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TO: All Colleges

FROM: Marc LeForestier
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SUBJECT: **Legal Advisory 18-02: Recent Additions to Nonresident Tuition Exemptions
(Supersedes Legal Advisory 07-01)**

This advisory provides information regarding exemptions to nonresident tuition, including changes to the law enacted by the California Legislature in 2017, and effective January 1, 2018. This advisory provides an update on new laws affecting residency, as well as new legislation on student immigrant visas and military dependents. Attached to this advisory is an updated list of Frequently Asked Questions ("FAQ").

A. Residency and Tuition

The Education Code defines California residency for the purpose of establishing resident tuition at public post-secondary institutions as a "student who has residence, pursuant to Article 5 (commencing with Section 68060) of this chapter in the state for more than one year immediately preceding the residence determination date." (Ed. Code, § 68017.) This residency determination is important because nonresidents are subject to an additional fee. (Ed. Code, §§ 68050 et seq., 76140, 76141.) Education Code section 68050 generally requires that students who are not residents of California pay nonresident tuition in addition to fees required by the institution of resident students.

The Education Code also authorizes a number of exemptions to this requirement. These exemptions do not affect residency status, but do excuse the payment of nonresident tuition.

B. The AB 540 Nonresident Tuition Exemption

In 2001, the Legislature enacted Assembly Bill 540, which added section 68130.5 to the Education Code. The AB 540 exemption allowed certain nonresident students who attended high school in California for three or more years, and received a high school diploma or its equivalent, an exemption from nonresident tuition. In 2014, the Legislature enacted Assembly Bill 2000, which expanded the exemption, extending it to certain students who either attended California elementary or secondary schools (or both) for a total of 3 or more years, or attained equivalent credits in California. This year, the Legislature reorganized the statute and expanded the exemption further, allowing adult school and noncredit course work to establish eligibility for the exemption. These changes are contained in Senate Bill 68.

1. AB 540 Exemption Eligibility Requirements

Senate Bill 68 established a complex scheme for determining eligibility for the AB 540 exemption. Under Senate Bill 68, a student¹ is exempt from paying nonresident tuition at the California Community Colleges if the student meets *all* of the following four requirements, as applicable:

Requirement 1: Attendance at California schools. This requirement may be met in either of the following two ways:

- ❖ Total attendance (or attainment of credits earned) in California equivalent to three or more years of full-time attendance at California high schools, California high schools established by the State Board of Education, California adult schools (established by a county office of education, a unified school district or high school district, or the Department of Corrections and Rehabilitation), campuses of the California Community Colleges, or a combination of these; or
- ❖ Three or more years of full-time California high school coursework, and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of California elementary and secondary schools.

(Ed. Code, § 68130.5, subd. (a)(1).)

Full-time attendance at a California community college means either 12 units of credit per semester (or quarter equivalent per year) or a minimum of 420 class hours per year (or semester or quarter equivalent per year) in non-credit courses authorized by Education Code section 84757. Attendance in credit courses at a California community college counted towards this requirement shall not exceed a total of two years of full-time attendance. (Ed. Code, § 68130.5, subs. (a)(1)(C)(i), (a)(1)(C)(ii).)

Full-time attendance at a California adult school means a minimum of 420 class hours of attendance for each school year in classes or courses authorized by Education Code section 41976, or Penal Codes sections 2053 or 2054.2. (Ed. Code, § 68130.5, subd. (a)(1)(C)(i).)

Requirement 2: Completion of a course of study. This requirement may be met in any of the following ways:

- ❖ Graduation from a California high school or equivalent.²
- ❖ Attainment of an associate degree from a California community college.
- ❖ Fulfillment of the minimum transfer requirements established for the University of California or the California State University for students transferring from a California community college.

(Ed. Code, § 68130.5, subd. (a)(2).)

¹ Under Senate Bill 68, a “nonimmigrant alien” within the meaning 8 U.S.C. § 1101(a)(15) is not entitled to claim the exemption. These provisions identify a number of categories of visitors to the United States who have a form of temporary lawful status, but do not intend to establish residency.

