

VET FEE-HELP Provider information

Request to increase Notional VET FEE-HELP loan account

How can a provider increase their notional loan account?

The *Higher Education Support Act 2003* (the Act) provides a specific framework for calculating notional loan account amounts (effectively VET FEE-HELP caps) for providers and only quite specific arrangements by which the statutory calculation may be varied.

VET providers are given a notional account for the year, setting the maximum amount of VET FEE-HELP available to their students. To the extent an account is overdrawn, the provider would typically be expected to repay the difference, as provided for by clause 45E of the Act.

There are only two circumstances where an increase to the notional loan account can formally be made. They are as follows:

- A. the Minister (or departmental delegate) may, by legislative instrument, determine whether credits arise in the VET FEE-HELP accounts of specified VET providers when another body ceases to be a VET provider, and the amounts of such credits; and
- B. the Secretary of the Department of Education and Training (or departmental delegate) may, on application by the VET provider, grant credit for a course that confers skills in an identified area of national importance that leads to employment in a licensed occupation where specific criteria are met.

More detailed guidance on the principles that will be applied in making decisions about increasing notional loan accounts is set out below.

Part A – additional credits following provider closure:

The determination that credits arise in the VET FEE-HELP account of a VET provider when another body ceases to be a VET provider does not specifically require submission through a formal application process. However, it is expected that affected VET providers would typically seek and make application for increased cap coverage, and would set out the facts and circumstances supporting the request. Further information and guidelines relevant to these requests are set out in **Part A** below.

Part B – additional credits for certain courses:

The grant of credit for a course that confers skills in an identified area of national importance that leads to employment in a licensed occupation may only be made on an application by a provider. An application is not required to be in any particular form. However, a VET provider making such an application is expected to:

- i. provide relevant identifying information (including VET provider's name, registered business name (if different), any other business name(s), HITS ID, business address, and contact person's details);
- ii. address all elements of the provision in their application (in accordance with the guidelines); and
- iii. specify the amount of credit they seek.

Failure to do so is likely to mean the application is unable to be decided. For further information, refer **Part B** below.

The power to make these decisions has been delegated to senior departmental officers. Requests and applications should therefore be sent to the Department of Education and Training for consideration. This could be in electronic or paper form, via:

- TSEnquiries@education.gov.au; or
- Branch Manager
VET FEE-HELP Branch
Department of Education and Training
GPO Box 9880
CANBERRA ACT 2601

Other

The department is aware there may be factors specific to a VET FEE-HELP provider's circumstances that are unusual or out of the ordinary and lead to an outcome that is unjust, unreasonable or otherwise inappropriate. For example, such circumstances may arise where the cap is not sufficient to cover existing continuing students enrolled prior to 11 December 2015, or where a provider may have only had two census dates in a year, the second falling after 31 August 2015. If these kinds of circumstances exist for a provider they may contact the department as indicated above.

It is **not** in accordance with the guidelines for additional cap coverage to provide for increased provider profit margins.

Part A

Guidelines – discretion to determine credits arise for a provider where another body ceases to be a VET provider

Applications

The power to make a legislative instrument by which these decisions are given effect is vested in the Minister, with the power delegated to senior departmental officers.

Although there is no formal application process for the exercise of this power to be effected, providers would be expected to make application for an increase pursuant to this provision. It is expected that affected VET providers would typically seek increased cap coverage, and would set out the facts and circumstances supporting the request. These requests will often be actioned in line with activation of tuition assurance provisions, and would include provision of information from the provider of prospective student study load and fees.

The onus would be on a VET provider to satisfy the Minister/delegate that credit should be transferred, and the amount of credit to be transferred.

Legislative framework

Paragraph 45D(2)(e) and subclause 45D(6) of Schedule 1A to the Act provide respectively as follows:

45D(2) A credit arises in the VET provider's VET FEE-HELP account as follows:

- (e) if another body ceases to be a VET provider, a credit may arise:*
 - (i) in accordance with a determination under subclause (6) at the time of the cessation; and*
 - (ii) that is equal to the amount worked out under that determination;*

45D(6) The Minister may, by legislative instrument, determine:

- (a) whether credits arise in the VET FEE-HELP accounts of specified VET providers when another body ceases to be a VET provider; and*
- (b) the amounts of such credits.*

Discretion

The threshold for use of the power is simply that a body ceases to be a VET provider (under the Act), however the Minister/delegate is not bound to make a determination in any circumstances.

