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**6.a**  
**Action/Information Item**

***California Student Aid Commission***

Grant Advisory Committee (GAC) Chair's Report

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Enclosed for your review is a written report from the Grant Advisory Committee (GAC) Chair, Ms. Mary Lindsey.

***Recommended Action:*** No action required.

***Responsible Staff:*** Mary Lindsey, Chair  
Grant Advisory Committee

## Grant Advisory Committee (GAC) Report

Submitted by Mary T. Lindsey, Chair

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The Grant Advisory Committee (GAC) met on July 19 and August 16, 2007. Additionally, two GAC workgroups, the Non-term, Non-standard-term Workgroup and the Competitive Cal Grant Selection Criteria Workgroup, met on July 18 and August 16 respectively. The following written report on the actions taken by GAC will be supplemented by an oral report at the Commission's September 6-7, 2007 meeting.

At the July 19, 2007 meeting, GAC continued its work on recommendations regarding the Institutional Participation Agreement. Three issues remained outstanding at that time:

1. The issue of interest-bearing/investment accounts in regards to whether or not an institution could co-mingle the funds with other funds, while maintaining a subsidiary ledger tracking Cal Grant Funds, or whether Cal Grant Funds must be maintained in a separate account.
2. The issue of the definition of California State Residency for purposes of determining a student's initial eligibility for a Cal Grant award.
3. The issue of confirmation of high school graduation in regards to students receiving a Cal Grant Entitlement award.

At the August 16, 2007 meeting, GAC developed recommendations regarding Budget Change Proposals for the 2008-09 year.

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### **INSTITUTIONAL PARTICIPATION AGREEMENT (IPA):**

- 1. The issue of interest-bearing accounts in regards to whether or not an institution could co-mingle the funds with other invested funds, while maintaining a subsidiary ledger tracking Cal Grant Funds, or whether Cal Grant Funds must be maintained in a separate bank account.**

#### **IPA Recommendation #1:**

In regards to maintaining interest-bearing accounts, GAC makes the following recommendations to the Commissioners:

*GAC endorsed the inclusion in the IPA of (staff's) language which indicates that the cash advances made to the institutions are State funds. GAC has concerns about the (new) legal interpretation that permits commingling of funds at public institutions but precludes commingling funds at private institutions. GAC concerns are two-fold: (1) there is disparate treatment between the public and private segments, and (2) separate bank accounts are not the most effective way to protect state funds. Other, more effective, strategies and mechanisms for determining at-risk institutions should be developed, and protective (and alternative) payment mechanisms for advancing funds to those institutions should be developed and implemented.*

**IPA Recommendation #2:**

In regards to the calculation of interest that is required to be returned to the State, GAC recommends that the Commission seek the following statutory changes:

- *Allow institutions to deduct the costs incurred from establishing and maintaining interest-bearing/investment accounts for Cal Grant funds from the interest accrued on those funds.*
- *Allow institutions to calculate the return of interest due to CSAC from Cal Grant funds (held/invested by the campuses) based on a formula which includes negative Cal Grant fund balances as well as positive balances.*

**2. The issue of the definition of California State Residency for purposes of determining a student’s initial eligibility for a Cal Grant award.**

**IPA Recommendation #3:**

*GAC endorsed, with recommended modifications, the staff proposal identifying the definitions for California residency for purposes of Cal Grant eligibility:*

- *Students attending The University of California, the California State University and the California Community Colleges would have their state residency for Cal Grant eligibility determined by the (respective) system’s state residency definition and the non-public institutions would use a single definition as defined for the Community College System in the 5 CCR §§ 54020-52024 or adopt their own policy which is not inconsistent with the 5 CCR §§ 54020-52024 and Ed Code §§ 68060-68062; with the following modification:*
- *that the residency determination date used at the non-public institutions be flexible in that either the date used by CSAC for their preliminary determination of student eligibility for a Cal Grant,, or the first date of instruction (at the institution) may be used; (and with the additional) with the following modification:*
- *that in the interest of maintaining portability (of the Cal Grant), once a student has been determined a resident and received a Cal Grant payment at an institution, should the student move to another school, on other residency determination for a Cal Grant, no other state residency determination for Cal Grant eligibility purposes shall be required.*

**3. The issue of confirmation of high school graduation in regards to students receiving a Cal Grant Entitlement award.**

**IPA Recommendation #4:**

*GAC endorsed staff’s proposal that CSAC be the central repository for collecting student’s post- high school graduation confirmation data.*

**BUDGET CHANGE PROPOSALS ( BCP)**

At the August 16, 2007 Meeting, GAC adopted the following recommendations in regards to Budget Change Proposals (BCPs) for the 2008-09 budget year.

**BCP RECOMMENDATION:** GAC approved two recommendations, the first being an overall recommendation and the second supporting the first recommendation while adding a specific recommendation regarding the prioritization of the BCP proposals:

**BCP Recommendation #1:**

*GAC expressed its support for the Commission's efforts to seek increased budgetary support for the Cal Grant local assistance programs.*

**BCP Recommendation #2:**

*GAC endorsed pursuing additional funding for the Cal Grant Program and specifically recommended that the pursuit be based on a balanced approach among the five funding increase proposals as presented by staff the Cal Grant Programs, with the exception of BCP #5 – Cal Grant C increases - in which GAC recommended limiting the focus to seeking an increase in the amount of the Cal Grant C books and supply allowance component of the award.*

**GAC WORKGROUPS:**

GAC workgroup members are continuing to work with staff and have not submitted recommendations to GAC for its consideration. Therefore there are no recommendations to forward to the Commission at this time.

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## 6.b

### Action/Information Item

#### *California Student Aid Commission*

##### Consideration of Institutional Participation Agreement (IPA)

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The purpose of this tab is to provide the Commission with an update of the 2007-08 Interim IPA renewal process and to present staff's recommendation for the adoption of the revised 2008-09 IPA.

On April 19, 2007, on MOTION by Commissioner Friedlander, SECONDED and CARRIED, the Commission approved an interim IPA for the time period July 1, 2007 to June 30, 2008. The renewal process began with the issuance of a Grant Special Alert (GSA 2007-16) sent to college financial aid administrators and presidents/chancellors/CEOs. A separate letter with attachments was sent to presidents/chancellors/CEOs, list serve announcements were transmitted, and the IPA page on the Commission's Website was updated. Since June 8, 2007, Commission staff has been receiving and reviewing renewal IPAs for the Cal Grant participating institutions. In anticipation of the upcoming Fall Advance of Cal Grant funds, staff is contacting the remaining institutions who have yet to provide all necessary documentation for renewal.

Also at the April 19 Commission meeting, Commissioners charged staff to continue working on the revision of the document, a comprehensive process that had commenced one year earlier.

Staff has spent the last year soliciting input from stakeholders on revising the agreement, which had not been updated since the implementation of Senate Bill 1644 in the 2001-2002 academic year. Feedback was received at ten meetings of the Grant Advisory Committee (GAC) and four meetings of the Advisory and Enhancement Committee; an IPA Breakout Workshop; a 40-day public comment period, featuring a Northern California public meeting, a Southern California public meeting and a statewide web conference; three fall listening sessions facilitated by the Commission's Executive Director; and an initial routing to all institutions in the early stages to collect input. Finally, the Executive Director has been updating the financial aid community on progress and consensus achieved through the last three months of meetings with the GAC through the "Fast Blast" publication.

At the May 24, 2007 IPA Breakout Workgroup, Commission staff organized and facilitated two sessions, each with three breakouts--

high school graduation confirmation, California residency, and Cal Grant account maintenance--at which time campus and system representatives reviewed staff recommendations and offered procedural suggestions.

In the most recent public comment period, staff considered more than 150 comments from 50 different individuals representing not only financial aid, but those representing fiscal, legal, executive and information technology offices as well. Staff was impressed with the wealth of information received from the institutions, and sought agreement on as many points as possible to meet the needs of stakeholders. Staff made more than 40 changes to the document, based on this extensive feedback.

Based on the extensive feedback received, the final draft is markedly changed from its predecessor, and helps strengthen a number of operational processes that were needed to comply with law, while still trying to be sensitive to how such changes might affect institutional resources and, ultimately, grant delivery to students.

In the final months the GAC and other stakeholders have continued to have disagreements with staff on three key issues, but through concentrated efforts to resolve those issues, consensus has been reached on two of the topics, while the third remains unsettled. More detailed information and recommendations addressing each of these outstanding issues can be found in the following tab enclosures:

- High School Graduation Confirmation Issue Paper
- California Residency Issue Paper
- Separate Accounts Issue Paper

The proposed 2008-09 Institutional Participation Agreement is also enclosed.

**Recommended Action:** Staff recommends that the revised 2008-09 IPA be approved and adopted by the Commission for implementation on July 1, 2008, when the current interim 2007-08 IPA expires.

**Responsible Staff:** Catalina Mistler, Chief  
Program Administration & Services Division

Bryan Dickason, Manager  
Cal Grant Operations Branch

Tae Kang, Associate Analyst  
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Program Policy & Development Branch

## Issue

How should the Institutional Participation Agreement (IPA) address the requirement that Cal Grant Entitlement recipients be high school graduates?

## Background

High school graduation was not a requirement for eligibility in the Cal Grant program prior to September 2000. Therefore, the Commission's administrative processes, including the Grant Delivery System (GDS) did not include a high school graduation component. GDS is the system of complementing programs that allow the awarding, notification and delivery of Cal Grant funds to schools for Cal Grant participants.

The Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant program was signed into law September 11, 2000, [Chapter 403, Statutes of 2000 (SB 1644)], creating the current Cal Grant Entitlement program. The new law imposed a number of new eligibility requirements, including the requirement that recipients of new Cal Grant Entitlement awards be high school graduates. The new law also created Cal Grant Competitive awards. It is significant that the Legislature included high school graduation as a requirement for Entitlement participants, but not for the Cal Grant Competitive program authorized by the new law.

The new law became effective immediately upon signing in September 2000, and applied to the Cal Grant award cycle beginning January 1, 2001. The completely new Entitlement program required the Commission to write and submit a Feasibility Study Report and shepherd it through its approval in about two and one-half months. To implement the requirements of the new Entitlement law, significant and critical changes to the Commission's entire administrative process for awarding Cal Grants were necessary, including extensive computer programming changes to the GDS. Regular milestones over an 18-month period were established and accomplished with very little margin for adjustments. A more realistic timeframe would have allowed Commission staff time for more complete and thorough testing of processes before having to implement "live" each critical step of the new Entitlement program.

Numerous complex compromises were made on an expedited basis to change and enhance the Commission's award process to meet the January 2001 deadline. For the new high school graduation requirement, the award process incorporated information the students provided on the Commission form for verifying grade point averages (GPA). Students now apply for a Cal Grant by completing and submitting a Cal Grant GPA Verification form they submit to the Commission and a Free Application for Federal Student Aid (FAFSA) they submit to the federal government by the March 2 Cal Grant application deadline. The paper GPA Verification form requests students to report the date they graduated from high school or the date they plan to graduate from high school. The file layout for the electronically submitted GPA data also includes a graduation date.

