South Carolina Commission on Higher Education

RESIDENCY WORKSHOP
2017
Please remember to sign-in
Agenda

9:30am  Welcome

9:35am  Review of the Regulation

10:35am Current Issues/Questions

10:50am Adjourn

11:00am Scholarship and Grant Workshop

* After the final workshop, a copy of this presentation can be found on the CHE website *
Disclaimer!

* The presentation will cover BOTH the old regulation, currently in place, and the changes to the regulation, which have an effective date in January, 2018.
  - Red indicates point of emphasis in regulation
  - Underline indicates added language in new Regulation
  - Strikethrough indicates removed language in new Regulation

* This presentation will contain scenarios that occurred throughout the academic year. The scenarios are real, however, the locations and names of the institutions have been changed.

* There will be opportunities for discussion if needed. However, please be mindful that we may need to move on from a topic in order to ensure the entire workshop is covered.
Typical Steps to a Residency Determination

- **Moves into State and Establishes Domicile**
  - Establishes Domicile - Rent/Lease/Own - Need paperwork in file for audit purposes

- **Check Important Documents**
  - 45 Days from date of signature on domicile to register vehicle
  - 90 Days from date of signature on domicile to relinquish out of state license
  - Taxes/Divorce Decree/LES

- **Check for Exceptions**
  - Active duty military
  - Retirees
  - Faculty at Public Colleges/Universities
  - Working Full-time in SC
  - Veterans and covered individuals using specific education benefits

- **Wait 12 months**
  - If no exceptions are met, then 12 months from date of Domicile. Next term will be first term of eligibility for instate rates
Review of Residency Regulation
A. Resident classification is an essential part of tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state.

What this means?
Each institution is responsible for making residency decisions according to State law & regulations provided by CHE. Institutions should take into account that they should be fair and consistent in their decisions.
62-602. Definitions

N. “Resident” for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, not withstanding other provisions of the Statute.

What does this Mean?

The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605.
A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in state tuition and fees. The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605 entitled “Establishing the Requisite Intent to Become a South Carolina Domiciliary.” The twelve month residency period cannot start until the absence of indicia in other states is proven. Absences from the State during the twelve month period may affect the establishment of permanent residence for tuition and fee purposes.
B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person’s support and claims or, only in the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, qualifies to claim the dependent person as a dependent for federal income tax purposes. Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.
**Qualifying Child**
- Relationship - Your child, stepchild, foster child, grandchild, siblings, half-siblings, step-siblings, niece or nephew
- Age – under 19 or student up to 24 and younger than filer
- Residency – lived with you more than half the year
- Support – You must provide more than half person’s support
- Joint Return – child can’t file joint return for year

**Qualifying Relative**
- Not a Qualifying Child of another taxpayer
- Member of Household or Relationship – Lives with you or related to you in a legal manner
- Gross Income – makes less than $4050 for year (2016)
- Support – You must provide more than half person’s support

*No age restriction on Qualifying relative*
C. For independent persons or the parent, spouse, or guardian of dependent persons, indicia showing examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:

(1) Statement of full-time employment;

(2) Designating South Carolina as state of legal residence on military record;

(3) Possession of a valid South Carolina driver’s license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until a South Carolina driver’s license is obtained;

(4) Possession of a valid South Carolina vehicle registration card for every vehicle the independent person is in sole or partial ownership. Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until the applicant obtains a valid South Carolina vehicle registration card;
(5) Maintenance of an established and current domicile in South Carolina;

(6) Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;

(7) Ownership of principal residence in South Carolina; and

(8) Licensing for professional practice (if applicable) in South Carolina.

D. The individual seeking residency must ensure that no item from the list above or any other item, reflects residency or intent to be a resident in another state or country. Having any one item from the list above or any other item(s) reflecting residency in another state or country will delay the beginning date of residency. The absence of indicia in other states or countries is required before the student is eligible to pay in state rates.
D. “Domicile” is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. Housing provided on an academic session basis for students at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary.
Scenario

I have a young man who is petitioning for in-state tuition on the basis of being in state for a year. His license shows a year as does the vehicle registration. He is living with his girlfriend in her house. He does not have a lease. He does not work and is not on unemployment. He does not receive any state or federal benefits. He does not have any bills in his name. He has a newly opened bank account in state. He is listed on the home owners insurance policy. Can we classify him as a resident?
Response