² California General Educational Development (GED), High School Equivalency Test (HiSET), Test Assessing Secondary Completion (TASC), and California High School Proficiency Examination (CHSPE). See General Counsel Legal Opinions 05-09 and 06-02.

Requirement 3: Registration. Requires registration as an entering student at, or current enrollment at, an accredited institution of higher education in California. (Ed. Code, § 68130.5, subd. (a)(3).)

Requirement 4: Affidavit of student without lawful immigration status. Students without lawful immigration status must file an affidavit with their college or university stating that the student has either filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so. (Ed. Code, § 68130.5, subd. (a)(4).)

2. AB 540 Exemption: Relation to Apportionment

Students who are exempt from nonresident tuition under this exemption may be reported by a community college district as a full-time equivalent student for apportionment purposes. (Ed. Code, § 68130.5, subd. (b).)

C. Nonresident Tuition Exemptions for Refugees, Special Immigrant Visa holders, and Others

In 2017, the California Legislature also enacted Assembly Bill 343, which establishes a new exemption from nonresident tuition for refugees with special immigrant visas (SIVs) who have fled Afghanistan, Iraq, Syria or other countries. According to the Legislature, between 2011 and March 2017, more than 36,000 refugees entered California, 9,200 of them under the SIV program. (Ed. Code, § 68075.6, subd. (a).)

Effective January 1, 2018, Education Code section 68075.6 grants an exemption to nonresident tuition for: (1) Iraqi citizens or nationals (and their spouses and children) who were employed by or on behalf of the United States Government in Iraq, and who meet certain criteria (Ed. Code, § 68075.6, subd. (b)(1); Public Law 110-181, § 1244); (2) translators (and their spouses and children) who worked directly with the United States Armed Forces, and who meet certain criteria (Ed. Code, § 68075.6; Public Law 109-163, § 1059); and (3) refugees (Ed. Code, § 68075.6, subd. (b)(1), 8 U.S.C. § 1157). These exemptions only apply to those who settled in California upon entering the United States. (Ed. Code, § 68075.6, subd. (b)(1).) Students who settled elsewhere in the United States, and then moved to California would not be eligible for this exemption and would be required to either establish residency or pay nonresident tuition. Under Education Code section 68122, T and U visa holders are also exempt from nonresident tuition by extension of Assembly Bill 343.

Assembly Bill 343 also states that the exemption for a student is only available for the maximum time it would take for the student to establish residency. (Ed. Code, § 68075.6, subd. (b)(1).) That time, and therefore any nonresident tuition exemption, will expire one year from the date the student settled in California upon entering the United States. (Ed. Code, § 68017.) Upon expiration of the nonresident tuition exemption, the student will either have established residency in California, or will have an intention to reside elsewhere, and be subject to nonresident tuition.

A community college district may report a student who is exempt from nonresident tuition pursuant to this section, and who is enrolled as a student in that district, as a full-time equivalent student for apportionment purposes. (Ed. Code, § 68075.6, subd. (b)(2).)

D. Expansion of Resident Classification for Purposes of Determining Tuition and Fees

Education Code section 68074 provides that specified dependents of members of the Armed Forces of the United States who are stationed in California on active duty are entitled to “resident classification only for the purpose of determining the amount of tuition and fees.” In Assembly Bill 172 (2017), the Legislature extends

this resident classification to specified dependents of transferred or retired members, provided the dependent was admitted to a public postsecondary institution prior to the transfer or retirement. (Ed. Code, § 68074, subd. (b).)

E. Attached Documents

Education Code section 68130.5.

California Nonresident Tuition Exemption Request.

The Board of Governors' regulations require community college districts to use a "questionnaire form prescribed by the Chancellor" to determine eligibility for the exemption. The form was developed in cooperation with the University of California and the California State University systems, and is required for use in the application process.