For the great majority of Cal Grant Entitlement applicants, graduation information is provided to the Commission before the students actually graduate from high school because they submit the form in March. The 2007-08 FAFSA contains the question: "Will you have a high school diploma or GED before you begin the 2007-08 school

year?” However, this information is not used by the Commission to determine eligibility for an Entitlement award because it does not provide a graduation date, and it is also submitted in March before the student’s actual graduation date.

Limiting this discussion to the high school graduation eligibility requirement, the new award process issued preliminary awards to all students who designated a graduation date on the GPA Verification form, even if the date constituted an “expected” graduation date. Before paying a Cal Grant award, the award process relied on institutions to obtain information that students had, in fact, graduated.

The IPA in existence at the time the new law took effect was not revised until 2003, when a new IPA became effective. That IPA did not specifically address high school graduation, but did reflect the reliance on institutions to obtain the information of actual graduation in Article V:

The institution understands and agrees to carry out the following responsibilities at the time Cal Grant funds are transferred to the recipient of the recipient’s account. These must include but are not limited to:

- A. Verification of Eligibility: Verify the recipient meets all eligibility and program requirements and resolve any conflicting information before disbursing Cal Grant funds.
- B. Confirmation of Eligibility: Confirm and document that students listed on a Commission roster or other award notification meet basic eligibility requirements including California residency, financial need and appropriate program eligibility.

Grant Operations Memo (GOM) 2003-05

In June 2003, upon recommendation of the Grant Advisory Committee (GAC), Commission staff issued a Grant Operations Memo (GOM 2003-05), entitled *Clarification of Specific Articles in New Institutional Participation Agreement (IPA)* that stated the following, in part:

Some members of the financial aid community have expressed concerns about the new IPA and have requested clarification. The Grant Advisory Committee (GAC) discussed the following items at its May 29, 2003 meeting:

- **Verification of Eligibility:** Article IV(A) (“Verify the recipient meets all eligibility and program requirements and resolve any conflicting information before disbursing Cal Grant funds.”)
  - *As with any federal, state, or any institutional program, funds should not be disbursed unless the student is eligible. As in the past, this requires an institution that has documentation on file that is contrary to the information the Commission used to offer an award to resolve and report conflicts to the Commission. At a*

*High School Graduation Confirmation*

*minimum, the institution must maintain a current award year FAFSA record on file for each Cal Grant recipient.*

- *An institution is not required to recalculate GPAs, document student files with high school graduation dates, or recalculate data that the Commission has already calculated to affirm a student's grant eligibility absent conflicting information in the institution's possession.*

The GOM 2003-05 has been interpreted to relieve institutions of the affirmative responsibility to collect information that students have, in fact, graduated from high school before paying a Cal Grant award. Instead, the GOM has been interpreted to allow institutions to rely on the Commission's acceptance of the expected high school graduation date as an actual graduation date, and to be obligated to collect information about high school graduation only if the institutions came into possession of information that was inconsistent with, or in conflict with, a student's status as a high school graduate.

Effect of the CAHSEE

Beginning in 2005, continuing discussions on the effects of the California High School Exit Examination (CAHSEE) on Cal Grant eligibility and work on the 2007 IPA brought into focus the requirement that only high school graduates should receive Cal Grant Entitlement benefits.

The definition of what is required to complete high school graduation at California public high schools is described in the California Education Code (CEC) in sections 51220-51228. These include course requirements and the requirement to pass an exit examination.

The CAHSEE exam was eventually implemented for the 2005-2006 academic year and has now survived challenges in court. Passage of the CAHSEE for public high school students is pertinent because as a result of the Commission's discussion of the GAC's recommendations, Commission staff was directed to research and review methods to implement certification of CAHSEE passage for Cal Grant Entitlement eligibility purposes and present these to the Commission for their consideration and possible action.

During the staff analysis of these methods, consideration was given to the fact that verification of CAHSEE passage would only constitute partial verification of the Cal Grant Entitlement eligibility requirements for high school graduation.

Upon analysis, Commission staff determined that the award process does not comply with current Cal Grant law because the process does not, for most Cal Grant applicants, include information that recipients have, in fact, graduated from high school. The information the Commission gathers on most Cal Grant applicants identifies "expected" high school graduation dates because the March 2 deadline occurs before high school graduation dates. Further, to the extent that GOM 2003-05 is perceived as excusing institutions from confirming that a Cal Grant recipient has, actually graduated neither the Commission nor the institutions have information that recipients have graduated, unless

an institution happens to come into possession of information that conflicts with the “expected” graduation information.

For the 2007-2008 Cal Grant award year, the Commission passed an action to ensure that the award process included actual graduation information. The Commission adopted the following motion at the September 7, 2006, Commission meeting:

On **MOTION** by Commissioner Friedlander, **SECONDED** and **CARRIED**, the Commission approved the Committee’s recommendation for the 2007-08 award year, that when the Commission sends its Cal Grant award letters, it shall include a self-certification form that the student must fill out at high school graduation and under penalty of perjury, certifying that he or she is a high school graduate and meets all the graduation requirements. Additionally, prior to disbursing any Cal Grant funds, the enrolling institution must receive the original self-certification form and the original form must be placed in the student’s financial aid file.

The Commission adopted the motion with the understanding that a permanent solution would be developed during the discussions on the new 2007 IPA. The Commission also subsequently asked the Attorney General’s Office to opine on the legality of the existing award process with respect to the requirement of high school graduation. The Attorney General’s Office provided a response that made it clear that a post graduation certification of high school graduation was required.

Since Cal Grant Entitlement awards were first mailed in February this year, Commission staff determined that the self-certification letters should be mailed to recipients under a separate mailing after the usual graduation period to prevent many students from certifying their graduation before they actually graduate.

Study of Entitlement Participant Graduation Confirmation

Commission staff performed a study of Entitlement awardees to determine their high school graduation rate. This study concluded that it was likely that the overwhelming majority of Cal Grant Entitlement participants are high school graduates.

Although this finding is significant, the Attorney General’s Office made it clear that the requirement that Entitlement participants be high school graduates calls for a post-graduation affirmation of graduation by the student, or authoritative documentation confirming that the student graduated. It was the intent of the Legislature that only high school graduates receive Cal Grant Entitlement benefits.

**Language in the Current IPA**

In April 2007, the Commission adopted an interim IPA for the 2007-08 academic year, which incorporated the Commission’s September 7, 2006, action.

The IPA currently in place contains no statements addressing the confirmation or verification of high school graduation.

## Language in the Proposed IPA

### ARTICLE V

#### Cal Grant Program Administration - Commission's Responsibilities

- E. Act as the central repository of high school graduation confirmation received from a variety of sources, placing all new high school Entitlement participants on hold until receipt of confirmation that the student is, in fact, a high school graduate or the equivalent. (This does not absolve institutions of the requirement under Article IV, A to resolve conflicting information.)

#### Suggestions from the IPA Workshops

At the May 24, 2007 Commission staff-hosted IPA workshops, a Commission-centered high school graduation confirmation system was discussed and emerged as the most student-friendly means of gathering high school graduation confirmation. Systems discussed included a comprehensive collection system and less encompassing Commission-based systems. The following is a summation of those ideas:

#### **Preferred Solution**

The stakeholders' preferred approach to gathering high school graduation confirmation is a comprehensive WebGrants-based process that would allow certification of high school graduation by multiple entities. High schools, colleges, students and Commission staff would all be able to affirm the high school graduation status of the student via existing WebGrants screens which, with modification, would allow the most efficient gathering of the confirmations.

A comprehensive approach to high school graduation certification would allow maximum opportunity to receive confirmation of high school graduation in a timely manner. Post-graduation self-certification by the student would be allowed, but increasing participation by high schools could eventually diminish reliance on self-reporting. Postsecondary Institutions that require high school graduation for admission to the institution would be able to affirm that the institution has received and retained authoritative documentation of the student's graduation from high school.

The Cal Grant roster would act as the central repository of the confirmed students in a manner similar to the high school and residency confirmation process for the Transfer Entitlement category Cal Grant awardees. The roster can be viewed directly on-line and is available as a data file which is easily sorted to isolate those students who have and have not had their graduation confirmed.

Easy identification of students whose graduation has not been confirmed is critical since Cal Grant payments for the new year would not be allowed until graduation was confirmed. The comprehensive confirmation system would have the following features:

1. Initially, all Entitlement awardees would be placed on-hold.
2. The on-hold status would be recorded on the Cal Grant roster giving colleges access at any time to view those students not yet confirmed.

3. High schools could confirm high school graduation directly on-line, via batch upload or via hardcopy certification forms or lists.
4. Colleges could confirm high school graduation via the Cal Grant Roster, or by upload of confirmation rosters.
5. Students could self-certify high school graduation through their WebGrants for Students account. A reminder could be given to them when they log-in if certification was still required.
6. Students submitting GED scores would be waived from further certification since a GED is a high school graduation equivalent.
7. Commission staff, upon review of authoritative graduation documentation, could enter confirmation of graduation information.
8. Upon confirmation, the student's on-hold status would be removed.
9. The Commission would send periodic notification to those students for whom graduation certification has not been received.

Input on this project would be solicited from colleges and high schools with implementation estimated for Spring 2008, in time for confirmation for 2008 year graduates.

The complexities and consequences of the execution of a comprehensive high school graduation collection system such as described above would require a formal project approach to its implementation. This approach requires significant time to be expended by Commission IT staff in design and creation of the system as well as Cal Grant Operations staff time spent in user acceptance testing to assure errorless implementation with no detrimental system effects.

### **Alternative Solutions**

If resources and time are not sufficient to put the above preferred solution into place, then simpler, student-only confirmation solutions were discussed. These systems would still have the Commission acting as the central repository of the confirmations using a system almost identical to the current system used for the Transfer Entitlement category Cal Grant participants. The student would certify on-line or via a paper form that they were high school graduates. The system would be very much less complex since high schools and colleges would not be able to certify as to the students' status.

The most simple system would be a Commission-based paper certification process. The student would be mailed a form to certify and return to the Commission. CSAC would mail the forms and track on the Cal Grant roster which students still require graduation certification. Cal Grant payments would not be allowed until graduation was confirmed.

Either of these alternative approaches would require much fewer modifications to WebGrants than the ideal comprehensive confirmation collection proposal.

### **Staff Discussion**

The Commission's action implementing the temporary process for obtaining 2007-2008 high school graduation information resulted in the development of self-certification form mailed to each student and available on the Commission's Web site. Each student certifies, under penalty of perjury, to his or her graduation from high school. The student delivers the form to the institution of enrollment. The institution must receive the

completed form before paying a Cal Grant Entitlement award, and place and retain the form in the student's financial aid file.

This institutional-centered system places burdens upon schools that have the potential to slow the delivery not just of Cal Grant funds, but other financial aid as well. Further testimony on the effects of the 2007-2008 year approach should be solicited as the year progresses.

A Commission centralized process also has the potential to delay funds to students but staff feels a comprehensive approach to confirmation of high school graduation is the best course of action. However, if implementing this approach adversely affects the implementation of Phase II of the GDS improvement project, including the Real-Time enhancements, the alternative solutions outlined on page six of this issue paper would be authorized.