No. Although the student has documentation that suggests residency, the residency officer has no idea if the student has satisfied the mandatory 12 month requirement in a domicile. The lack of a lease or document showing home ownership does not allow for the date to be identified where the 12 month clock can begin.
C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who claims the dependent person as a dependent for tax purposes; or

based on the resident status of the parent who has legal custody or legal joint custody of the dependent person; or

based on the resident status of the person who makes payments under a court order for child support and at least the cost of his/her college tuition and fees.
What does this mean

There are three ways that a child of divorced or legally separated parents can gain in-state tuition and fees:

1. The SC parent is a resident and claims the child on taxes; or
2. There is a joint custody agreement and one of the parents is a SC resident; or
3. The SC resident parent is responsible for paying court ordered child support AND the cost of college.
Scenario

“My parents are divorced with ‘joint’ custody. I have lived with my mother (who lives in South Carolina) my whole life, but moved with my dad (who lives in Florida) just this past year and I received my drivers license in Florida. My father claims me on taxes as a part of the divorce decree.

But next fall, I plan on moving back to South Carolina to go to school. Would I qualify for in state tuition? I've lived in South Carolina with my mother my whole life.”
Response

Because the mother has joint custody, and is a SC resident, the student can be considered in-state. The fact that the father claims student in Florida and the student has a Florida license does not matter in this situation.
Examples of Documentation for Verification

- Document of legal separation
- Divorce Decree showing custodial agreement.
- Copies of income taxes.
- Copies of legal documentation of child support and determination of who shall pay cost of college.

Note: Documents from a notary public do not count as examples for verification
62-606. Maintaining Residence

(1) Continuing to use a South Carolina permanent address on all records;
(2) Maintaining South Carolina driver’s license;
(3) Maintaining South Carolina vehicle registration;
(4) Satisfying South Carolina resident income tax obligation.

Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country (ex. Individual who crosses state lines to work daily).
62-606. Maintaining Residence

B. Active duty members of the United States Armed Forces and their dependents are eligible to pay in state tuition and fees as long they continuously claim South Carolina as their state of legal residence during their military service. Documentation will be required in all cases to support this claim, including an official Leave and Earnings Statement (LES) demonstrating South Carolina as the member’s state of legal residence. South Carolina residents who change their state of legal residence while in the military lose their South Carolina resident status for tuition and fee purposes.
Scenario

I have an incoming student whose dad is active duty in the Army. He is seeking SC residency based on dad’s active status. Here is the documentation I have:

- SCDL issued in 2011
- 2016 SC Income Tax Return with a Georgia address
- LES Statement from Jan. 2017 listing under SC “State Taxes”

Does student have any grounds for in-state charges?
Response

Yes, even though most signs point to North Carolina or Kansas, there is one that we give special weight to for active duty military folks stationed outside SC:

- LES Statement from Jan. 2017 listing under SC “State Taxes”

Student should be charged as an in-state student.
62-609 Exceptions

A. Persons in the following categories qualify to pay in-state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of class of the term for which payment of in-state tuition and fees is requested. Please note that these individuals do not automatically qualify for State Scholarships and Grants.
62-609 Exceptions

1. “Military Personnel and their Dependents”: Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled or transfer to an eligible institution during the term or semester, excluding summer terms, immediately following their enrollment at the previous institution. In the event of a transfer, the receiving institution shall verify the decision made by the student’s previous institution in order to certify the student’s eligibility for in-state tuition rates. It is the responsibility of the transferring student to ensure that all documents required to verify both the previous and present residency decisions are provided to the institution.
Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty. Such persons (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month “physical presence” requirement for them or their dependents to qualify to pay in state tuition and fees.
What does this mean

Active duty military members stationed in SC and their dependents are eligible for instate tuition and fees. When they are transferred away, their dependents can maintain instate tuition and fee status as long as they remain continuously enrolled.

Act No. 133 of 2012 charges the receiving institution with verifying the decision of the first institution in the event of a transfer of a student who was given instate through a military member, and the member has been transferred out of state after enrollment of the student.
62-609 Exceptions Continued

(2) “ Faculty and Administrative Employees with Full-Time Employment and their Dependents:”

Full-time faculty and administrative employees of South Carolina state-supported colleges and universities and their dependents are eligible to pay in-state tuition and fees.

Note 1: The dependent does not have to attend the same SC Institution as their parent or guardian.

