

In-State Tuition for Military-Related Students

2021 Domicile Workshop

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**STATE COUNCIL OF HIGHER
EDUCATION FOR VIRGINIA**

Multiple Paths for Military In-State Tuition

1 Domicile

Standard domicile review and benefits, with special provisions for the military family.

2 Dependents “Deemed as Domiciled”

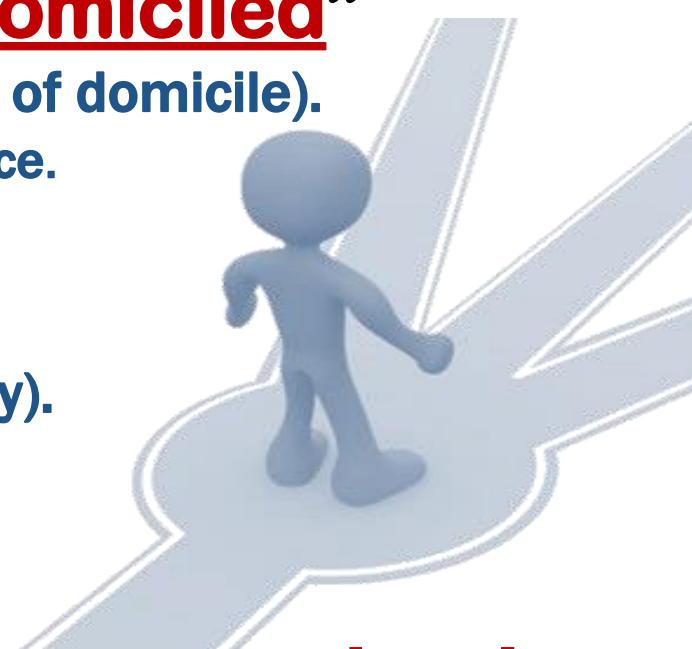
Not a domicile review (receive all benefits of domicile).

- ❖ Based on military assignment and residence.

3 Four Exceptions

Not a domicile review (tuition benefits only).

- ❖ State – two provisions
- ❖ Federal – two provisions



Each path is completely separate and unique

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Path**1**: Domicile with Military Provisions

Standard domicile review process applies

- ❖ Evaluate each case using the standard domicile review process.
- ❖ Domicile must be demonstrated.

Special provisions for the military family

Four provisions dealing with the timing and maintaining of eligibility for benefits and with the nonmilitary spouse.

Path 1: Domicile with Military Provisions

1. Waiver of One-Year Waiting Period

“In determining the domicile of (i) active duty military personnel residing in the Commonwealth, retired military personnel residing in the Commonwealth at the time of their retirement, surviving spouses, or veterans who voluntarily elect to establish the Commonwealth as their permanent residence for the purpose of domicile or (ii) a dependent spouse or dependent child who claims domicile through an individual listed in clause (i), institutions of higher education shall waive the one-year requirement set forth in subsection B of § 23.1-502.”

- ❖ **Once domicile is established, eligible for in-state tuition as of the next term (must be domiciled prior to or as of the first day of the term).**
- ❖ **Provision does not change domicile review.**
- ❖ **Still must provide clear and convincing evidence of domicile.**

Path1: Domicile with Military Provisions

2. Eligibility through Nonmilitary Spouse Residing in Virginia Less than One Year

“In determining domiciliary intent, institutions of higher education shall consider the totality of the circumstances, including the following applicable factors: continuous residence for at least one year prior to the date of the alleged entitlement, except in the event of the establishment and maintenance of a place of residence outside the Commonwealth for the purpose of maintaining a joint household with an active duty United States military spouse;”

- ❖ **Actual residence may be interrupted by a military move.**
- ❖ **Such a move should not penalize the nonmilitary spouse or his/her dependents.**

Path1: Domicile with Military Provisions

3. Maintaining of Domicile by Nonmilitary Spouse

“Domicile, once established, is not affected by (i) mere transient or temporary physical presence outside the Commonwealth or (ii) the establishment and maintenance of a place of residence outside the Commonwealth for the purpose of maintaining a joint household with an active duty United States military spouse.”

- ❖ **If** it is clear and convincing that the spouse of a military member had established domicile while in Virginia, **and**
- ❖ If the spouse then moves to follow the military member to another assignment, **and**
- ❖ If the spouse can demonstrate they have not intentionally changed their domicile to another jurisdiction,
- ❖ **Then** the nonmilitary spouse does not lose their domicile.