Under both of these solutions, the Commission would act as the central repository of high school graduation confirmation information received from a variety of sources. The Commission would place all new High School Entitlement participants on hold until receipt of confirmation that the student was a high school graduate or had completed the equivalent.

#### Grant Delivery System (GDS)

The Commission is currently involved in a major project to revise and update the GDS which has not been comprehensively restructured since the early 1990s. When the system was converted from the original 1990 Financial Aid Processing System (FAPS) to GDS, the existing system 'batch' limitations were retained as an essential implementation strategy to reduce project risk. Subsequently planned improvements were put on hold during the critical implementation timeline of the Cal Grant Entitlement program in 2001-2003, again to limit the risk to completion of the Entitlement project. In June 2004, plans for system enhancements and restructure were forwarded to the state Department of Finance, and were approved and included in the Governor's May revised budget for FY 2005-2006. However, the Legislature, because of budget shortfalls, approved only those budget changes that impacted health and safety for that fiscal year.

For the 2006-2007 year, the GDS restructure and enhancements were again approved and funded as Phase I of the Real-Time Database project. Phase I of this project restructures the underlying GDS system to simplify processes, increase flexibility for change, and enable real-time transactions. This restructure will prepare the system for implementation of Phase II of the project. The Governor's January 2007-2008 budget proposal contains a funding request for Phase II of this project.

Assuming approval in the Budget Act, Phase II of the Real-Time database project will address the ambitious goal to bring real-time processing capability to the GDS and to establish direct communication protocols between GDS and the various Financial Aid Management (FAM) systems used by participating Cal Grant schools. These accomplishments are paramount to solving many of the inherent shortcomings in the 12 year old FAPS/GDS. Not only would these structural changes allow direct system-to-system communication between GDS and other systems, it would increase the ability for the Commission to adapt the system to meet new requirements such as the gathering of high school graduation data without significant impact on the students and institutions.

Additionally, other benefits of the real-time transactions should reduce the institutional workload required for proper reporting of Cal Grant payments and the later payment reconciliation.

However, during the critical implementation of Phase I and Phase II of the project, any other changes to the GDS system could severely and adversely affect the project schedule and increase risk of project failure. Changes to GDS required by the Commission's responsibility for obtaining the actual high school graduation information would constitute a serious risk to Phase I and Phase II.

The Commission could try to avoid the risk to Phase I and Phase II by minimizing the changes to GDS while still taking responsibility for obtaining high school graduation information. If the Commission advises staff to progress with a centralized graduation collection process, the effect on Phase II implementation should be carefully monitored. As presented above, compromises were made in the GDS to meet the deadline for implementation of the new Cal Grant program by January 2001. These compromises were based, in part, on policy decisions designed to implement the law consistent with the expressed intent of the law. Essentially, the award process was designed to consider a student's eligibility for as many Cal Grant programs as possible to maximize student access to an education after high school. All Cal Grant applicants are initially evaluated for eligibility for an Entitlement award; those who do not qualify are considered for a Competitive award, then a Cal Grant C award. However, GDS was designed to evaluate eligibility for each program in a linear fashion, not independently for each program. The linear processing model, with each program determination incumbent on completion of the prior step, was not designed to allow reconsideration for another program.

#### Transfer Entitlement Process

For the 2006-07 year, when implementing the then-new Transfer Entitlement self-certification process, extensive delays occurred in the processing of many of the awards for students. This was a result of staff having to key-in individual forms to release the students from an on-hold status. Compounding this was confusion over the required responses on the self-certification form and the resulting reprocessing of many students after initial processing had already occurred. Staff was still processing forms through November. For those students initially found ineligible for an Entitlement award, and who were then considered for a Competitive award, Information Technology Division staff was required to intervene directly in the system to initiate and complete the Competitive process.

The similar processing protocols needed for a centralized high school Entitlement graduation confirmation process could also impact the system adversely. The GDS was not designed to process grants out of order. Staff has concerns that if the Commission takes on the responsibility for processing Entitlement high school graduation self-certification forms, Entitlement award processing timeliness could be affected, with a delay in the release of funds to students. Also, the results of having Commission Information Technology staff expend significant amounts of time performing data maintenance to the system might delay the Real-Time project and other system enhancements. Despite these concerns, staff feels the centralized process can be put into place and, if monitored, be an effective way of assuring compliance with the graduation requirement.

During the last year and during the recent previous IPA public comment periods, several commenters proposed that high schools should report the actual high school graduation of Cal Grant recipients. This information would be useful only in a centralized high school graduation confirmation system because the Commission is not sure where the student is attending college until the student is paid at an eligible institution. This makes sharing this type of data with the student's school of attendance problematic.

High school graduation confirmation could be integrated into a centralized high school graduation certification system, whether on a voluntary basis by high schools or if mandated by the Legislature. A formal mandate from the Legislature that high schools confirm high school graduation would assure that only eligible students receive Cal Grant Entitlement benefits. However, the law would likely be considered to impose a state-mandated local cost that would require reimbursement from the State General Fund. The Commission could consider requesting the Legislature to require high school graduation confirmations from high schools to most efficiently assure the eligibility of Cal Grant Entitlement participants.

Although not ideal, voluntary reports from at least some high schools would diminish the number of students for which disbursing institutions would have to collect graduation certifications. The proposed graduation confirmation system would record the certifications allowing payment of benefits by the disbursing institution.

#### Conflicting Information

Stakeholders have requested that the Commission establish that institutions may disregard any other information in their possession if they receive the form from the student certifying that he or she actually graduated from high school. Commission staff does not agree with this request. The factual circumstances in which student information the institution possesses might conflict with the student's certification are too numerous to list. A blanket excuse from resolving information that conflicts with the student's certification would be too broad to be appropriate. For example, an institution that possessed a transcript indicating the student did not graduate from high school should not be excused from resolving the conflict presented by a student's certification to the contrary.

Further, trying to limit the facts that would excuse the institution from resolving conflicting information would be incomplete. Some of the unexpressed circumstances could, if properly resolved, result in determinations that students were not high school graduates, and thus, do not qualify for Cal Grant awards. By limiting the circumstances in which an institution is required to resolve conflicting information, the Commission would be increasing the likelihood of unauthorized Cal Grant awards and the unauthorized expenditure of state funds.

The resolution of conflicting information is an exercise in judgment that depends on the information in the possession of the institution, is fact-specific to an individual student, and is required to be done on a student-by-student basis. It is simply not possible, or appropriate, to attempt to define every circumstance in which an institution is required to resolve conflicting information.

Federal government requirements relating to resolving conflicting information on federal financial aid eligibility recognize this concern. Cal Grant institutions are already subject to federal requirements to resolve conflicting information about eligibility factors for

federal financial aid described in the *FSA Handbook* and *The Blue Book: Accounting, Recordkeeping, and Reporting by Postsecondary Educational Institutions for Federally Funded Student Financial Aid Programs*. The *FSA Handbook* provides detailed information on the administration of the Title IV federal student aid programs, as well as on institutional eligibility to participate in these programs. *The Blue Book* provides guidance to institutions on general Title IV federal student financial aid program management, fiscal recordkeeping, accounting, and reporting functions. Relevant provisions relating to conflicting information from the *FSA Handbook* Vol. 1, p. 14, and *The Blue Book*, Chapter 10, pp. 142-143 are attached as Attachment 1. Each describes the requirement for resolving conflicting information in general terms, and describes circumstances that illustrate, but do not limit, the requirement to resolve conflicting information.

### **Staff Recommendation**

CSAC staff recommends the adoption of the proposed IPA language requiring a centralized high school graduation confirmation approach be pursued with implementation planned for the 2008-2009 award year. Staff would implement a centralized high school graduation confirmation database and limit the payment of Cal Grant funds only for those new Entitlement Cal Grant participants that have either self-confirmed their graduation or have had their graduation status confirmed by their high school or postsecondary institution.

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### Gaining eligibility examples

Allen enrolls in a one-year certificate program at Sarven Technical Institute. Sarven won't officially admit Allen before he provides an academic transcript from his previous school, but it lets him start classes in the fall. Sarven receives Allen's transcript after he's attended for a month and officially admits him. He's still in his first payment period when admitted, so he can receive Pell and campus-based funds for his entire period of enrollment. The school can also use the program length of one year as the period of enrollment for which Allen can receive a loan.

Chavo is finishing his senior year in high school; his classes end June 4. He decides to start classes in the winter at Sarven Technical Institute on January 11. The second payment period begins on May 17. Chavo isn't eligible for aid when he first starts classes at Sarven. However, when he becomes eligible after June 4, Sarven can disburse Pell and campus-based funds to Chavo retroactively for the current payment period that started on May 17 (but not for the payment period that started in January) and a Stafford loan for the current period of enrollment, which does include the payment period that began in January.

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### Losing eligibility example

George is a student at Guerrero University. At the end of September, after the start of the fall term, he is convicted in a state court for possession of drugs. It is his first offense, and he isn't incarcerated, but he is ineligible for aid. Guerrero gave George his first Direct subsidized loan disbursement at the beginning of the semester in September and was going to disburse a Perkins loan to him in October. Now Guerrero can't disburse the Perkins loan. George doesn't have to pay back the first disbursement of his Direct loan, but he can't receive any more Title IV aid until one year elapses or he successfully completes a qualified drug rehabilitation program.

### CONFLICTING INFORMATION

In addition to reviewing data provided by the Department's application system and NSLDS (as discussed in the rest of this volume), your school must have an internal system to share information relevant to the student's eligibility, such as his academic standing. The FSA program regulations require a school to develop an adequate system to ensure the consistency of any data related to a student's application for federal student aid regardless of the source of that data. Your school is responsible for reconciling all inconsistencies that it receives with one exception: if the student dies during the award year, you aren't required to resolve conflicting information.

If your school has conflicting information for a student or you have any reason to believe his application information is incorrect, you **must** resolve such discrepancies before disbursing FSA funds. If you discover a discrepancy after disbursing FSA funds, you must reconcile the conflicting information and require the student to repay any aid for which he wasn't eligible, unless he is no longer enrolled for the award year and will not re-enroll. Refer to the *Application and Verification Guide* and the *School Eligibility and Operations* volume for more information.

### CHANGE IN STATUS

The student's eligibility status can change during the award year, which almost always affects whether the student can be paid. The special rules for changes in satisfactory academic progress status were discussed earlier in the SAP section.

#### Gaining eligibility

A student who *applies for aid* by filling out a FAFSA is eligible for aid for the entire award year. A student who *gains eligibility* is one who was previously ineligible for some reason. In general, when a student gains eligibility, she may receive Pell, ACG, National SMART, and Campus-based funds for the entire payment period and Stafford and PLUS loans for the period of enrollment in which she became eligible.

The student is eligible for Pell, ACG, National SMART, and Campus-based aid for the entire award year—not just the payment period—in which he becomes eligible by meeting the requirements for citizenship, valid Social Security Number (SSN), or Selective Service registration.

#### Losing eligibility

A student cannot receive any federal student aid after losing eligibility for it, unless he qualifies for a late disbursement.