Note 2: These individuals would not qualify for State Scholarships or Grants until intent to be a SC resident was established.
(3) “Retired Persons and their Dependents:” Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in-state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in-state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.
(4) “Residents with Full-Time Employment and their Dependents:” Persons who reside, are domiciled, and are full-time employed in the State and who continue to work full-time until they meet the twelve-month requirement and their dependents are eligible to pay in-state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in section 62-605 entitled (“Establishing the Requisite Intent to Become a South Carolina Domiciliary”).
“Full-time employment” is defined as employment that consists of at least thirty seven and one half hours a week on a single job in a full-time status. However, a person who works less than thirty seven and one half hours a week but receives or is entitled to receive full time employee benefits shall be considered to be employed full-time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full-time employment.
Examples of Documentation for Verification

• Copies of pay stubs – Evidence based on an income stream
• W-2
• Current letter of full-time employment or part-time enrollment with full-time benefits

Note: Two part-time jobs do NOT equal one full-time job
5. “Covered Individuals Receiving Specific Education Benefits”: Covered individuals living in South Carolina, who are enrolled in a public institution of higher education and receiving educational assistance under Chapter 30 and Chapter 33, Title 38 of the United States Code, are entitled to pay in-state tuition and fees without regard to the length of time the covered individual has resided in this State. For purposes of this subsection, a covered individual is defined as either a veteran receiving educational assistance under Chapter 30 and Chapter 33, Title 38 of the United States Code, who served ninety days or longer on active duty in the Uniformed Service of the United States, their respective Reserve forces, and the National Guard and who enrolls within three years of discharge; or Anyone using transferred Post-9/11 GI Bill benefits (38 U.S.C. § 3319) who lives in the state in which the institution is located (regardless of his/her formal State of residence) and enrolls in the institution within three years of the transferor's discharge or release from a period of active duty service of 90 days or more; or Anyone using benefits under the Marine Gunnery Sergeant John David Fry Scholarship (38 U.S.C. § 3311(b)(9)) who lives in the state in which the institution is located (regardless of his/her formal State of residence); or Anyone using transferred Post-9/11 G.I. Bill benefits (38 U.S.C. § 3319) who lives in the state in which the institution is located (regardless of his/her formal state of residence) and the transferor is a member of the uniformed service who is serving on active duty.
At the conclusion of the applicable three year period in subsection (C)(2)(a) or (C)(2)(b), a covered individual shall remain eligible for in-state rates as long as he remains continuously enrolled in an in-state institution or transfers to another in-state institution during the term or semester, excluding summer terms, immediately following his enrollment at the previous in-state institution. In the event of a transfer, the in-state institution receiving the covered individual shall verify the covered individual’s eligibility for in-state rates with the covered individual’s prior in-state institution. It is the responsibility of the transferring covered individual to ensure all documents required to verify both the previous and present residency decisions are provided to the in-state institution.”
“Independent Person” is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order. And for the purposes of determining residency for tuition and fees, an independent person:

1. must provide more than half of his or her support, which shall include the institutional cost of attendance as defined by Title IV, during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested. An independent person

2. cannot claim the domicile of another individual as their own for the purposes of establishing intent to become a South Carolina resident. An independent person
62-602. Definitions

3. must have established his/her own domicile and provide documentation of establishing his/her own domicile for twelve months to include documentation of renting a domicile if applicable, prior to receiving in-state tuition and fees.

; and An independent person

“Dependent Person” is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian, who claims the dependent person on his/her federal income tax return. In the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, a dependent person can be defined as one who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person’s college education. A dependent person’s residency is based upon the residency presumed to be that of the person upon whom they are dependent.”
Scenario

I hope this email finds you well. We are running into a situation with a Dual Enrolled student. He is a sophomore in high school and is completing a couple college courses. He moved to our town to live with his aunt and attend high school last year. He is technically still considered an out of state resident because his father lives in Utah and is still claiming him on his UT taxes, and refuses to give that up. He has been in town for over a year, but he is only 16 years old. His aunt has agreed that she would sign and have notarized an Affidavit of Dependence for the next tax year to claim him. The problem we are facing is that his father will not give him up on his Utah taxes. His aunt does not have any legal ties to him.