Path1: Domicile with Military Provisions

4. Nonmilitary Spouse Claiming Student for Tax Purposes

“E. The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent or legal guardian (i) claiming him as an exemption on federal or state income tax returns currently and for the tax year prior to the date of the alleged entitlement or (ii) providing him with substantial financial support. The spouse of an active duty military service member, if such spouse has established domicile and claimed the dependent student on federal or state income tax returns, is not subject to minimum income tests or requirements.”

Guidance

- ❖ **Law allows the student to claim domicile of the parent claiming him for tax purposes; however, there is no minimum income test for the nonmilitary spouse.**
- ❖ **Set aside concerns whether the nonmilitary parent is actually providing substantial financial support.**

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- ❖ State – two provisions
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Path 2: Dependents Deemed as Domiciled

§ 23.1-505 “

B. Notwithstanding § 23.1-502 or any other provision of law to the contrary, all dependents, as defined by 37 U.S.C. § 401, of active duty military personnel or activated or temporarily mobilized reservists or guard members (i) assigned to a permanent duty station or workplace in the Commonwealth, the District of Columbia, or a state contiguous to the Commonwealth who reside in the Commonwealth; (ii) assigned unaccompanied orders and immediately prior to receiving such unaccompanied orders were assigned to a permanent duty station or workplace in the Commonwealth, the District of Columbia, or a state contiguous to the Commonwealth and resided in the Commonwealth; or (iii) assigned unaccompanied orders with the Commonwealth listed as the designated place move shall be deemed to be domiciled in the Commonwealth and are eligible to receive in-state tuition.”

“C. All such dependents shall be afforded the same educational benefits as any other individual who is eligible for in-state tuition pursuant to § 23.1-502. Such dependents are eligible for such benefits, including in-state tuition status, for as long as they are continuously enrolled in a public institution of higher education or private institution of higher education or have transferred between public institutions of higher education or private institutions of higher education or from an undergraduate degree program to a graduate degree program at a public institution of higher education or private institution of higher education, regardless of any change of duty station or residence of the military service member.”

Path 2: Dependents Deemed as Domiciled

“B. Notwithstanding § 23.1-502 or any other provision of law”

- ❖ **They do not have to meet any other requirement.**
- ❖ **This is not a domicile review.**

“all dependents, as defined by 37 U.S.C. § 401”

- ❖ **Much broader interpretation of dependent than state definition for domicile or federal definition for financial aid.**
- ❖ **Includes adoption, legal custody, stepchildren, dependent parents.**
- ❖ **Complete military definition is available on SCHEV website.**

“of active duty military personnel or activated or temporarily mobilized reservists or guard members”

- ❖ **Essentially, active duty military personnel as defined in military law and the Domicile Guidelines.**

Path 2: Dependents Deemed as Domiciled

“(i) assigned to a permanent duty station or workplace in the Commonwealth, the District of Columbia, or a state contiguous to the Commonwealth who reside in the Commonwealth; (ii) assigned unaccompanied orders and immediately prior to receiving such unaccompanied orders were assigned to a permanent duty station or workplace in the Commonwealth, the District of Columbia, or a state contiguous to the Commonwealth and resided in the Commonwealth; or (iii) assigned unaccompanied orders with the Commonwealth listed as the designated place move”

- ❖ **Does not include temporary assignments.**
- ❖ **Includes military personnel assigned to a Virginia base but “deployed” elsewhere.**
- ❖ **Provisions to cover *unaccompanied orders* if the orders (ii) are for immediately after a Virginia assignment and family remains in the state or (iii) prior to Virginia assignment and family is directed to reside in Virginia in advance.**

Path 2: Dependents Deemed as Domiciled

“who reside in Virginia”

- ❖ **Military member must physically reside in Virginia.**
- ❖ **Any kind of housing in Virginia is acceptable (base, rental, home ownership, etc.).**
- ❖ **Does not include housing outside of the Commonwealth whether military-assigned or voluntary.**

Path 2: Dependents Deemed as Domiciled

“shall be deemed to be domiciled in the Commonwealth and are eligible to receive in-state tuition.