**Conflicting information does not include such things as –**

1. a household size that differs from number of exemptions on a tax return;
2. dependency under IRS rules vs. ED definition of dependency;
3. a roster of candidates for an outside scholarship, as opposed to a list of recipients;
4. privacy protected information, such as information from professional counselors, chaplains, doctors, etc.;
5. assumptions made by the CPS;
6. a FAFSA filed using estimated income; and
7. a student who has an expired INS document, but secondary confirmation match is successful.

**Death of a student**

If a student dies during the award year, the school isn't required to resolve conflicting information.

**Clarification**

**Conflicting information may include information related to a student's eligibility such as –**

- citizenship status,
- accuracy of SSN,
- default or overpayment status,
- changes in student's academic status (including grade level progression),
- COA elements,
- other student financial assistance or resources, and
- inconsistent information used in calculating the student's EFC.

**Consistency of information**

A school must have a system of identifying and resolving discrepancies in all FSA-related information received by any school office. A school must resolve discrepancies for all students, not just those selected for verification.

Resolution includes —

- ◆ determining what information is correct, and
- ◆ documenting the school's findings in the student's file.

Such a system must include a review of —

1. all student aid applications, need analysis documents, MRRs, POPs from COD, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

Even if a school has previously verified the information on a student's SAR/ISIR, the school must review all information on subsequent SARs/ISIRs, and resolve discrepancies.

2. any documents, including any copies of state and federal income tax returns, that are normally collected by the school to verify information received from the student or other sources; and
3. any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, documentation of the student's social security number or other factors relating to the student's eligibility for funds under FSA programs.

For instance, if a student receives veterans benefits through one school office, that office must notify the aid administrator of these benefits to ensure that the amounts are correctly reported on the student's aid application and are counted as a resource for the Campus-Based programs and estimated financial assistance for the Direct Loan and FFEL programs. Other examples include –

- a school's admissions or registrar's office must provide the aid office with any information it has that might affect a student's eligibility such as the student's enrollment in an ineligible program, or enrollment in summer classes immediately preceding a fall term of enrollment; and
- a school's business office must inform the aid office whenever it receives information about a student receiving an outside scholarship.

## Tab 6.b.1 Attachment 1b

### Chapter 10 – Administrative Standards

There is a distinction between how long you need to be alert for conflicting information and how long you have to actually resolve a conflict. Even if the processing year has ended, you must continue to resolve conflicting information unless —

1. all aid for period of enrollment has been disbursed, and
2. at the time of disbursement, there was no conflicting information, and
3. student is no longer enrolled at the school (and is not intending to reenroll).

**You may not ignore a document in your files unless a student is no longer enrolled. If you have conflicting information in your files, you must resolve it as expeditiously as possible.**

If you become aware of conflicting information for a student who is no longer enrolled, and there is aid to be disbursed, you must resolve the conflict before making the late or postwithdrawal disbursement.

If aid (that school was unaware of) is received after the end of a period of enrollment for a student who is intending to reenroll, assuming the student reenrolls in the next award year, that aid must be treated as resource/EFA for the subsequent period of enrollment.

Remember, if any office at your school has information that might affect a student's eligibility for FSA funds, it must provide that information to the school's designated coordinating official. That individual in turn must forward it to the financial aid office where procedures must be in place to ensure that any conflicting information is resolved and documented before the student receives any (or any additional) FSA funds.

#### Sources of conflicting information include –

- unsolicited tax returns or schedules,
- information provided by the student to the financial aid office,
- supplemental financial aid applications,
- other offices within the school,
- offices at other educational institutions (not just aid offices),
- ED,
- scholarships and information from outside sources,
- state agencies such as Vocational Rehabilitation, WIA, State Scholarship Agencies, etc.,
- tips from outside sources,
- transcripts from other postsecondary institutions,
- SARs or ISIRs,
- verification,
- C Flags,
- Reject Codes, and
- Comment Codes.

#### Discrepant tax data

Because conflicting data often involve tax information, FAAs must have a fundamental understanding of tax issues that can affect need analysis. You should know –

1. whether an individual is required to file a tax return;
2. an individual's correct filing status; and
3. only one person can claim another as an exemption.

Publication 17 of the IRS, "Your Federal Income Tax," is a useful resource for the aid office. You can view it on the Web at

[www.irs.gov](http://www.irs.gov)

or you can call the IRS at

800-829-3676

to order a copy.

For additional information on resolving tax issues, please see the Federal Student Aid Handbook, Volume 1 – Student Eligibility."

## Issue

The California residency issue is twofold: date and method of determination.

What date shall the Institutional Participation Agreement (IPA) establish as the date on which a Cal Grant applicant's California residency is determined?

What method must be used to determine whether a Cal Grant applicant is a California resident?

## Background

The current Institutional Participation Agreement (IPA) includes a general requirement that institutions verify eligibility (Article IV, B). California residency is one of those eligibility requirements. The IPA does not, however, provide the date on which residency is determined or specify how residency is determined.

### Date on Which California Residency is Determined

California Education Code section 69433.5 establishes how the Commission determines residency for Cal Grant purposes. It provides in relevant part:

- (a) Only a resident of California, as determined by the commission pursuant to Part 41 (commencing with Section 68000), is eligible for an initial Cal Grant award....

Part 41 (commencing with section 68000) of the Education Code prescribes uniform student residency requirements for public institutions of higher education. These requirements are applied to establish whether the student is a California resident who must pay system-wide fees required by the institutions, or is not a resident of California, and must pay non-resident tuition in addition to system-wide fees. Among the relevant sections in Part 41, the Education Code specifies the following:

A resident is 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. (Educ. Code § 68017)

"Resident determination date" is a date or day established by the governing boards or district governing boards, as appropriate, for each semester, quarter, or term to determine a student's residence. (Educ. Code § 68023)

The reference to the governing boards means, among others, the Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges (Educ. Code § 68012).

Thus, the dates on which California residency is determined for purposes of Cal Grant eligibility for students in public institutions, are the same dates used by those institutions for purposes of deciding whether the students are California residents required to pay system-wide fees or non-residents required to pay non-resident tuition in addition to the fees.

The law is silent with respect to private institutions.

The 1999 Institutional Participation Agreement (IPA) used September 20 of the award year as the residence determination date (Article III, A, 4). The rationale behind the choice of this date is not precisely known by current California Student Aid Commission (CSAC) staff, but it is presumed that the selection was meant to be consistent with the start dates of institutions with traditional academic calendars.

The residence determination date was not expressly addressed in the current IPA, which became effective in 2003, and was again extended with minor revisions for the 2007-08 academic year. However, CSAC staff has administratively used March 2 as the residency determination date since 2003. Again rationale for the change is not specifically known by current staff, but it is supposed that the change was meant to ensure residency had already been attained by the application cycle deadline and, hence, awarding. CSAC did not formally notify institutions of the residency date change, though the March 2 date was incorporated into training curriculum and the Cal Grant Program Manual (CGPM) updated in 2003.

At the Grant Advisory Committee (GAC) Workgroup of January 5, 2007, in discussion over the draft IPA, Article IV, Section A Confirmation of General Eligibility, CSAC staff proposed allowing the public institutions to use the dates chosen by their governing boards for purposes of ascertaining a student's residency for in-state tuition payment. Additionally, staff proposed returning the residency determination date to September 20 for private institutions as it was a historically familiar date and reasonably consistent with the dates chosen by the governing boards of the public institutions. Stakeholders from private segments urged CSAC to continue searching for a more equitable and consistent date.

At the CSAC-hosted workshop on May 24, 2007, approximately 20 GAC members and other stakeholders, from both public and private institutions, met with staff and jointly recommended focusing on the underlying principle behind the determination made by public governing boards and applying it to all Cal Grant students. According to Community College regulation 5 CCR 54010: "Residence determination date' is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board..." Likewise the CSU and UC governing boards have chosen dates which correspond to term start dates for institutions in their respective segments. Workshop members proposed that non-public institutions' residence determination date also be connected to the start date of the term for which the Cal Grant is awarded.

Method of Determination of Residency

As noted above, Education Code section 68017 provides:

A resident is 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.

Education Code sections 68060-68062 in Article 5 specifically address the determination of student residence:

Every person has, in law, a residence. (Educ. Code § 68060)

Every person who is married or 18 years of age, or older, and under no legal disability to do so, may establish residence. (Educ. Code § 68061)

In determining the place of residence the following rules are to be observed:

- (a) There can only be one residence.
- (b) A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (c) A residence cannot be lost until another is gained.
- (d) The residence can be changed only by the union of act and intent.
- (e) A man or woman may establish his or her residence. A woman's residence shall not be derivative from that of her husband.
- (f) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child. When the minor lives with neither parent his or her residence is that of the parent with whom he or she maintained his or her last place of abode, provided the minor may establish his or her residence when both parents are deceased and a legal guardian has not been appointed.
- (g) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act, by the appointment of a legal guardian, or by relinquishment of a parent's right of control.
- (h) An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States.
- (i) The residence of an unmarried minor alien shall be derived from his or her parents pursuant to the provisions of subdivisions (f) and (g). (Educ. Code § 68062)

Public institutions apply these laws to determine whether students are California residents who must pay system-wide fees only or are non-residents who must pay non-resident tuition in addition to the system-wide fees. Education Code section 69433.5 requires the governing boards of the public institutions to establish their own methodology for determining California residence. UC has adopted procedures for

determining residency. CSU has adopted regulations in Title 5, California Code of Regulations (CCR) sections 41903, 41904, 41905, and 41907, and the California Community Colleges have adopted regulations in Title 5, California Code of Regulations, sections 54010 through 54024, setting out requirements for residency determinations.

For example, the UC has adopted "Standing Order 110.2" for matters relating to California residency. The Order references Education Code Sections 68000, 68010-68012, 68014-68018, 68022-68023, and 68040-68044 with a few stated exclusions and additions.

CSU applies the following standard:

In order to establish a residence, it is necessary that there be a union of act and intent. The act necessary to establish legal residence is physical presence within the State of California. Relevant indicia of intent to make California one's residence include, but are not limited to: voting in elections in California and not in any other state; satisfying resident State personal income tax obligations; establishing an abode in the state where one's belongings are kept; licensing from the State for professional practice; maintaining active resident memberships in California professional or social organizations; maintaining California vehicle plates and operator's license; maintaining active savings and checking accounts in California banks; maintaining permanent military address or home of record in California if in the armed forces; engagement in litigation for which residence is required; showing California as home address on federal income tax forms; and the absence of these indicia outside California during any period for which a residence in California is asserted. No single factor is controlling or decisive. (5 CCR § 41905)

For the CCC, the process is similar:

The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence. (5 CCR § 54010 (b))

(a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f).

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary

purpose if both the student and his or her parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f).

(d) A student who does not meet the requirements of subdivision (b) or subdivision (c) shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subdivision (e).