When a VET provider ceases to be a VET provider

Suspension or revocation can be relied upon to engage the legislative power. However, the circumstances under which suspension or revocation occur will vary, and it is a matter of judgment therefore about the appropriate timing of any decision to determine that credit arises for another provider.

Where a provider ceases voluntarily and transfers students to a new provider, or providers combine, it would (unless there are other factors of concern) typically be appropriate to take prompt action to determine that credits arise for the new provider. In such circumstances it is anticipated most, if not all, of the ceasing provider's credit would be transferred, however individual circumstances may indicate otherwise and it may not be appropriate to transfer all credit.

Where a provider ceases and tuition assurance is invoked, it would also (unless there are other factors of concern) typically be appropriate to take prompt action to determine that credits arise for provider(s) taking displaced students. It is anticipated that credit would effectively follow students to the extent appropriate.

Where a provider ceases involuntarily as a consequence of compliance or other action the situation will often be less clear. For example, where such a decision is 'stayed' through judicial process the affected organisation will regain its VET provider status. In such circumstances, as a general principle it would typically be appropriate for such decisions to be made later in the process of suspension/revocation, when the potential outcome may be more certain, subject however to the emergent needs of continuing students and the providers with which they may choose to continue their studies. The legislation requires the provider cessation to occur – which is to be effected by lodgement of the relevant legislative instrument on the Federal Register of Legislative Instruments, and cap may not be able to be allocated until this legislative process has occurred.

Priorities

The first priority will be to support the ongoing study of genuine, affected students of the ceasing provider. Credits would be determined to arise for providers that in fact take on those students.

To the extent relevant, tuition assurance processes will be used to 'trace' the movement of students. To the extent tuition assurance arrangements do not apply to the arrangement (e.g. a provider transfers the whole or a part of its business to a new provider) other evidence of the extent of movement of students would usually be sought.

Amount of credit determined to arise

The Minister/delegate may determine the amount of credit that arises.

The Act does not require a link between the amount of credit determined to arise, and the amount of credit that would otherwise have been available to the ceasing provider. As a general principle however, the amount of credit determined to arise would not exceed the amount of credit that would otherwise have been available to the ceasing provider (unless there are special circumstances).

Other considerations

In exercising the discretion the Minister/delegate may have regard to the policy intent of the scheme and its reforms, and any other relevant matter.

Review

A decision of the Minister/delegate is **not** reviewable under clause 91 of Schedule 1A to the Act. However the legislative instrument determining the additional credits would be subject to potential disallowance by Parliament.

Part B

Guidelines for the grant of additional credit in a VET provider's VET FEE HELP account

Application required

The Secretary/delegate may only exercise this power on the application of a VET provider.

An application is not required to be in any particular form. However, a VET provider making such an application would be expected to:

- i. provide relevant identifying information (including VET provider's name, registered business name (if different), any other business name(s), HITS ID, business address, and contact person's details):
- ii. address all elements of the provision in their application (details of each element are provided below); and
- iii. specify the amount of credit they seek.

Failure to do so is likely to mean the application is unable to be decided.

The onus is on the applicant provider to satisfy the Secretary/delegate that the elements of the provision are met, and that a grant of credit should be made.

Legislative framework

Paragraph 45D(2)(f) of Schedule 1A to the Act provides as follows:

45D(2)(f) if the Secretary, on application by the VET provider, is satisfied on a particular day that:

- (i) the VET provider is offering a VET course of study that confers skills in an identified area of national importance; and*

- (ii) the course is relevant for employment in a licensed occupation; and*
- (iii) one or more students are unable to readily access training places in courses of this kind with any other VET provider; and*
- (iv) insufficient credits have arisen in the VET provider's VET FEE-HELP account for an appropriate number of students to undertake the course with the VET provider; and*
- (v) granting an extra credit of a particular amount is appropriate (which need not be the amount specified in the application);
the Secretary may grant a credit, which arises on that day, that is equal to the amount considered appropriate under subparagraph (v).*

Secretary's discretion

The Secretary/delegate must be satisfied that all elements of the provision are satisfied before exercising the discretion to grant additional credit.

Whether or not credit is granted, and if so, the amount of credit granted, is (subject to the Secretary/delegate acting reasonably) at the discretion of the Secretary/delegate. Satisfaction of all elements of the provision does not require or obligate the grant of credit.

The Secretary/delegate will administer this provision on its enacted terms.

Element descriptions

The provider should address all of the following legislative elements in its application – all criteria must be satisfied.