I was inquiring to see if there was any other way this student could become classified as a South Carolina resident, besides having his father stop claiming him.
Response

As long as father continues to claim, this will be difficult for student to be considered in-state. The only other way would be if the mother is in the picture as a SC resident with a joint custody agreement, or is paying child support and the cost of college as a SC resident.
A. Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family’s domicile in this state is terminated immediately prior to his/her enrollment may enroll at the in state rate and may continue to be enrolled at such rate even if the parent, spouse or guardian upon whom he is dependent moves his domicile from this State. Any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family’s domicile in this state is terminated after his/her enrollment may continue to receive in state rates, however, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.
62-602. (H) - Definition of Immediately prior

H. “Immediately Prior” is defined as the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year.
SC CODE OF LAWS SECTION 59-112-30 deals with effect of change of residency. This is already in law.

59-112-30 C. Notwithstanding the other provisions of this section, any dependent person who has been domiciled with his family in South Carolina for a period of not less than three years immediately prior to his enrollment may enroll in a state-supported institution of higher learning at the in-state rate and may continue to be enrolled at such rate even if the parent, spouse or guardian upon whom he is dependent moves his domicile from this State.
62-607 Effect of Change of Residency

B. If a dependent or independent person voluntarily leaves the state, and information becomes available that would impact the existing residency status, eligibility for in state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters.

A. Except as otherwise specified in this section or as provided in Section 62-609 (1) & (2), independent non citizens and non permanent residents of the United States will be assessed tuition and fees at the non resident, out of state rate. Independent non resident aliens, including refugees, asylees, and parolees may be entitled to resident, in state classification once they have been awarded permanent resident status by the U.S. Department of Justice and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period. Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.
What does that mean?

• Independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out-of-state rate.

• Refugees, asylees, and parolees may be entitled to in-state residency once they have received their Green card and met the SC Residency requirement.

• Time spent waiting for permanent resident status (time prior to getting your Green card) does not count towards the 12 month physical presence requirement.
What does that mean?

- Certain VISA classifications are entitled to in-state tuition and fees.
- Note: Students who are granted I-485 Pending status, as well as students in the US on Temporary Protective Status, are NOT green card holders and therefore cannot be considered SC Residents.
# Approved Visa Classification Descriptions

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>A-1</td>
<td>Highest diplomatic officers and their families</td>
</tr>
<tr>
<td>A-2</td>
<td>Staff under diplomatic officers and their families</td>
</tr>
<tr>
<td>E-2</td>
<td>Investor assisting in operating an enterprise who also invests a large amount of capital (and their families)</td>
</tr>
<tr>
<td>G-1</td>
<td>Principal representatives to international organizations (and their families)</td>
</tr>
<tr>
<td>G-2</td>
<td>Other representatives of foreign governments or international organizations (and their families)</td>
</tr>
<tr>
<td>G-3</td>
<td>Representatives of foreign governments (and their families)</td>
</tr>
<tr>
<td>G-4</td>
<td>Officers and employees of international organizations (and their families)</td>
</tr>
</tbody>
</table>
Approved Visa Classifications - Continued

H-1B  Temporary Professional Workers
H-2A  Temporary Agricultural Workers
H-2B  Temporary workers whose skills are needed in the U.S.
H-3   Trainees or participants in a special education exchange program
H-4   Dependents of H-1, H-2, H-3 employees
K-1   Fiancée or Fiancé of U.S. Citizens*
K-2   Child of Fiancée or Fiancé of U.S. Citizens*

* There is a 90 day marriage or green card stipulation that the student must fulfill for the K Visas
Approved Visa Classifications - Continued

L-1  Intra-company transfers, i.e., managers or executives who have worked abroad for branch of U.S. firm
L-2  Dependents of L-1 visa holder
N-8  Parent of alien child accorded special immigrant status
N-9  Child of an alien parent accorded special immigrant status

https://travel.state.gov/content/visas/en/immigrate.html - Link to the U.S Department of State, Bureau of Consular Affairs’s VISA page.
A. Persons incorrectly classified as residents are subject to reclassification and to payment of all non resident tuition and fees not paid. If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out of state rate. The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

B. Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.
62-612. Inquiries and Appeals

A. Inquiries regarding residency requirements and determinations should be directed to the institutional residency official.

B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution’s residency official. Each institution’s appeal process should be directed by that institution’s primary residency officer, in conjunction with those individuals who practice the application of State residency regulations on a daily basis. The professional judgment of the residency officer and administrators will constitute the institutional appeal process. Neither the primary residency official nor appellate official(s) may waive the provisions of the Statute or regulation governing residency for tuition and fee purposes.
What does this mean?

Each institution is responsible for developing an appeal process for students wishing to appeal institutional residency decisions.