F. Questions and Answers

1. Does SB 68 affect current title 5 regulations concerning residency?

No. Residency regulations remain in effect. The law does not grant or amend current residency rules, but rather provides for an exemption from nonresident tuition for certain nonresident students. Education Code section 68130.5 requires the Board of Governors to adopt regulations detailing the requirements for the new exemption. The regulations appear in title 5 of the California Code of Regulations as sections 54045.5 and 58003.6.

2. Does the nonresident tuition exemption law grant residency?

No. The law does not grant residency. It provides that certain nonresident students are exempt from paying nonresident tuition.

3. Do students need to demonstrate an intent to become a California resident in order to qualify for this exemption?

No. However, the exemption is not available for students who are absent from California, and are taking distance education classes from California community colleges.

4. Is the exemption available to anyone who qualifies for it, regardless of citizenship or immigration status?

Yes.

5. Do community college districts have discretion in granting the exemption?

No. The exemption from nonresident tuition is mandatory. If a district finds that a student meets all requirements of the law, nonresident tuition may not be charged.

6. What happens if a student is determined to be eligible for this exemption after the payment of nonresident tuition?

The nonresident portion of tuition paid must be refunded to the student.

7. May community college districts claim apportionment for credit courses taken by the nonresident students who are exempted from the payment of nonresident tuition pursuant to section 68130.5?

Yes.

8. May a community college district charge the capital outlay fee authorized by Education Code section 76141 to a student who is eligible for the exemption from nonresident tuition provided by Education Code section 68130.5?

No. (See Office of General Counsel Opinion 04-15.)

9. How does SB 68 relate to pre-registration of a student?

Some districts conduct pre-registration for high school seniors prior to their graduation. Such students cannot sign a valid exemption request (because they have not yet graduated from high school). If district policies permit, a student's payment of nonresident tuition can be deferred until the district can consider the student for an exemption. As of January 1, 2017, Assembly Bill 2364 (Holden) requires community college districts to exempt all qualifying nonresident special "part-time" students (other than those with a non-immigrant status, such as students present in the United States on a B visitor visa) from the nonresident tuition fee.

Forms and Verification

10. Are districts and colleges required to use the prescribed questionnaire form?

Districts should ensure that the prescribed questionnaire form is contained in any publications printed by the college. The common form as prescribed by the Chancellor must be used for all exemptions granted for terms subsequent to Fall 2002. In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. Districts are encouraged to print this one-page document on the reverse of the mandated form and to include it in a convenient manner in other media. The use of this informational piece is optional.

11. Is additional documentation required for verification?

The law does not specify the manner or type of verification required except by reference to an affidavit from those without lawful immigration status. The Chancellor's Office has concluded that a district may rely exclusively on the student's self-certification of status. The University of California and the California State Universities may require additional documentation.

12. What should a district or college do if they have conflicting information about a student's eligibility?

If the district is in possession of conflicting information regarding any aspect of student eligibility, the district should pursue additional verification (e.g., high school transcript, diploma, etc.) to resolve discrepancies prior to granting this exemption.

13. Can districts implement additional qualification criteria?

Districts are free, at their discretion, to develop and implement additional documentation requirements relating to qualification criteria, as long as such requirements are uniformly applied to all applicants. However, districts may not require additional documentation related to immigration status (see #31) unless the district has conflicting information which must be resolved.

14. Are districts required to obtain a new affidavit or re-verify eligibility after receipt of the original exemption?

The law does not require districts to obtain a new affidavit for terms subsequent to the original exemption.

15. How long must a district or college retain the original certified affidavit?

The original certified affidavit and other materials utilized to meet the certification requirements, are considered Class 1 - Permanent Records, under the provisions of title 5, section 59023. Class 1 records must be retained indefinitely, unless copied or reproduced by photograph, microphotograph or reproduced on film or electronically. It is suggested, for audit purposes, that the original documents be maintained for at least five years.

Eligibility Issues Related to High School Attendance and Graduation

16. Are students required to attend an educational institution for three consecutive years?

For purposes of eligibility, the law does not require consecutive attendance.