(i) VET course of study that confers skills in an identified area of national importance

Skills required for employment in an occupation on the [Consolidated Sponsored Occupations List \(CSOL\)](#), as published by the Department of Immigration and Border Protection from time to time, will be accepted as meeting the requirement of being an identified area of national importance.

(ii) The course is relevant for employment in a licensed occupation

A licensed occupation is one where it would be unlawful for a person to engage in that occupation without having first obtained a licence. Such licensing arrangements will have a statutory basis, although may be referred to as a certificate, accreditation or otherwise when granted by the relevant authority.

A requirement for registration as a condition of employment in an occupation is accepted as a relevant licensing requirement, where the course is relevant to the registration. For example, for a person to work as a nurse or midwife in Australia, they need to apply for and be registered with the Nursing and Midwifery Board of Australia.

Certification and/or registration, including with an industry or professional body, in the absence of legal restrictions on the right to practice in an occupation are not considered relevantly to be licensing.

The licensing requirement has no geographical element. It will therefore be sufficient if employment in a relevant licensed occupation is required anywhere in Australia.

It will also be sufficiently relevant if one of the qualifications accepted for licensing is a VET qualification. For example, registration as a building inspector in Victoria requires either '[a] certificate issued by the board after an examination of the applicant certifying that the applicant has adequate knowledge and experience to inspect the classes and types of building or the components of building work specified in the certificate' or a 'Diploma in Building Surveying'.

The Secretary/delegate may have regard to the information published by the Australian Bureau of Statistics in the Australian and New Zealand Standard Classification of Occupations in determining whether an occupation is one for which registration or licensing is required.

The fact that a particular course could be used in a licensed occupation would not usually, without more, be relevant in the appropriate sense. There should typically be a causal connection, with the course being a means, or on the pathway, to employment in the licensed occupation. For example, information technology or business studies are likely to be of use to some degree potentially in a range of licensed occupations, however they would not be considered relevant in the necessary sense on that basis alone.

(iii) One or more students are unable to readily access training places in courses of this kind with any other VET provider

A theoretical shortfall of places is not sufficient. There must be in fact one or more students actually seeking training places. In many cases a provider should be able to identify affected individuals.

There must be no other VET provider with which affected students would be able to access places. It is not necessary that other providers offer exactly the same course of study as the provider seeking the grant of credit. Other providers can be considered to offer access to training places if the course on offer leads to the same material outcome.

The Secretary/delegate may have regard to the practical aspects of students accessing places with another provider, including:

- teaching, accommodation and other resources;
- credit in the other VET provider's VET FEE-HELP account; and
- the physical location of the students and the other provider(s), and associated travel arrangements.

(iv) Insufficient credits have arisen in the VET provider's VET FEE-HELP account

It is not necessary for the applicant VET provider's VET FEE-HELP account to be at zero or in deficit before an application may be made. However, an applicant provider would be expected to be able to show with a high degree of certainty that the credits in their account will be insufficient. Applications should address a breakdown of the VET fee liabilities to be incurred by, and numbers of, existing students, together with an analysis of projected liabilities of proposed additional students.

Granting an extra credit of a particular amount is appropriate

In considering whether a grant of extra credit is appropriate, and the amount of such a grant, the Secretary/delegate may additionally have regard to any other relevant matter. This includes, although is not necessarily limited to, the following:

- the level of outlay for the VET FEE-HELP scheme, at the national and regional level;
- current demand and likely future demand for the relevant skills and occupation;
- the level of student demand and the degree to which the applicant provider would satisfy that demand (if any) for the relevant skills and occupation, and the degree to which the applicant provider would satisfy the level of student demand;
- the cost benefit of providing additional credit, including consideration of fee levels and the history of learning outcomes delivered by the provider, including pass and completion rates, and the subsequent employment of students;
- relative commercial advantage/fairness to the applicant provider and other relevant providers, and the degree (if any) to which the grant of credit may lead to material adverse impacts on third parties;
- skills shortages identified by the Department of Employment or otherwise;
- degree of risk (if any) to the integrity of the scheme; and
- consistency with the policy intent of the scheme.

Amount of credit provided

The Secretary/delegate may grant an amount that is appropriate.

In deciding an appropriate amount regard may be had to the factors outlined in paragraph (v) above under the heading 'Granting an extra credit of a particular amount is appropriate'. Notwithstanding that the Secretary/delegate may consider the terms of subparagraphs 45D(2)(f)(i) to (iv) to be satisfied, it may still be determined that the grant of a nil amount is appropriate.

Review

A decision of the Secretary/delegate is reviewable under clause 91 of Schedule 1A to the Act.