(e) Objective manifestations of intent to establish California residence include but are not limited to:

- (1) Ownership of residential property or continuous occupancy of rented or leased property in California.
- (2) Registering to vote and voting in California.
- (3) Licensing from California for professional practice.
- (4) Active membership in service or social clubs.
- (5) Presence of spouse, children or other close relatives in the state.
- (6) Showing California as home address on federal income tax form.
- (7) Payment of California state income tax as a resident.
- (8) Possessing California motor vehicle license plates.
- (9) Possessing a California driver's license.
- (10) Maintaining permanent military address or home of record in California while in armed forces.
- (11) Establishing and maintaining active California bank accounts.
- (12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

- (1) Maintaining voter registration and voting in another state.
- (2) Being the petitioner for a divorce in another state.
- (3) Attending an out-of-state institution as a resident of that other state.
- (4) Declaring nonresidence for state income tax purposes. (5 CCR § 54024)

### **Recommendations by the Grant Advisory Committee**

The Grant Advisory Committee (GAC) members representing public institutions supported the use of the residency determination dates for public institutions, albeit slightly different from one public segment to another, already in place. GAC members from the private segments preferred a single date for all institutions but deferred to the

Grant Advisory Committee Chair's Report to the Commission at the February 22, 2007 meeting:

The [GAC] workgroup supported CSAC's proposed date for measuring the one-year physical presence test. CSAC currently requires a year of residency prior to March 2, although this requirement is not well known at the campus level. Under the proposed change, the required year of residency would be prior to the start of the fall term (publics) or September 20 (privates). This change would be a step to reducing differences in the CSAC and public segment determination of residency since all the public segments base their residency determinations on the fall time frame.

Again, in the February 2007 Chair's Report to the Commission GAC stated:

One option would be for CSAC to use the determination of residency for tuition purposes made in accordance with regulations adopted by the various public segments. Under this approach, conflicting information at the public segments is simply a difference in the institutional and initial CSAC residency determinations. However, since each public segment has a somewhat different definition, this choice could result in different residency determinations for Cal Grant eligibility at different segments. Moreover, the independent and proprietary segments do not define California residency since it is not required for their admission or enrollment processes. Thus the workgroup recommended against this approach in favor of CSAC adopting its own definition for Cal Grant purposes to be applied to students in all segments.

GAC and other financial aid personnel were also concerned about "the significant workload that would be entailed if campuses were responsible for reviewing all information available on campus that could potentially conflict with CSAC's initial residency determination based on the FAFSA data. At a public institution the underlying information in each student's residency file would have to be carefully examined."<sup>1</sup>

On April 5, 2007, GAC further refined its position to recommend the IPA include a single CSAC definition of residency for all Cal Grant recipients, but allow public institutions to continue resolving conflicting information as defined by current practice, while CSAC provide an indicator for private institutions to consider as conflicting information.

At the May 24, 2007, Commission-sponsored IPA Workgroup, GAC and other stakeholders discussed the possibility of using the Community College definition and method for determining residency for all institutions as it represented the least restrictive of the public segments. Wording for a determination date and a starting list of indicia for conflicting information based on information available to all institutions was developed.

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<sup>1</sup> "The final outcome of a public institution's residency determination for tuition purposes cannot be used since the Cal Grant standard is different (unless CSAC were to choose to designate the public segments' definitions as the Cal Grant standard in those segments)." February 2007 Chair's Report to the Commission

At the brief GAC meeting following the workgroup, results of the discussion were reported to the Committee, but no actions were taken.

On July 19, 2007, GAC met again and expressed support for staff's original recommendation that public institutions continue to determine residency for Cal Grant purposes as they would for determining whether a student was subject only to system-wide fees, or to non-resident tuition in addition to system-wide fees, while private institutions may adopt the community college method of determining residency or develop their own policy which is not inconsistent with CCR §§ 54020-54024 (Community College regulations). GAC also recommended that private institutions have the flexibility to choose CSAC's residency determination date for the initial awarding of Cal Grants or the start date of the term in which the Cal Grant recipient is first enrolled.

GAC added a final caveat in the interest of maintaining award portability: once a student has been determined a resident and received Cal Grant payment at one institution, should the student move to another school, no other residency determination for Cal Grant purposes would be required.

GAC has discussed their desire for CSAC to tighten initial edits relating to California residency, so students who are not residents would most likely not be awarded a Cal Grant (February 14, 2007, GAC Teleconference). CSAC staff has commenced the process of requesting changes to the Grant Delivery System which would tighten initial residency edits to the FAFSA.

### **Language in the Current IPA**

The IPA addresses residency within the context of institutional responsibilities to verify and confirm eligibility:

- A. Verification of Eligibility: Verify the recipient meets all eligibility and program requirements and resolve any conflicting information before disbursing Cal Grant funds.
- B. Confirmation of Eligibility: Confirm and document that students listed on a Commission roster or other award notification meet basic eligibility requirements including California residency, financial need and appropriate program eligibility.

### **Language in the Proposed IPA**

"Resolve and report to the Commission prior to disbursement any conflicting information (pursuant to *FSA Handbook* Vol. 1, p. 13 and *The Blue Book*, Chapter 10, pp. 142-143) that may affect the disbursement of Cal Grant funds:

- 6). the recipient is a legal California state resident for at least one year [CEC § 69433.5(a)] as of the residence determination date.

\* \* \*

- i. If the governing board of a public institution has adopted by regulation or policy a residence determination date [CEC § 68023], that date shall be used for Cal Grant purposes

OTHERWISE

The first day of instruction of the term for the award year in which the student is enrolled as a Cal Grant recipient shall be the residence determination date for Cal Grant purposes

OR

The date CSAC uses to make the preliminary determination of California residency for purposes of offering a Cal Grant shall be the residence determination date for Cal Grant purposes.<sup>1</sup>

- ii. Public institutions shall continue to use the procedures or rules and regulations instituted by their respective governing boards for determining California residency, including resolving conflicting information in the possession of the institution [CEC § 68044].
- iii. Private institutions may adopt the regulations in 5 CCR §§ 54020-54024 or they may develop and document their own policy which is not inconsistent with CCR § 54020-54024 and CEC §§ 68060-68062, including the resolving of conflicting information in the possession of the institution (see Appendix C).
- iv. Conflicting information may include indicators on the ISIR such as
- Permanent mailing address in a state other than CA
  - Driver's license issued by a state other than CA
  - Student's state of address not CA
  - Date of residence not more than a year prior to residence determination date
  - (If minor) parent's state of address not CA
  - (If minor) parent's date of residence not more than a year prior to residence determination date

OR

Any other information available at the institution which shows inconsistency with a claim of CA residency.

## Staff Discussion

### Date on Which California Residency is Determined

California law dictates the use of the California residency determination dates already in place at the UC, CSU, and the California Community Colleges for the purposes of determining residency for Cal Grant eligibility. CSAC staff, therefore, recommends that

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<sup>1</sup> Institutions shall apply the same residence determination date(s) to all their students uniformly.

the IPA recognize the residency determination dates at the public institutions established by their respective governing boards.

For private institutions, stakeholders at the May 24 workgroup indicated that the use of the first day of instruction of the term in which the student enrolls as a Cal Grant recipient was an acceptable practice. GAC later recommended that private institutions also be allowed to choose the date CSAC uses to make the preliminary determination of California residency for purposes of offering a Cal Grant.

CSAC staff agrees with the stakeholders' recommendation that the residence determination date for private institutions be the first day of instruction of the term in which the student is enrolled as a Cal Grant recipient or the date CSAC uses to make the preliminary determination of California residency for purposes of offering a Cal Grant as long as one option is chosen over the other and applied uniformly to all students at the institution. This provides the maximum opportunity within the law for a student to qualify as a resident for Cal Grant purposes.

#### Method of Determination of Residency

CSAC staff and GAC agree that a standard definition be put in place for determining California residency across all segments. Staff considers Education Code § 68060-68062 to provide that standard definition and proposes to list the code, verbatim, in Appendix A. Definitions. A uniform method for determining residency has also been discussed. However, the Commission does not have authority to require the University of California, California State University, or the California Community Colleges to use rules for determining Cal Grant residency that are different from the rules their governing boards have adopted for determining residency for tuition purposes. Because Education Code section 69433.5 requires the Commission to determine residency for Cal Grant purposes pursuant to Part 41, and because Part 41 mandates that the governing boards of the public institutions adopt rules for determining residency applicable to their institutions, the Commission must accept the governing boards' rules for purposes of determining Cal Grant residency in those public institutions. (See Educ. Code §§ 68040, 68044.)

The Commission, therefore, must allow public institutions to continue to be governed by the institutional standards they use to determine residency, including the process by which they resolve conflicting information. This will ensure consistency between the public institutions' determinations of residency for purposes of charging only system-wide fees to students who are residents of California, and Cal Grant awards requiring California residency. The Cal Grant and system-wide fees at the CSU and UC are tied together in statute and the Budget Act. (See Educ. Code, § 66021.2(b), 69432(b), and 69432.5.) The amount of non-resident tuition is not tied to Cal Grant awards. Requiring public institutions to adopt a different method of determination from those mandated by their governing boards may result in a student paying non-resident tuition and system-wide fees and receiving a Cal Grant which does not cover both of those costs, or a student paying system-wide fees only but not receiving a Cal Grant for residency reasons.

Further, a single method applicable to both public and private institutions could result in different determinations of California residency for fee purposes and for Cal Grant purposes at the UC and CSU, thereby requiring the Residency Offices to make two determinations for each Cal Grant student or requiring the Financial Aid Office to make a separate determination (which they do not currently make) for each Cal Grant student than the one originally made by their Residency Office.

Therefore, CSAC staff recommends the adoption of the proposed IPA language requiring residency determinations for Cal Grant purposes to be identical to the rules adopted by the governing bodies of the public institutions for purposes of student residency classification.

To keep the standards as comparable as possible, and to provide uniform guidance for private institutions, CSAC staff recommends that the IPA allow private institutions to adopt the standards established in the California Community College regulations in 5 CCR §§ 54020-54024 for determining residency, or develop and document their own policy which is not inconsistent with 5 CCR §§ 54020-54024 and Educ. Code §§ 68060-68062.

To aid institutions in developing a protocol for determining California residency and resolving conflicting information about California residency, various stakeholders requested that the IPA include a list of indicators of conflicting information that may require the gathering of supplemental documentation. Through discussion at the May 24 workshop, several indicators present on the Institutional Student Information Record (ISIR), a document available to all institutions, were identified, but the list was not all-inclusive. (See Language in the Proposed IPA above.)

In fact, the factual circumstances in which student information received by an institution might conflict with CSAC's initial determination of California residency are too numerous to list completely. Since a specific listing of facts that constitute conflicting information, therefore, would be incomplete, the IPA would effectively limit the instances in which institutions would be required to resolve conflicting information on residency only to those expressed in the IPA. The Commission would be excusing institutions from resolving conflicting information in all circumstances except those expressly stated. Some of these unexpressed circumstances could, if properly resolved, result in determinations that students were not California residents, and thus, do not qualify for Cal Grant awards. By effectively limiting the circumstances in which an institution is required to resolve conflicting information, the Commission would be increasing the likelihood of unauthorized Cal Grant awards and the unauthorized expenditure of State funds.