C. All such dependents shall be afforded the same educational benefits as any other individual who is eligible for in-state tuition pursuant to § 23.1-502”

- ❖ **Means to treat in the same manner as any Virginia domicile.**
- ❖ **Afford every educational benefit including:**
 - **In-state tuition.**
 - **Financial aid (including TAG).**

Path 2: Dependents Deemed as Domiciled

Duration of Benefits

“for as long as they are continuously enrolled in a public institution of higher education or private institution of higher education or have transferred between public institutions of higher education or private institutions of higher education or from an undergraduate degree program to a graduate degree program at a public institution of higher education or private institution of higher education, regardless of any change of duty station or residence of the military service member.”

- ❖ “Continuously” means at least one course in consecutive fall/spring or spring/fall terms (lack of summer enrollment does not disqualify).
- ❖ Able to transfer between public institutions or private institutions back to public as long as maintains continuous enrollment. (Private institutions are accredited, degree-granting institutions of higher education formed, chartered, or established within Virginia.)
- ❖ May enroll in undergraduate or graduate/professional program.
- ❖ After initial eligibility, continued eligibility based solely on continuous enrollment, not on the status or reassignment of the military member.
- ❖ If a student breaks enrollment, the student may regain eligibility by meeting initial eligibility requirements upon reenrollment.

Path 2: Dependents Deemed as Domiciled

Duration of Benefits Amended

“Such continuous enrollment requirement shall be waived if the dependent verifies that a break of no longer than one year was required in order to support a spouse or parent on orders for a change of duty assignment or location.”

The institution should verify:

- ❖ Whether the initial requirements for the provision have been met (follow current practice).
- ❖ Whether the break in enrollment:
 - ❖ Is no more than one year (student missed no more than one fall and one spring term; in any order)
 - ❖ Is tangential to or overlapping a military reassignment of the military spouse/parent (verifiable through a copy of military orders and enrollment records).
- ❖ Aside from the above documents, the institution need not conduct any further verification or determine specific reasons for the break in enrollment.

Path 2: Dependents Deemed as Domiciled

Window of Eligibility

“For the purpose of this subsection:

“Date of alleged entitlement” means the date of admission or acceptance for dependents currently residing in the Commonwealth or the final add/drop date for dependents of members newly transferred to the Commonwealth.”

- ❖ Differs from standard domicile review definition (first day of term).
- ❖ Altered definition includes an “eligibility window” from the date of admission until the end of add/drop; if conditions met for any one day within this window, then eligible for benefits.
- ❖ Enrolled students meeting criteria within this window remain eligible regardless of any subsequent military reassignment.
- ❖ Students whose families transfer into Virginia after admission but prior to the end of drop/add are eligible if they otherwise meet criteria (and remain eligible regardless of any subsequent military reassignment).

Path 2: Dependents Deemed as Domiciled

Documentation

- ❖ Copy of the military orders to verify:
 - Active duty military status or activation of reservist / guard member, and
 - Permanent duty station within Virginia, a contiguous state, or Washington DC.
- ❖ Documentation verifying Virginia residence.
- ❖ Verification of military dependent status: e.g. copy of military dependent card issued by the military or other document demonstrating dependent status.

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❖ Based on military assignment and residence.

Four Exceptions

3 Not a domicile review (tuition benefits only).

- a. State - based on residence
- b. State - based on paying taxes for 10 years
- c. Federal - based on military assignment
- d. Federal Veteran’s Choice Act



Path: **3.a. State Military Exception**

Section 506 – residence based

3. Any active duty member, activated guard or reserve member, or guard or reserve member mobilized or on temporary active orders for 180 days or more who resides in the Commonwealth.

4. Any veteran who resides in the Commonwealth.

5. Any surviving spouse who resides in the Commonwealth.

Path: 3.a. State Military Exception

Code of Virginia Definitions

“Active duty service members”

- ❖ *“Any active duty member, activated guard or reserve member, or guard or reserve member mobilized or on temporary active orders for 180 days or more”*

Essentially, those that meet the definition of active-duty military under military law.

“Veteran”

- ❖ *“means an individual who has served on active duty in the Armed Forces of the United States and who was discharged or released from such service under conditions other than dishonorable.”*

“Surviving spouse”

- ❖ *“means the spouse of a military service member who, while serving as an active duty member in the Armed Forces of the United States, Reserves of the Armed Forces of the United States, or Virginia National Guard, during military operations against terrorism, on a peacekeeping mission, or as a result of a terrorist act, or in any armed conflict, was killed in action, became missing in action, or became a prisoner of war.”*

Must have been the result of active combat.