While CHE can be contacted for assistance with interpretation of an existing regulation or statute during the institutional residency process, the institution will make the final determination of residency classification.
Topics for Additional Discussion

Act 22 of 2014 (H. 4034)
Other Important Topics
Act No. 22 of 2017
In 2015 legislation was passed (Act No. 11) in response to changes in Federal law pertaining to Section 702 of the Veterans Access, Choice and Accountability Act of 2014. That legislation provided that veterans and covered individuals attending public institutions located in South Carolina, and who are using specific educational benefits, would be charged tuition and fees at an in-state rate.

Recently, Congress passed Public Law 114-315, which again modifies 38 U.S.C. 3679(c). States were required to comply with Public Law 114-315 by no later than July 1, 2017, or risk losing eligibility for all education benefits for the Veteran population of the State.
In response, on May 9th, 2017, Governor McMaster signed into law Act No. 22 of 2017 (H. 3034), a piece of legislation related to tuition and fee assessment for covered individuals receiving specific educational benefits at public institutions in South Carolina. The legislation was required in order for South Carolina to be in compliance with Federal Public Law 114-315, which modified 38 U.S.C. 3679(c). Act No. 22 amends Section 59-112-50 of the SC Code of Laws, making the following categories of veterans and covered individuals eligible for in-state charges:
Act No. 22 of 2017

- A Veteran using educational assistance under either chapter 30 (Montgomery G.I. Bill – Active Duty Program) or chapter 33 (Post-9/11 G.I. Bill), of title 38, United States Code, who lives in the state in which the institution is located (regardless of his/her formal State of residence) and enrolls in the institution within three years of discharge or release from a period of active duty service of 90 days or more. (3-Year Rule Applies)

- Anyone using transferred Post-9/11 GI Bill benefits (38 U.S.C. § 3319) who lives in the state in which the institution is located (regardless of his/her formal State of residence) and enrolls in the institution within three years of the transferor's discharge or release from a period of active duty service of 90 days or more. (3-Year Rule Applies)
Act No. 22 of 2017

• Anyone using benefits under the Marine Gunnery Sergeant John David Fry Scholarship (38 U.S.C. § 3311(b)(9)) who lives in the state in which the institution is located (regardless of his/her formal State of residence). (NO 3-Year Rule here)

• Anyone using transferred Post-9/11 G.I. Bill benefits (38 U.S.C. § 3319) who lives in the state in which the institution is located (regardless of his/her formal state of residence) and the transferor is a member of the uniformed service who is serving on active duty. (NO 3-Year Rule here)
Act No. 22 of 2017

In summary, individuals using the Marine Gunnery Sergeant John David Fry Scholarship are no longer required to enroll within three years of the service member’s death, and there is no longer a requirement that the deceased service member’s death in the line of duty followed a period of active duty service of 90 days or more. In addition, a new category of covered individuals was added; the new category of consists of individuals using transferred Post-9/11 G.I. Bill benefits while the transferor is on active duty in the uniformed services. Please note that there is no a stipulation that either of these two categories of individuals enroll within a specific time period (no “3-year rule” for these two groups).
How can public institutions verify that the student is a covered individual?

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Documentation</th>
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<tbody>
<tr>
<td>Receiving Benefits under Chapter 30 or 33</td>
<td>• Certificate of Eligibility</td>
</tr>
<tr>
<td>Served at least 90 days of active duty in uniformed service of the US</td>
<td>• DD-214</td>
</tr>
<tr>
<td>Must enroll in public institution in SC within 3 years of discharge date</td>
<td>• DD-214 (First two categories ONLY)</td>
</tr>
<tr>
<td>Must be living in SC</td>
<td>• Proof of physical address (Not a P.O. box number)</td>
</tr>
</tbody>
</table>
SECTION 17. Chapter 101, Title 59 of the 1976 Code is amended by adding:

Section 59-101-430

(A) An alien unlawfully present in the United States is not eligible to attend a public institution of higher learning in this State, as defined in Section 59-103-5. The trustees of a public institution of higher learning in this State shall develop and institute a process by which lawful presence in the United States is verified. In doing so, institution personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 U.S.C. Section 1373(c).
(B) An alien unlawfully present in the United States is not eligible on the basis of residence for a public higher education benefit including, but not limited to, scholarships, financial aid, grants, or resident tuition.