17. What other forms of high school attendance are acceptable towards eligibility?

Attendance at continuation high schools, charter high schools, independent study at the 9th-12th grade level while enrolled in a California public school, including a charter school, and private tutoring provided by a person holding a valid California teaching credential (and meeting other state requirements) are recognized under state law as acceptable manners in which to attend high school.

18. Does home schooling count as valid attendance towards eligibility?

Home schooling is instruction by a tutor or other person (including the student's parent) who does not have a valid California teaching credential. Local high schools are charged with determining whether to accept home schooling as valid attendance. Therefore, community college districts that are asked to consider home schooling as high school attendance for purposes of granting the exemption should confer with the public high school the student would have attended if not home schooled. If that high school accepts or would accept home schooling as valid high school attendance, the community college should also accept it for purposes of assessing whether the student can demonstrate three years of high school attendance.

19. Will attendance at a private school count towards attendance eligibility?

The law does not distinguish between public and private primary and secondary schools. However, for purposes of adult schools, the law requires that the adult school be established by a county office of education, a unified school district or high school district, or the Department of Corrections and Rehabilitation (Ed. Code, § 68130.5, subd. (a)(1)(iii).)

20. Is there a time limit on when a student is required to attend an eligible educational institution?

There is no restriction based on when a student attended an eligible educational institution.

21. Can a student who graduated from a high school outside of California be eligible?

The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED or a high school proficiency exam). The GED or high school proficiency exam must be from California. There is no time limit on how far in the past the student attained this status.

22. Can a student be eligible without receiving a high school diploma?

Under limited circumstances students may be eligible for the exemption from nonresident tuition provided by AB 540 even though they have not received a high school diploma. For example, a student with a disability who has received a certificate of achievement issued by a high school pursuant to Education Code section 56390 should be considered to have satisfied the high school graduation requirement of AB 540 and would be entitled to the exemption from nonresident tuition if he or she meets all other requirements of the statute. (See Legal Opinion 05-09.) More generally, we believe that a student (other than a nonimmigrant) who meets minimum attendance requirements and receives a certificate of completion from a California high school is eligible for the exemption from nonresident tuition, provided that the document from the high school either states that it is issued pursuant to Education Code section 51412 or explicitly certifies that the student has completed the course of study and met the proficiency standards prescribed by the governing board of the high school district. (See Legal Opinion 06-02.)

Eligibility Issues Related to Immigration

23. Can districts create eligibility forms and ask for additional documentation?

All districts must use the affidavit contained on the form prescribed by the Chancellor's Office that affirms that those students without lawful immigration status have applied for legalization or will do so as soon as they are eligible to do so. A student who files the affidavit may not be asked to provide additional evidence of immigration status, unless evidence casts doubt on the validity of the affidavit. The law does not require the district to monitor future changes in such eligibility.

24. What should districts do if an eligible student files an application with USCIS to change status?

If the student has filed an application with the United States Citizenship and Immigration Service (USCIS) to change his or her status to a classification that permits establishing residency, the student may already be eligible for resident fee status if the student has resided in California for more than one year since the time of the application to USCIS. (See Cal. Code Regs., tit. 5, § 54045.)

25. Are nonimmigrant visa holders eligible for this exemption?

Students who hold visas as nonimmigrant aliens other than T and U visas are not eligible for this exemption. (See 8 U.S.C. § 1101(a)(15).)

26. Are B visa holders eligible for this exemption?

Please note that federal immigration law provides that: "An alien who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study." (8 C.F.R. § 214.2(b)(7).) This does not affect the student's eligibility for the exemption provided by AB 540, but colleges should consult their legal counsel about the ramifications of the federal restrictions.

27. Are out-of-status students eligible for this exemption?

Students who previously held valid nonimmigrant visas but who are out-of-status at the time of execution of the affidavit are eligible for the exemption.