The resolution of conflicting information is an exercise of judgment that depends on the information in the possession of the institution, is fact-specific to an individual student, and is required to be done on a student-by-student basis. It is simply not possible, or appropriate, to attempt to define every circumstance in which an institution is required to resolve conflicting information. Therefore any list of indicators of conflicting information needs to contain a proviso that the list provides examples which trigger the requirement

to resolve conflicting information, but is not comprehensive. (See Language in the Proposed IPA above.)

CSAC staff recommends that the proposed IPA provide examples of circumstances (“indicators”) in which conflicting information could require resolution, but not to limit the requirement to resolve conflicting information to specific examples.

Federal government requirements relating to resolving conflicting information on federal financial aid eligibility recognize this concern. Cal Grant institutions are already subject to federal requirements to resolve conflicting information about eligibility factors for federal financial aid described in the *FSA Handbook* and *The Blue Book: Accounting, Recordkeeping, and Reporting by Postsecondary Educational Institutions for Federally Funded Student Financial Aid Programs*. The *FSA Handbook* provides detailed information on the administration of the Title IV federal student aid programs, as well as on institutional eligibility to participate in these programs. *The Blue Book* provides guidance to institutions on general Title IV federal student financial aid program management, fiscal recordkeeping, accounting, and reporting functions. Relevant provisions relating to conflicting information from the *FSA Handbook* Vol. 1, p. 13, and *The Blue Book*, Chapter 10, pp. 142-143 are attached as Attachment 1. Each describes the requirement for resolving conflicting information in general terms, and describes circumstances that illustrate, but do not limit, the requirement to resolve conflicting information.

Staff is unable to concur with GAC’s suggestion relating to portability of a Cal Grant. GAC recommended that once an institution has determined a student to be a California resident and the student has received a Cal Grant payment, no other residency determination for Cal Grant purposes should be required if the student were to transfer to another school. However, any student who transferred to a public institution would be required to undergo a residency determination by that public institution to establish whether that student would pay only system-wide fees or non-resident tuition in addition to system-wide fees. As noted earlier, the residency requirement for Cal Grants is directly tied to the residency requirement for system-wide fees, not to non-resident tuition. Education Code section 69433.5 requires the Commission to determine residency as required by Part 41, which, in turn, requires compliance with standards established by the governing boards of the public institutions. In other words, Education Code section 69433.5 requires that a student is eligible for a Cal Grant only if the public institution in which he or she is enrolled has determined that he or she is a resident and must pay only system-wide fees, not non-resident tuition. Therefore, a failure to require a residency determination upon the student’s transfer could result in the student continuing to be eligible for a Cal Grant even if the student is determined by the new public institution to be required to pay non-resident tuition. This would be inconsistent with Education Code section 69433.5.

Other eligibility requirements among the various Cal Grants already exist and limit their portability. For example, a recipient of a Cal Grant C who transfers from a vocational certificate or diploma into a baccalaureate degree at the same or another institution, will be deemed ineligible to keep that award; a professional judgment decision which gives rise to student eligibility for a Cal Grant at one institution may not be accepted at another

institution; a student who is disqualified from one institution due to failing to meet satisfactory academic progress (SAP) may transfer to another institution and maintain Cal Grant eligibility. For these reasons and others, staff maintains that California residency determination must be the responsibility of the institution at which a student seeks to utilize his/her Cal Grant.

CSAC staff has concluded that the Commission will minimize the possibility of allowing unauthorized Cal Grant awards to be paid to students who are not California residents, by adjusting the Commission's initial awarding process, and by requiring a private institution to develop specific factors and procedures for determining California residency, either based on the regulations adopted by the California Community Colleges or on the institution's own determination of the factors the law requires to establish residency, not inconsistent with the Community College regulations, and to use its judgment to determine whether information it receives about its student is inconsistent with the factors the institution uses to determine the student's residency. Consistent with the federal approach, CSAC staff recommends that the proposed IPA provide examples of circumstances ("indicators") in which conflicting information could require resolution, but not to limit the requirement to resolve conflicting information to specific examples. The staff has included a reference to the *FSA Handbook* and *The Blue Book* in the IPA.

### **Staff Recommendations**

CSAC staff recommends that the IPA recognize the residency determination dates at the public institutions established by their respective governing boards.

CSAC staff recommends that the residence determination date for private institutions be the first day of instruction of the term in which the student is first enrolled as a Cal Grant recipient or the date CSAC uses to make the preliminary determination of California residency for purposes of offering a Cal Grant, as long as one option is chosen over the other and applied uniformly to all students at the institution.

CSAC staff recommends the adoption of the proposed IPA language requiring residency determinations for Cal Grant purposes at public institutions to be identical to the rules adopted by the governing bodies of the public institutions for purposes of student residency classification.

CSAC staff recommends that the IPA allow private institutions to adopt the standards established in the California Community College regulations in 5 CCR §§ 54020-54024 for determining residency, or develop and document their own policy which is not inconsistent with 5 CCR §§ 54020-54024 and Educ. Code §§ 68060-68062.

Further, CSAC staff recommends that the proposed IPA provide examples of circumstances ("indicators") in which conflicting information could require resolution, but not to limit the requirement to resolve conflicting information to specific examples.

Therefore, CSAC staff recommends that the Commission adopt the proposed IPA language.

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### Gaining eligibility examples

Allen enrolls in a one-year certificate program at Sarven Technical Institute. Sarven won't officially admit Allen before he provides an academic transcript from his previous school, but it lets him start classes in the fall. Sarven receives Allen's transcript after he's attended for a month and officially admits him. He's still in his first payment period when admitted, so he can receive Pell and campus-based funds for his entire period of enrollment. The school can also use the program length of one year as the period of enrollment for which Allen can receive a loan.

Chavo is finishing his senior year in high school; his classes end June 4. He decides to start classes in the winter at Sarven Technical Institute on January 11. The second payment period begins on May 17. Chavo isn't eligible for aid when he first starts classes at Sarven. However, when he becomes eligible after June 4, Sarven can disburse Pell and campus-based funds to Chavo retroactively for the current payment period that started on May 17 (but not for the payment period that started in January) and a Stafford loan for the current period of enrollment, which does include the payment period that began in January.

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### Losing eligibility example

George is a student at Guerrero University. At the end of September, after the start of the fall term, he is convicted in a state court for possession of drugs. It is his first offense, and he isn't incarcerated, but he is ineligible for aid. Guerrero gave George his first Direct subsidized loan disbursement at the beginning of the semester in September and was going to disburse a Perkins loan to him in October. Now Guerrero can't disburse the Perkins loan. George doesn't have to pay back the first disbursement of his Direct loan, but he can't receive any more Title IV aid until one year elapses or he successfully completes a qualified drug rehabilitation program.

### CONFLICTING INFORMATION

In addition to reviewing data provided by the Department's application system and NSLDS (as discussed in the rest of this volume), your school must have an internal system to share information relevant to the student's eligibility, such as his academic standing. The FSA program regulations require a school to develop an adequate system to ensure the consistency of any data related to a student's application for federal student aid regardless of the source of that data. Your school is responsible for reconciling all inconsistencies that it receives with one exception: if the student dies during the award year, you aren't required to resolve conflicting information.

If your school has conflicting information for a student or you have any reason to believe his application information is incorrect, you **must** resolve such discrepancies before disbursing FSA funds. If you discover a discrepancy after disbursing FSA funds, you must reconcile the conflicting information and require the student to repay any aid for which he wasn't eligible, unless he is no longer enrolled for the award year and will not re-enroll. Refer to the *Application and Verification Guide* and the *School Eligibility and Operations* volume for more information.

### CHANGE IN STATUS

The student's eligibility status can change during the award year, which almost always affects whether the student can be paid. The special rules for changes in satisfactory academic progress status were discussed earlier in the SAP section.

#### Gaining eligibility

A student who *applies for aid* by filling out a FAFSA is eligible for aid for the entire award year. A student who *gains eligibility* is one who was previously ineligible for some reason. In general, when a student gains eligibility, she may receive Pell, ACG, National SMART, and Campus-based funds for the entire payment period and Stafford and PLUS loans for the period of enrollment in which she became eligible.

The student is eligible for Pell, ACG, National SMART, and Campus-based aid for the entire award year—not just the payment period—in which he becomes eligible by meeting the requirements for citizenship, valid Social Security Number (SSN), or Selective Service registration.

#### Losing eligibility

A student cannot receive any federal student aid after losing eligibility for it, unless he qualifies for a late disbursement.

**Conflicting information does not include such things as –**

1. a household size that differs from number of exemptions on a tax return;
2. dependency under IRS rules vs. ED definition of dependency;
3. a roster of candidates for an outside scholarship, as opposed to a list of recipients;
4. privacy protected information, such as information from professional counselors, chaplains, doctors, etc.;
5. assumptions made by the CPS;
6. a FAFSA filed using estimated income; and
7. a student who has an expired INS document, but secondary confirmation match is successful.

**Death of a student**

If a student dies during the award year, the school isn't required to resolve conflicting information.

**Clarification**

**Conflicting information may include information related to a student's eligibility such as –**

- citizenship status,
- accuracy of SSN,
- default or overpayment status,
- changes in student's academic status (including grade level progression),
- COA elements,
- other student financial assistance or resources, and
- inconsistent information used in calculating the student's EFC.

**Consistency of information**

A school must have a system of identifying and resolving discrepancies in all FSA-related information received by any school office. A school must resolve discrepancies for all students, not just those selected for verification.

Resolution includes —

- ◆ determining what information is correct, and
- ◆ documenting the school's findings in the student's file.

Such a system must include a review of —

1. all student aid applications, need analysis documents, MRRs, POPs from COD, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

Even if a school has previously verified the information on a student's SAR/ISIR, the school must review all information on subsequent SARs/ISIRs, and resolve discrepancies.

2. any documents, including any copies of state and federal income tax returns, that are normally collected by the school to verify information received from the student or other sources; and
3. any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, documentation of the student's social security number or other factors relating to the student's eligibility for funds under FSA programs.

For instance, if a student receives veterans benefits through one school office, that office must notify the aid administrator of these benefits to ensure that the amounts are correctly reported on the student's aid application and are counted as a resource for the Campus-Based programs and estimated financial assistance for the Direct Loan and FFEL programs. Other examples include –

- a school's admissions or registrar's office must provide the aid office with any information it has that might affect a student's eligibility such as the student's enrollment in an ineligible program, or enrollment in summer classes immediately preceding a fall term of enrollment; and
- a school's business office must inform the aid office whenever it receives information about a student receiving an outside scholarship.

## Tab 6.b.2 Attachment 1b

### Chapter 10 – Administrative Standards

There is a distinction between how long you need to be alert for conflicting information and how long you have to actually resolve a conflict. Even if the processing year has ended, you must continue to resolve conflicting information unless —

1. all aid for period of enrollment has been disbursed, and
2. at the time of disbursement, there was no conflicting information, and
3. student is no longer enrolled at the school (and is not intending to reenroll).

**You may not ignore a document in your files unless a student is no longer enrolled. If you have conflicting information in your files, you must resolve it as expeditiously as possible.**

If you become aware of conflicting information for a student who is no longer enrolled, and there is aid to be disbursed, you must resolve the conflict before making the late or postwithdrawal disbursement.