Path: **3.a. State Military Exception**

Who is eligible?

- ❖ Active duty service members.
- ❖ Veterans.
- ❖ Surviving spouses.

Family members of the above are not eligible under these provisions.

What are they eligible for?

- ❖ In-state tuition rate.

Other educational benefits such as financial aid are not included.

Which institutions are affected?

- ❖ Since provision affects tuition rate, only Virginia public colleges and universities are affected.

Path: 3.a. State Military Exception

Residence Requirement

“who resides in the Commonwealth”

- ❖ Eligible student must have a physical residence within Virginia.
- ❖ Commuting from out-of-state or taking online courses from out-of-state does not qualify.

Specific to active-duty members

- ❖ Regardless of military assignment.
- ❖ In addition to personal permanent housing, residence may include base, rental, or other temporary housing.
- ❖ Temporary deployment (i.e. to overseas station) does not disqualify the member as long as a residence is maintained in Virginia.
- ❖ Military assigned and voluntary housing located outside of Virginia do not qualify.

Path: **3.a. State Military Exception**

Window of Eligibility

- ❖ Must be eligible as of the date of alleged entitlement - the first official day of class within the term, semester, or quarter of the student's program.

Continued Eligibility

- ❖ Eligible student must continue to meet all eligibility criteria in successive terms.
- ❖ If student breaks enrollment, eligibility can be reestablished by meeting the initial eligibility requirements.

Path: **3.a. State Military Exception**

Documentation Needed to Verify Eligibility

For active-duty military status

- ❖ Copy of military orders.

For veteran status

- ❖ Copy of form DD-214.

For surviving spouse status

- ❖ Proof of payment from Office of Servicemembers Group Life Insurance or OSGI (call 800.419.1473) or
- ❖ Copy of form DD-1300 “Report of Casualty” (<http://www.archives.gov/veterans/>) and
- ❖ Copy of marriage certificate.

For Virginia residence

- ❖ Any official document showing name, date, and a Virginia address.

Path: **3.b.State Military Exception**

Section 506 – tax based

Path: 3.b. State Military Exception

Section 506 – tax based

8. Any child of an active duty member or veteran who claims Virginia as his home state and filed Virginia tax returns for at least 10 years during active duty service.

Path: **3.b.State Military Exception**

Section 506 – tax based

- Eligible student
 - Any child
 - Biological, Adopted, Step, and/or Foster; see definition under Title 37 U.S. Code § 401
 - Does not include the spouse.
 - whose parent was either
 - An active duty member or
 - Veteran
 - And such parent, while on active duty, claimed Virginia as the home of record
 - And such parent, for at least 10 years during active duty service, filed Virginia state tax returns

Path: **3.b.State Military Exception**

Section 506 – tax based

State taxes:

- Proof of filing Virginia state income taxes for at least ten years during active duty
- No restrictions on when state taxes were filed
- No requirement that the ten years of filing were continuous or current
- State tax returns must have been filed as Virginia legal resident

Verification:

- Proof of current (military orders) or prior active duty status (DD-214)
- Proof of having Virginia as home of record during active service
- Proof of filing Virginia state income taxes for at least ten years during active duty
 - For example, tax transcript or copies of Leave and Earnings Statement.

Federal Provisions

Path: **3.C. Federal Military Exception**

Active Duty and Dependents

Federal Higher Education Opportunity Act - 2008

<http://www.ed.gov/policy/highered/leg/hea08/index.html>

SEC. 135. IN-STATE TUITION RATES FOR MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY, SPOUSES, AND DEPENDENT CHILDREN.