Financial Aid, Outreach and Transfer

28. How does this exemption affect financial aid?

The laws and regulations regarding state financial aid are not affected by this exemption from nonresident tuition. Students who qualify for the exemption may also qualify for financial aid consistent with the California Dream Act. Nonresidents who are U.S. citizens or permanent residents are eligible for federal student aid.

29. What can districts do to help students who qualify for this exemption, but may otherwise be afraid to seek assistance?

Some students may be reluctant to come forward in order to obtain this exemption. Districts may publicize the eligibility requirements of the non-resident tuition exemption to all interested and eligible students. Districts may refer students to the "I Can Afford College" campaign website and the Chancellor's Office's "Resources for Undocumented Students" website.³

30. Are UC and CSU providing the same exemption from non-resident tuition?

Both UC and CSU are implementing this exemption from nonresident tuition. UC and CSU use a similar form as the Community Colleges for the exemption application, or may accept the same form. Students should submit an application form to all UC or CSU campuses under consideration – there is no centralized UC or CSU office that makes assessments for all the campuses. Transfer students will be required to execute a new form with the UC or CSU campus (even if a current form is on file with the community college) and will be required to submit proof of high school attendance and high school graduation.

³ <http://www.icanaffordcollege.com/>
<http://www.cccco.edu/ResourcesforUndocumentedStudents.aspx>

Student Liability

31. What happens if a student falsely certifies and receives the exemption?

If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student will be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may also be subject to disciplinary proceedings under district policy. The student self-certification contains a student acknowledgement of this potential liability and discipline.

Confidentiality

32. Is the certification form and the information it contains confidential?

Yes. The law requires that all information obtained in the implementation of this program be confidential.

Research

33. Will the Chancellor's Office keep data on the students for identification purposes?

No. The Chancellor's Office will not maintain a Management Information Systems (MIS) data element to identify students receiving an exemption from nonresident tuition under these rules.

Questions regarding these guidelines should be directed to the following staff at the California Community College Chancellor's Office:

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Education Code section 68130.5

Notwithstanding any other law:

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges if the student meets all of the following requirements:

(1) Satisfaction of the requirements of either subparagraph (A) or subparagraph (B):

(A) A total attendance of, or attainment of credits earned while in California equivalent to, three or more years of full-time attendance or attainment of credits at any of the following:

(i) California high schools.

(ii) California high schools established by the State Board of Education.

(iii) California adult schools established by any of the following entities:

(I) A county office of education.

(II) A unified school district or high school district.

(III) The Department of Corrections and Rehabilitation.

(iv) Campuses of the California Community Colleges.

(v) A combination of those schools set forth in clauses (i) to (iv), inclusive.

(B) Three or more years of full-time high school coursework, and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of California elementary and secondary schools.

(C) (i) Full-time attendance at a campus of the California Community Colleges counted towards the requirements of this paragraph shall comprise either a minimum of 12 units of credit per semester or quarter equivalent per year or a minimum of 420 class hours per year or semester or quarter equivalent per year in noncredit courses authorized pursuant to Section 84757. Attendance in credit courses at a campus of the California Community Colleges counted towards the requirements of this paragraph shall not exceed a total attendance of two years of full-time attendance.

(ii) Full-time attendance at a California adult school counted towards the requirements of this paragraph shall be a minimum of 420 class hours of attendance for each school year in classes or courses authorized pursuant to Section 41976 or Sections 2053 to 2054.2, inclusive, of the Penal Code.

(2) Satisfaction of any of the following:

(A) Graduation from a California high school or attainment of the equivalent thereof.

(B) Attainment of an associate degree from a campus of the California Community Colleges.

(C) Fulfillment of the minimum transfer requirements established for the University of California or the California State University for students transferring from a campus of the California Community Colleges.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student who is exempt from nonresident tuition under this section may be reported by a community college district as a full-time equivalent student for apportionment purposes.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall prescribe rules and regulations for the implementation of this section.

(d) Student information obtained in the implementation of this section is confidential.