAMBLE

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

22 PA. CODE - EDUCATION

CHAPTER 44: PROGRAM STANDARDS AND ELIGIBILITY CRITERIA FOR  
THE HIGHER EDUCATION EQUAL OPPORTUNITY ACT

The State Board of Education hereby amends Title 22 of the Pennsylvania Code by amending Chapter 44, which relates to program standards and eligibility criteria for the Higher Education Equal Opportunity Act, as set forth at Annex A, under authority of Sections 3 and 4 of the Higher Education Equal Opportunity Act, the act of July 1, 1971 (P.L. 423, No. 101) (24 P.S. 2510-303 and 2510-304).

Notice of proposed rulemaking was published at 28 Pa.B. 2148 (May 9, 1998) with an invitation to submit written comments within 30 days.

Chapter 44 governs the responsibility of institutions of higher education to administer counseling and tutorial programs (commonly referred to as Act 101 programs) for educationally- and economically-disadvantaged students provided for in the Higher Education Equal Opportunity Act and the eligibility of students for participation in those programs. The final-form of the section 44.4(a)(1) amends the income eligibility criteria from one based on a Pennsylvania Higher Education Assistance Agency (PHEAA) determined adjusted gross income adjusted annually by a

percentage of growth in the Consumer Price Index (CPI) to one based on a percentage of the poverty guidelines as determined annually by the US Department of Health and Human Services.

## **PURPOSE**

The purpose of amended section 44.4(a)(1) is to employ a measure of income eligibility designed to reflect growth (or decline) in income for students and families for whom the act was designed to serve. Former measures of income eligibility did not as accurately reflect the economics of poverty-level and low income families. A multiple of federally-determined poverty guideline is employed in a number of state-administered programs designed to serve a similar clientele. Two hundred percent of poverty is established in this final-form regulation because it most accurately reflects the maximum income level for participation in Act 101 programs at the time Chapter 44 was originally promulgated. The definition of CPI is deleted because the Consumer Price Index will no longer be applicable to the regulations.

## **PUBLIC COMMENTS**

All public comments received favored the proposed amendments to the regulations. No comment was received from the House or Senate Education Committees. The Independent Regulatory Review Commission suggested in their comments suggested that the date in Section 44.4(a)(1) should be changed to reflect the probable date of final regulation. The date was changed in this final-form regulation.

## **AFFECTED PARTIES**

These final-form regulations will benefit current and potential college and university students participating in institutional Act 101 programs.

## **COST AND PAPERWORK ESTIMATES**

Amended §44.4(a)(1) will not substantially alter paperwork, accounting or reporting requirements already in place.

## **EFFECTIVE DATE**

These final-form regulations will become effective upon final publication in the Pennsylvania Bulletin.

## **SUNSET DATE**

The effectiveness of Chapter 44 (including section 44.4(a)(1)) will be reviewed by the State Board of Education every 4 years, in accordance with the Board's policy and practice respecting all regulations of the Board. Thus, no sunset date is necessary.

## **REGULATORY REVIEW**

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the State Board of Education submitted a copy of the notice of proposed rulemaking at 28 Pa.B. 2148 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Committees on Education. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as



other documentation. In addition to submitting the final regulations, the Board has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation". A copy of this material is available to the public upon request.

In preparing these final-form regulations, the Board has considered the comments received from the Commission, the Committees and the public.

These final-form regulations were approved by the House Education Committee on \_\_\_\_\_, the Senate Education Committee on \_\_\_\_\_, and were approved by the Commission on \_\_\_\_\_, in accordance with section 5(c) of the Regulatory Review Act.

#### **CONTACT PERSON**

The official responsible for information on these final-form regulations is Peter H. Garland, Executive Director, State Board of Education 333 Market Street, Harrisburg, PA 17126-0333, telephone (717) 787-3787 or TDD (717)772-2864.

#### **FINDINGS**

The Board finds that:

- (1) Public notice of the intention to adopt these final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No.240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.

- (3) The regulations are necessary and appropriate for the administration of the Public School Code of 1949.

## ORDER

The Board, acting under authorizing statute, orders that:

- (a) The regulation of the State Board at 22 Pa. Code, Chapter 44 is amended to read as set forth in Annex A.
- (b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.
- (c) The Executive Director shall certify this order and Annex and deposit them with the Legislative Reference Bureau as required by law.
- (d) The order is effective upon final publication in the Pennsylvania Bulletin.



Peter H. Garland

Executive Director

State Board of Education

ANNEX A

TITLE 22: EDUCATION  
CHAPTER 44: PROGRAM STANDARDS AND ELIGIBILITY CRITERIA  
FOR THE HIGHER EDUCATION EQUAL OPPORTUNITY ACT

\* \* \* \* \*

Section 44.2. Definitions.

[CPI - The Consumer Price Index as determined and published  
by  
the Federal government.]

\* \* \* \* \*

Section 44.4. Eligible students.

(a) A bona fide domiciliary of this Commonwealth who is attending an institution which is an eligible grant applicant under section 44.3 (relating to eligible grant applicants) and who is determined to be economically and educationally disadvantaged under this section is eligible for participation in the program. To be eligible for participation, a student shall meet the following criteria. The student shall be:

(1) Economically disadvantaged by having **[resources for higher education derived from an adjusted family income of \$18,000 or less as defined in Higher Education Assistance Agency procedures for calculating student financial aid] an annual family income equal to or less than 200% of the family income level established by the U.S. Bureau of the Census for determining**

poverty status and published by the U.S. Department of Health and Human Services in the Federal Register. The [Secretary will annually revise the family income level by a factor that is 25% of the most recent 12 month change in the CPI, rounded to the nearest \$50. The revision factor used and the revised] annual family income to be used to recruit students who will enter the program on or after July 1 of every year beginning in [1993] ~~1997~~ 2001 will be provided to institutions by the Secretary by [January 15] March 31 of the same year and will be published in the Pennsylvania Bulletin by [January 31] April 15 of the same year. The Secretary's [determinations and notifications] notification under this section will comply with the chapter and will not be subject to the regulatory review procedures under section 5 of the Regulatory Review Act (71 P.S. §745.5).

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 6-263

SUBJECT: Program Standards and Eligibility Criteria for the Higher Education Equal Opportunity Act

2000 JUN - 8 PM 4: 04

REGULATORY REVIEW COMMISSION

AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/8/00	M. Lamprey	HOUSE COMMITTEE ON EDUCATION
6/8/00	V. O'Shea	
	J. Guiguer	SENATE COMMITTEE ON EDUCATION
	Sherry Baker	
6/8/00	J. Vallancourt	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

June 6, 2000