(a) **REQUIREMENT.** — *In the case of a member of the armed forces who is on active duty for a period of more than 30 days and whose domicile or permanent duty station is in a State that receives assistance under this Act, such State shall not charge such member (or the spouse or dependent child of such member) tuition for attendance at a public institution of higher education in the State at a rate that is greater than the rate charged for residents of the State.*

(b) **CONTINUATION.** — *If a member of the armed forces (or the spouse or dependent child of a member) pays tuition at a public institution of higher education in a State at a rate determined by subsection (a), the provisions of subsection (a) shall continue to apply to such member, spouse, or dependent while continuously enrolled at that institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State.*

Path: **3.C. Federal Military Exception**

❖ Who is Eligible:

- **Active duty members, spouse and dependent children.**

❖ Requirement:

- **Permanent duty station is in Virginia.**

❖ Benefit:

- **Institution cannot charge more than the tuition charged to in-state residents.**
- **Continuous enrollment at the institution.**
- **Does not include state financial aid.**

Comparison of State and Federal Provisions

Differences for Dependents

- ❖ **State** “deemed-as-domiciled” provision is residency based:
 - ❖ military member must reside in Virginia
 - ❖ military member can be assigned to a contiguous state.
- ❖ **Federal** provision is assignment based:
 - ❖ military member must be assigned to Virginia,
 - ❖ military member can reside in another state.
- ❖ **State** “deemed as domicile” provision for military dependents provides for in-state tuition and access to state financial aid.
- ❖ **Federal** provision only provides for in-state tuition but not state financial aid.
- ❖ **State** is based on continuous enrollment in any state institution
- ❖ **Federal** is based on continuous enrollment in the one institution.

Comparison of State and Federal Provisions

Differences for Active Duty Members

Under federal provision, duration of eligibility based upon enrollment of the student, not military assignment.

Of special note:

- ❖ State law covers “residing in Virginia”
- ❖ Federal law covers “assigned to Virginia”
- ❖ So active duty military members need only one or the other, not both and the benefit is the same: in-state tuition.
- ❖ Neither provision provides access to state financial aid.

Path 3: Military Exception (Comparison)

Expansive comparison between federal and state law available on SCHEV website:

<http://www.schev.edu/docs/default-source/students-section/military-education/comparison-of-federal-and-state-military-provisions.pdf>

Path 3: Exception Comparison Cheat Sheet

Military Member		
	Federal Exception	State Exception
ELIGIBILITY CRITERIA		
Residency	No residency requirement	Must reside in Virginia
Duty Station	Virginia	Not specified
Length of Military Member Activation	More than 30 days	At least six months
BENEFITS		
Tuition Rate	No more than in-state tuition	No more than in-state tuition
State Financial Aid	None	None
Continuation	Continuous enrollment at initial institution	Continuation not automatic. Must continue to meet initial eligibility criteria.

Path 3: Exception Comparison Cheat Sheet

Military Dependents		
	Federal Exception	State Exception
ELIGIBILITY CRITERIA		
Who Benefits	Spouse and dependent children	Spouse and children but could include other relationships such as a dependent parent
Residency	No residency requirement	<ol style="list-style-type: none"> Assigned to Virginia or contiguous state or DC; and reside in Virginia Assigned unaccompanied orders and immediately prior to receiving such orders was assigned to a permanent duty station or workplace geographically located in Virginia, or in a state contiguous to Virginia or DC; and resided in Virginia Assigned unaccompanied orders with Virginia listed as the designated place move
Military Member Permanent Duty Station	Virginia	
Length of Military Member Activation	More than 30 days	No minimum
BENEFITS		
Tuition Rate	No more than in-state tuition	In-state tuition
State Financial Aid	None	Eligible
Continuation	Continuous enrollment at <u>initial</u> institution	Continuous enrollment in <u>any Virginia</u> institution

Path: 3.d. Federal Military Exception

Veterans Choice Act

Path: 3.d. Federal Military Exception

Veteran's Choice Act

- Are the institutions required to comply?
 - This is a requirement if the institution to participate in federal chapters 30, 31, or 33 veteran's education benefits.
- What are the requirements for the qualifying veteran?
 - Be a former member of Army, Navy, Air Force, Marines, and Coast Guard
 - Have been commissioned corps of Public Health Services or National Oceanic and Atmospheric Administration
 - Had active service for at least 90 days
 - **IMPORTANT: as of August 1, 2021, the veteran no longer is required to be within 3 years of separation**
 - Be eligible for Chapter 30, 31, or 33 military education benefits.
- **The student is only covered by the VCA for terms in which the student is using military education benefits.**

SEC. 1005. REQUIREMENTS FOR IN-STATE TUITION **(Effective August 1, 2021)**

- (a) IN GENERAL.—Section 3679(c) of title 38, United States Code, is amended—
 - (1) in paragraph (2) (A), by striking “less than three years before the date of enrollment in the course concerned”; and
 - (2) in paragraph (4)—
 - (A) by striking “It shall” and inserting “(A) It shall”; and
 - (B) by adding at the end the following new subparagraph:

“(B) To the extent feasible, the Secretary shall make publicly available on the internet website of the Department a database explaining any requirements described in subparagraph (A) that are established by a public institution of higher learning for an individual to be charged tuition and fees at a rate that is equal to or less than the rate the institution charges for tuition and fees for residents of the State in which the institution is located. The Secretary shall disapprove a course of education provided by such an institution that does not provide the Secretary—

“(i) an initial explanation of such requirements; and

“(ii) not later than 90 days after the date on which any such requirements change, the Updated requirements.”
- (b) APPLICATION.—The amendments made by this section shall apply with respect to a quarter, semester, or term, as applicable, commencing on or after August 1, 2021.

Path: 3.d. Federal Military Exception

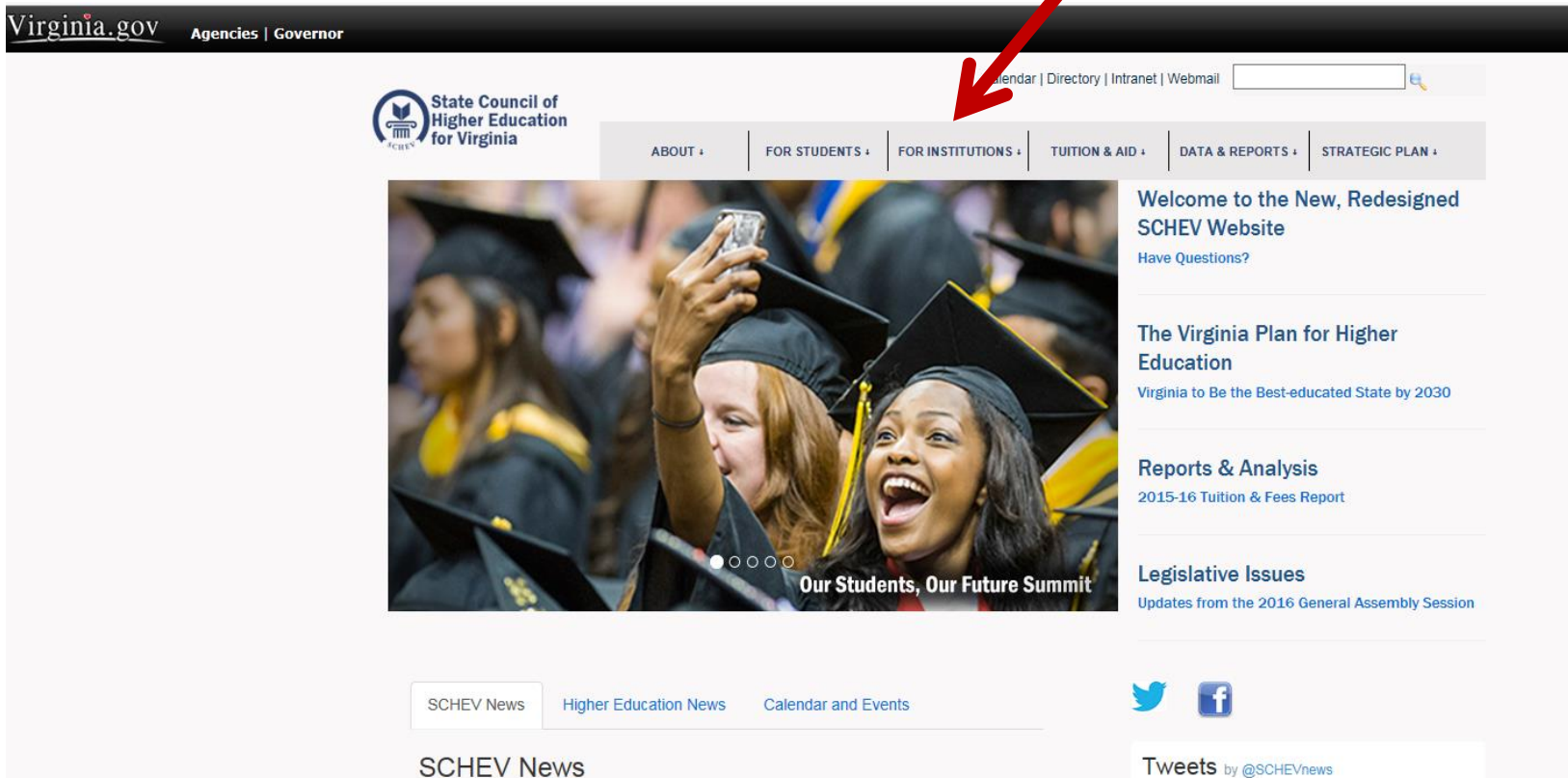
- The Frequently Asked Questions for the Veteran's Choice Act has been updated accordingly.