If aid (that school was unaware of) is received after the end of a period of enrollment for a student who is intending to reenroll, assuming the student reenrolls in the next award year, that aid must be treated as resource/EFA for the subsequent period of enrollment.

Remember, if any office at your school has information that might affect a student's eligibility for FSA funds, it must provide that information to the school's designated coordinating official. That individual in turn must forward it to the financial aid office where procedures must be in place to ensure that any conflicting information is resolved and documented before the student receives any (or any additional) FSA funds.

#### Sources of conflicting information include –

- unsolicited tax returns or schedules,
- information provided by the student to the financial aid office,
- supplemental financial aid applications,
- other offices within the school,
- offices at other educational institutions (not just aid offices),
- ED,
- scholarships and information from outside sources,
- state agencies such as Vocational Rehabilitation, WIA, State Scholarship Agencies, etc.,
- tips from outside sources,
- transcripts from other postsecondary institutions,
- SARs or ISIRs,
- verification,
- C Flags,
- Reject Codes, and
- Comment Codes.

#### Discrepant tax data

Because conflicting data often involve tax information, FAAs must have a fundamental understanding of tax issues that can affect need analysis. You should know –

1. whether an individual is required to file a tax return;
2. an individual's correct filing status; and
3. only one person can claim another as an exemption.

Publication 17 of the IRS, "Your Federal Income Tax," is a useful resource for the aid office. You can view it on the Web at

[www.irs.gov](http://www.irs.gov)

or you can call the IRS at

800-829-3676

to order a copy.

For additional information on resolving tax issues, please see the Federal Student Aid Handbook, Volume 1 – Student Eligibility."

**Issue**

Shall the Institutional Participation Agreement (IPA) require Cal Grant institutions to hold funds in trust for the State in separate accounts with no commingling of Cal Grant funds with funds from any other sources?

**Background**

This issue arises out of two concerns identified by Commission staff. The first concern relates to the Commission's compliance with the Budget Act appropriation of State money for Cal Grant awards, particularly with respect to the Commission's discretionary authority granted by the Education Code to advance money to participating institutions. The second concern relates to bankruptcy considerations.

Appropriation Authority and Advances

Article XVI, section 7 of the California Constitution states that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." An appropriation is a legislative act setting aside a certain sum of money for a specified object in such manner that the State's executive officers are authorized to use that money, and no more, for that specified purpose. (White v. Davis (2002) 108 Cal.App.4<sup>th</sup> 197, 211.)

The Legislature appropriates State funds for Cal Grant awards through the annual Budget Act. The Budget Acts appropriate the funds to the Commission for Cal Grant awards as "Local Assistance," which means expenditures made for the support of local government or other local administered activities.

In the 2006 Budget Act, for example, the appropriation for Cal Grant awards was expressly spelled out as follows:

7980-101-0001--For local assistance,  
Student Aid Commission..... 846,838,000

Schedule:

- (1) 15-Financial Aid**
  - Grants Program..... 881,991,000**
  - (2) Reimbursements..... -22,570,000
  - (3) Amount payable from the Federal Trust Fund (Item 7980-101-0890)..... -12,583,000

Provisions:

- 1. Funds appropriated in Schedule (1) are for the purposes of all of the following:
  - (a) Awards in the Cal Grant Program under Chapter 1.7 (commencing with Section 69430) and Article 3**

**(commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code.**

- (b) Grants under Section 4709 of the Labor Code.
- (c) California Student Opportunity and Access Program contract agreements under Article 4 (commencing with Section 69560) of Chapter 2 of Part 42 of the Education Code.
- (d) The purchase of loan assumptions under Article 5 (commencing with Section 69612) of Chapter 2 of Part 42 of the Education Code. The Student Aid Commission shall issue 8,000 new warrants.
- (e) The purchase of loan assumptions under Article 5.5 (commencing with Section 69618) of Chapter 2 of Part 42 of the Education Code.
- (f) New and renewal Cal Grant awards.
- (g) The California Student Aid Commission shall report by April 1, 2007, on the State Nursing Assumption Program of Loans for Education, pursuant to the reporting requirements of Section 69616.8 of the Education Code.
- (h) No more than 100 warrants shall be authorized for the National Guard Assumption Program of Loans for Education under Article 12.5 (commencing with Section 69750) of Chapter 2 of Part 42 of the Education Code. It is the intent of the Legislature to provide

no more than \$200,000 in  
2007-08 for the additional  
warrants.

(Chapter 47, Statutes of 2006 [emphasis added].)

The Legislature appropriated the funds to the Commission specifically to pay for those items listed in Provision 1 (a)-(h). Provision 1(a) is the relevant item. It states that the purpose of the appropriation of funds is to pay awards of Cal Grants under the current Cal Grant program and remaining awards under the Cal Grant program in existence before Chapter 403 of the Statutes of 2000 (Senate Bill 1644) was enacted to establish the current Cal Grant program.

Thus, the Commission is authorized to use Cal Grant funds only to pay awards to eligible students.

Expenditures by an administrative official are proper only insofar as they are authorized, explicitly or implicitly, by legislative enactment; administrative officials are not free to spend public funds for any "public purpose" they may choose, but must utilize appropriated funds in accordance with the legislatively designated purpose. (Stanson v. Mott (1976) 17 Cal. 3d 206, 214.) Public officials who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave public responsibility, and courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards upon such officials. (Id. at 225.)

Ultimately, public officials must use "due care," i.e., reasonable diligence, when authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care. (Stanson v. Mott, supra, 17 Cal. 3d at 226-227; see also Stevens v. Geduldig (1986) 42 Cal. 3d 24, 32 [A public official who controls public funds may be held personally liable to repay improperly expended funds if he has failed to exercise due care in permitting the expenditure].)

Education Code section 69432.8 allows the Commission to choose to advance Cal Grant funds to institutions to ensure that the funds are available at the time students who are awarded Cal Grants enroll in the institutions. It specifically provides:

The commission may determine that an advance payment is essential to ensure that funds provided pursuant to this chapter to assist students to enroll in postsecondary education are available at the time students enroll. Upon making that determination, the commission may, on the basis of institutional academic calendars, advance, per term to authorized postsecondary educational institutions, the funds for eligible students who have indicated they will attend those institutions, less an amount based on historical claim enrollment attrition information. Each institution shall disburse the funds in accordance with the provisions set forth in the institutional agreement between the commission and the institution.

(Educ. Code, § 69432.8 [emphasis added])

This section only authorizes the Commission to advance funds to an institution for the purpose of ensuring that the funds are available at the time Cal Grant students enroll in the institution. This section does not constitute an appropriation authorizing the institutions to use the money advanced to them. In other words, the Commission's advance of Cal Grant funds to institutions does not constitute authority to the institutions to use the funds immediately or for any purpose. Rather, the Budget Act's stated purpose of the appropriation of State funds to pay Cal Grant funds still applies: the funds may only be used to pay Cal Grant awards. The Commission is not authorized to allow advanced funds to be spent on anything other than a properly payable Cal Grant award. The Cal Grant funds advanced to institutions remain State funds until Cal Grant awards may be properly paid for eligible students enrolled in the institutions.

The Commission, therefore, must ensure that it does not transfer ownership of Cal Grant funds to institutions when it advances funds to those institutions.

The Commission's responsibility for Cal Grant funds is similar to a trustee's responsibility over trust funds. Just as a trustee has a duty to administer the trust property solely in the interest of the trust beneficiaries, (see Prob. Code, § 16002; Restatement of the Law, Second, Trusts, § 170), the Commission must administer State funds solely in the interests of taxpayers. A trustee has a further duty to keep trust property separate from other property not subject to the trust, and to see that the trust property is designated as property of the trust. (See Prob. Code, § 16009.) The Commission staff's proposal conforms to this fiduciary duty, in addition to providing practical protection from adverse bankruptcy effects.

To protect the State's continuing ownership of the Cal Grant funds, to keep the Cal Grant funds separated from other funds, and to ensure that those funds are used only for the authorized purposes after they have been advanced to institutions, the IPA proposes that institutions are to hold Cal Grant funds in trust on behalf of the State, and that the institutions are to hold Cal Grant funds in accounts separate from the institutions' own funds. This requirement conforms to a trustee's duty to keep trust property designated as trust property and separate from other non-trust property, and, therefore, can be considered to constitute the Commission's due care or reasonable diligence over the expenditure of State funds.

Until an institution determines that a Cal Grant award is properly payable on behalf of an eligible student enrolled in the institution, the institution must continue to hold the Cal Grant funds relating to that student in trust for the State in an account separate from the institution's other funds.

Bankruptcy law reinforces the necessity for the Commission to require institutions to hold Cal Grant funds in trust in separate accounts.

### **General Bankruptcy Concepts**

Bankruptcy law treats property differently depending on how it is held by a debtor. Generally speaking, a bankruptcy court has jurisdiction over the bankruptcy estate of a debtor, which consists of property actually owned by the debtor, i.e., property in which the debtor has an "equitable interest". However, property that is held by the debtor, but

which the debtor does not own, that is, does not have an equitable interest, is not part of the bankruptcy estate.

It is a well-settled bankruptcy law principle that debtors do not own an equitable interest in property they hold in trust for another, and that, therefore, funds held in trust are not property of the bankruptcy estate. (Begier v. Internal Revenue Service, 496 U.S. 53, 110 S. Ct. 2258, 110 L. Ed. 2d 46 (1990).)

This is a crucial distinction for purposes of bankruptcy procedure. Property held in trust by the debtor is not subject to the same treatment in bankruptcy as property owned by the debtor. The “real” or legal owner of the property held by the debtor may be able to recover the full amount of the property, unlike creditors, who in many instances will not be able to recover the full amount of their debt because there is not enough money in the bankruptcy estate. Instead, creditors oftentimes receive only a portion, if any, of the amounts owed them.

Therefore, the real owner of property must take preventive steps to require the debtor to hold the property in trust to protect the real owner’s rights, because creditors of the debtor will aggressively seek to include the property in the bankruptcy estate to increase the amount they can recover.

Generally, whether a trust has been established is a question to be resolved under state law. (B.I. Financial Services Group, Inc. v. Breninc, Inc., 854 F.2d 351, 354 (9<sup>th</sup> Cir. 1988).) Under California law, an express trust is created by acts or words of the trustor which indicate (1) an intention to create a trust and (2) the subject, purpose, and beneficiary of the trust. Payment of money may create either a debt or a trust, depending on the parties' intent. The parties' intent must be ascertained from their words and conduct in light of the circumstances surrounding the transaction. (Id.)

When the payment of money is intended to create a trust, the real owner, for example, the State, retains the ownership of the money, while the payee, for example, a participating Cal Grant institution, may not use the money for its own purposes. The payee generally may not mingle the real owner's money with its own. In contrast, where the payment of money is intended to create a debtor-creditor relationship, even though the payee may be obligated to repay an equal amount, the money becomes the payee's property and the payee may mingle it with other funds and use it for its own purposes. Lack of control by the real owner over treatment of its money is an indication of the establishment of a debtor-creditor, not trust, relationship. (Id.)