*This Fall (2017) CHE will be requesting documentation of your process for verification, and the person responsible for that process.*
SC Illegal Immigration Reform Act Recommended Process for Verification

1. Student Application
   - FAFSA
   - SC Driver's License or ID Card after 2002
     - Social Security Card
       - Non Verified = Not Admitted or No Public Benefit
     - Verified
       - Verified
   - SAVE
     - Non Verified = Not Admitted or No Public Benefit
Deferred Action for Childhood Arrivals (DACA)
Deferred Action for Childhood Arrivals (DACA)

“On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization.
DACA (continued)

Key Points:
• Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.
• Deferred action does not provide an individual with lawful status.
• Verification with a Federal Process is still required, per Act 280, the SC Illegal Immigration Reform Act.
• DACA students could be admitted, once status is verified through Federal Process.
• DACA students would not be considered SC residents and would pay an out of state rate.
• DACA students would not be eligible for state sponsored Scholarships or Grants.
In determining the legal residency status of a student, South Carolina law differentiates between students who are independent and those who are still dependent on a parent or guardian. If the student is dependent, state law provides that the student is *presumed* to have the same residency status as the parent or guardian on whom he/she is dependent. S.C. Reg. § 62-603(B) specifically provides that "the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian."
Therefore, in the typical case, where a student is dependent on a parent or guardian, that student's residency is presumed to be that of the parent or guardian. Where the student is dependent on a parent or guardian who has an undocumented immigration status, the preliminary residency decision will typically be that the student qualifies as a "non-resident alien." According to Commission regulations, a "non-resident alien" is defined as "a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status 'non-resident aliens' generally do not have the capacity to establish domicile in South Carolina." S.C. Reg. § 62-602(K).
However, where that student is also a United States citizen, the Commission recommends that the analysis should not stop there. In that circumstance, the Commission recommends that the student should be informed that state law only presumes that he/she is a "non-resident alien" like the parent or guardian on whom he/she is dependent. That presumption is rebuttable, and the burden remains on the student to rebut that presumption, if possible, by presenting evidence to establish that that student is entitled to in-state residency status notwithstanding the undocumented status of his/her parent or guardian.
The Commission recommends that the following information may be obtained from the student to form the basis for the determination by the college or university that the U.S. citizen student may be granted in-state residency status:

1. Years that the student has resided continuously in South Carolina.
2. Official high school transcript(s) showing whether the student graduated from a South Carolina high school and showing years of attendance at a South Carolina high school.
3. Possession by the student of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card.
4. Possession of a valid SC vehicle registration if the student owns a motor vehicle.

5. Proof that the student filed South Carolina tax returns as a resident for prior tax years.

6. Proof that the parent or guardian on whom the student is dependent filed South Carolina tax returns as a resident for prior tax years.

7. Other proof that the parent or guardian on whom the student is dependent is living in South Carolina, including evidence of employment in South Carolina, a lease showing a rental home or apartment in South Carolina, utility bills, and the like.
This list is not intended to be exhaustive, and no single piece of evidence is necessarily conclusive. However, the Commission recommends that the institutional residency official weigh the evidence to make a determination whether the U.S. citizen student is domiciled in South Carolina. Students with an undocumented parent or guardian should not gain any advantage over other students whose parent or guardian on whom they are dependent qualify as a "non-resident," such as a resident of another state or country. However, a U.S. citizen student who can establish domicile in South Carolina should not be denied in-state residency status on the basis of his/her parent's undocumented status.
CHE Guidance Re: US Citizen Children with undocumented parents

The Commission further recommends that a U.S. citizen student who is denied in-state residency status by the institutional residency official should be advised of his/her right to appeal that decision to the institution's residency appeal committee.
CHE Guidance Re: US Citizen Children with undocumented parents

The Commission further recommends that the ultimate residency decision reached by the institutional residency official, and as applicable, the residency appeal committee, should be fully documented. The residency decision reached by the college or university shall be final. There is no appeals process by which the Commission will review and reverse or modify the residency decision reached by the college or university. Likewise, to the extent it has the authority, the Commission will not impose any sanction on the college or university for its residency decision made with regard to students who are United States citizens but are dependent on a parent or guardian who has an undocumented immigration status.
QUESTIONS?
Items on the CHE website pertaining to SC Residency

http://www.che.sc.gov/StudentServices/Residency/Residency.htm

Residency Law

Residency Regulation (Approved as of June 26, 2009)

Approved Visa Classifications

Frequently Asked Questions

June 15th Presentation on Act 11 of 2015

CHE Guidance pertaining to US Citizen Children with Undocumented Parents
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