<https://www.schev.edu/docs/default-source/institution-section/financial-aid-and-domicile-officers/choiceactupdates2021.pdf>

Website

- **Domicile information at: “For Institutions” then “Policies and Guidelines” then “Financial Aid and Domicile Officers”**

<http://www.schev.edu/index/institutional/guidance-policies/financial-aid-domicile-officers>



The screenshot shows the SCHEV website homepage. At the top left is the Virginia.gov logo and 'Agencies | Governor'. The main header features the SCHEV logo and a navigation menu with items: ABOUT, FOR STUDENTS, FOR INSTITUTIONS, TUITION & AID, DATA & REPORTS, and STRATEGIC PLAN. A red arrow points to the 'FOR INSTITUTIONS' item. Below the menu is a large image of graduates with the text 'Our Students, Our Future Summit'. To the right of the image are several content blocks: 'Welcome to the New, Redesigned SCHEV Website', 'The Virginia Plan for Higher Education', 'Reports & Analysis', and 'Legislative Issues'. At the bottom, there are social media icons for Twitter and Facebook, and a 'Tweets by @SCHEVnews' section.

Information for Domicile Officers

- [Code of Virginia Relating to Domicile](#)
- [Domicile Guideline | Printable Version](#)
- [Addendum A - Descriptions and Domicile Eligibility Status for Various Categories of Aliens](#)
- [Addendum B - Common Forms and Definitions](#)
- [Addendum C - Summary of In-State or Reduced Tuition Provisions](#)
- [Establishing Virginia Domicile](#)

DACA Students:

- [Attorney General's Advice to Public Institutions Regarding DACA Students – April 29, 2014](#)
- [Domicile Determinations for Students Under Deferred Action for Childhood Arrivals](#)

Military Provisions:

- [Comparison of Federal and State Military Provisions](#)
- [Veteran's Choice Act: In-state tuition FAQs](#)
- [SCHEV Bulletin - Photocopying Military IDs](#)

Domicile Officer's Web Resources

NOTE: SCHEV provides the following websites for your information and/or additional research.

Descriptions of resident eligibility and responsibility under other state offices

- [Driver's License Eligibility Requirements](#) (Virginia Dept. of Motor Vehicles)
- [Residency Status Definitions](#) (Virginia Dept. of Taxation)
- [Registering to Vote](#) (Virginia State Board of Elections)

Resources pertaining to non-immigrant students

Military (Conclusion)

- ❖ The hardest part is choosing the right provision, but **they never lose right to claim a provision, if eligible.**
- ❖ Most military family members will qualify for the in-state tuition rate. Legislative intent is clear for military-related students; extend benefit of doubt where applicable.
- ❖ It is possible a military family might not qualify though those cases will now be rare.
 - Temporary assignments.
 - No Virginia connection: assigned/residing in another state and not domiciled in Virginia.

Resources

Virginia Educational Benefits for Military Families

- ❖ <https://www.schev.edu/index/students-and-parents/student-type/military-education>

Comparing federal and state In-State Tuition Provisions

- ❖ <http://schev.edu/docs/default-source/students-section/military-education/comparison-of-federal-and-state-military-provisions.pdf>

Photocopying Military ID Cards

- ❖ <http://schev.edu/docs/default-source/tuition-aid-section/financial-aid/schev-bulletin—photocopying-military-ids.pdf?sfvrsn=2>

External Resources for Military Personnel and their Families

- ❖ <http://schev.edu/index/students-and-parents/student-type/military-education/military-education-resources>

External Resources for Military Personnel and their Families

- ❖ <http://schev.edu/index/institutional/guidance-policies/financial-aid-domicile-officers>

Questions

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