The Commission must ensure that it does not create a debtor-creditor relationship when it advances Cal Grant funds to institutions, because, as noted above, the Commission has no authority to transfer ownership of the Cal Grant funds from the State to the institutions until Cal Grant awards to eligible students enrolled at the institutions are properly payable. The Commission must require that Cal Grant funds are held in trust.

Even if property is held in trust on behalf of the real owner, a bankruptcy court will preliminarily consider the trust property to be part of the bankruptcy estate – and available for use to pay the creditors – until the real owner obtains an order from the bankruptcy court. To get this order, the real owner has the burden of proving to the court that the trust property was, in fact, held in trust. (5 Collier on Bankruptcy, at para.

541.11 (15th Ed. Rev. 2006.) The real owner must prove its title and identify the trust property.

Where the trust property has been commingled with that of the debtor, the real owner faces additional burdens. First, the real owner is bound by the normal rule for construing trust proceeds commingled in a bank account, known as the "lowest intermediate balance test." This test was established by the Supreme Court in Schuyler v. Littlefield, 232 U.S. 707, 58 L. Ed. 806, 34 S. Ct. 466 (1914), and Cunningham v. Brown, 265 U.S. 1, 68 L. Ed. 873, 44 S. Ct. 424 (1924). A court will follow the trust property and require restitution from an account where the amount on deposit has at all times since the commingling of the funds equaled or exceeded the amount of the trust property. Where, however, after the commingling, all the money is withdrawn, the trust property is treated as lost, even though later deposits are made into the account. Should the amount on deposit be reduced below the amount of the trust property, but not depleted, the real owner is entitled to the lowest intermediate balance in the account. This is based on the fiction that the trustee would withdraw non-trust funds first, retaining as much as possible of the trust fund in the account. (Connecticut General Life Insurance Company v. Universal Insurance Company 838 F.2d 612, 619 (1<sup>st</sup> Cir. 1988).)

Where the amount on deposit in the commingled account has been completely withdrawn or reduced below the amount of the trust property, the real owner may attempt to trace payments out of the commingled account to some other specific property which may have value. The real owner cannot rely solely on showing that trust property went into the general estate and increased the amount and value of the general estate. Where the trust property can be traced to a specific asset or property, the real owner must trace the trust property to that asset to be able to recover the value of that asset or property. However, where the trust property has been expended, but no substitute property has been obtained, such as when the trust property has been used to pay an electric bill to a utility or to pay the salary of an employee, the real owner will not be able to recover the value of the payment.

Thus, the real owner of Cal Grant funds – the State, as represented by the Commission - must take steps to ensure that its property will be protected against a potential bankruptcy before it transfers that property to a Cal Grant participating institution. This will insure that the Cal Grant funds clearly continue to retain their status as State funds until the funds are paid as Cal Grant awards to eligible Cal Grant recipients, and that the State funds are protected to the greatest extent possible, from being used to pay creditors of the institution.

First, the Commission must ensure that it does not relinquish its ownership through the transfer of Cal Grant funds to the participating institution. This is done by formalizing in a legally recognizable way that the Commission intends that the transfer create a trust. If the Commission cannot prove that the property was held in trust, the property will be included in the bankruptcy estate and be available to pay creditors. The Commission may be able to be considered a creditor, but is likely to lose a substantial portion of the value of the property, if it recovers anything.

Second, the Commission must, in the exercise of its responsibility for State funds, minimize the steps, and costs, in bankruptcy court necessary to establish its ownership and confirm that its property is not property of the bankruptcy estate. It should seek to

avoid the imposition of the lowest intermediate balance test applicable to commingling of trust property – in this case, Cal Grant funds – with other, non-trust property – participating institution funds. The Commission should also seek to avoid the additional financial burden of tracing improper Cal Grant fund expenditures through a commingled account to specific other assets or property.

### Language in the Current IPA

#### Cal Grant Account Maintenance – Institutional Responsibilities

- A. The Institution agrees to maintain all Commission Cal Grant funds in a designated interest-bearing account identified as the property of the State either by a ledger account or a bank account.
- 1) The Institution may deposit funds from various sources including Cal Grant funds into one bank account, but must identify the Cal Grant funds by using subsidiary ledgers. All activity (deposits and expenditures) of Cal Grant funds must be supported by appropriate accounting records in accordance with generally accepted accounting principles and practices.
  - 2) The Institution may establish a separate bank account designated for Cal Grant funds.
  - 3) Interest earned on Cal Grant funds in these accounts must be returned to the Commission on behalf of the State.
  - 4) **Phased Implementation** – The account holding Cal Grant funds must be in place and the EFT Application returned to CSAC by November 1, 2007. If switching from a non interest-bearing account to an interest-bearing account for the 2007-08 academic year, interest calculation for return to CSAC will begin when Cal Grant funds enter the interest-bearing account. If continuing use of an interest-bearing account, interest calculation for return to CSAC will begin with the Fall Advance for 2007-08.

### Language in the Proposed IPA

#### D. OPTION 1

The Institution agrees that all Cal Grant funds, including term advances transferred by the Commission pursuant to Education Code section 69432.8, constitute State funds, owned by the State, and held in trust for the State, until the funds are withdrawn to be paid as an award for an eligible Cal Grant recipient or are withdrawn as directed by the Commission.

- 1) The Institution shall hold all Cal Grant funds in a separate, designated account identified as the property of the State.
  - i) The separate account must be an interest-bearing account or an investment account at a financial institution with a presence in California whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) or

secured by collateral of value reasonably equivalent to the amount of Cal Grant Program funds in the account.

ii) Annual interest earned on Cal Grant funds in the separate account constitute State funds and must be remitted to the Commission on behalf of the State no later than March 1 following the award year for which the interest accrued (e.g. March 1, 2008, for calendar year 2007).

- 2) The Institution shall not commingle any other funds with the Cal Grant funds in the separate account.
- 3) The Institution has a fiduciary responsibility to ensure that Cal Grant funds are used only for the benefit of eligible students. Under no circumstances may the Institution use Cal Grant funds in the separate account for any other purpose, such as paying operating expenses, collateralizing or otherwise securing a loan, or earning interest or generating revenue in a manner that risks the loss of Cal Grant funds or subjects Cal Grant funds to liens or other attachments (such as would be the case with certain overnight investment arrangements or sweeps).

D. OPTION 2

The Institution agrees that all Cal Grant funds, including term advances transferred by the Commission pursuant to Education Code section 69432.8, constitute State funds, owned by the State, and held in trust for the State, until the funds are withdrawn to be paid as an award for an eligible Cal Grant recipient or as otherwise directed by the Commission.

- 1) The Institution shall hold all Cal Grant funds in a designated account identified as the property of the State according to one of the following two designations:
  - i. Public Institutions may hold Cal Grant funds in a separate bank account or may commingle Cal Grant funds with funds from other sources, but must identify the Cal Grant funds through a subsidiary ledger.
    - a. Absent a separate bank account, the Public Institution must ensure that its accounting records clearly reflect that it identifies Cal Grant funds as readily as if those funds were in a separate account; and
    - b. The Public Institution must identify earnings on Cal Grant funds in the Institution's bank or investment account.
  - ii. Private non-profit and for-profit Institutions must hold Cal Grant funds in a separate account. The Institution shall not commingle any other funds with the Cal Grant funds in the separate account.
- 2) The account in which Cal Grant funds are held must be an interest-bearing account or investment account at a financial institution with a presence in California whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation

(FSLIC) or secured by collateral of value reasonably equivalent to the amount of Cal Grant Program funds in the account.

- 3) Annual interest earned on Cal Grant funds constitute State funds and must be remitted to the Commission on behalf of the State no later than March 1 following the award year for which the interest accrued (e.g. March 8, 2008, for calendar year 2007).
- 4) Both Public Institutions and Private Institutions have a fiduciary responsibility to ensure that State funds are used only for the benefit of eligible students. Under no circumstances may a Public or Private Institution use State funds for any other purpose, such as paying operating expenses, collateralizing or otherwise securing a loan, or earning interest or generating revenue in a manner that risks the loss of State funds or subjects State funds to liens or other attachments (such as would be the case with certain overnight investment arrangements or sweeps).

### Description of Proposed IPA Options

#### Option 1

Option 1 in the proposed IPA states that any Cal Grant funds, including advances, transferred by the Commission constitute State funds, owned by the State, and held in trust for the State until the funds are withdrawn to be paid as an award for an eligible Cal Grant recipient or are withdrawn as directed by the Commission. The proposed IPA also states that participating institutions must hold Cal Grant funds in a separate, designated account identified as the property of the State. Further, the proposed IPA prohibits the use of Cal Grant funds for any purpose other than for the benefit of eligible students.

This language creates an express trust, and establishes the Commission's control over the funds, both of which are intended to constitute clear indications of the Commission's intent to maintain the Commission's ownership of the funds.

In addition to the requirement of a separate account for Cal Grant funds, Option 1 also expressly prohibits participating institutions from commingling any other funds with Cal Grant funds.

These requirements provide a level of assurance, consistent with the obligation of public officials to exercise due care and reasonable diligence over State funds, that Cal Grant funds will remain the property of the State and will not be used for unauthorized purposes, until they are properly payable to eligible students enrolled at institutions.

The requirements also satisfy the two bankruptcy-related steps, described above, that are necessary to avoid the practical problems facing real owners who allow their trust property to be commingled with other property. In the absence of the prohibition against commingling, the Commission would be required to trace through the participating institution's financial records to establish that Cal Grant funds were used to obtain other property, in order to establish that the other property is excluded from the bankruptcy estate, so that the Commission could recover that value on behalf of the State. If the Cal

Grant funds were used, but are not traceable to a specific asset, the Commission could not recover those funds.

Option 2

The proposed IPA also includes a second option that allows public institutions – the University of California, California State University, and California Community Colleges – to choose between holding Cal Grant funds in a separate account or in a commingled account. If they choose a commingled account, they are required to have accounting records that clearly reflect that they segregate Cal Grant funds as readily as if those funds were in a separate account. Private institutions would still be required to have separate accounts with no commingling.

Option 2 recognizes the legal and practical distinctions between public and private institutions. Bankruptcy law allows municipalities – which would include the University of California, California State University, and California Community Colleges – to file petitions in bankruptcy. Municipalities are covered by different bankruptcy rules and procedures than private companies. While many procedures are similar or identical, municipal bankruptcies under Chapter 9 of the Bankruptcy Code allow much greater involvement and control by the municipality filing the bankruptcy petition than the private-company bankruptcy Chapters 7 and 11 allow to private company debtors. This distinction is founded on the sovereignty of states, as recognized by the 10<sup>th</sup> and 11<sup>th</sup> Amendments to the United States Constitution.

This different bankruptcy treatment is related to a second distinction between public and private institutions. From a practical and policy perspective, the state can actively protect its financial interests if a public institution were to file a Chapter 9 bankruptcy petition. For example, the bankruptcy process normally prevents a creditor from offsetting amounts owed by a debtor from the creditor's payments to the debtor. However, because Chapter 9 requires a bankruptcy court to defer to the authority of the state over sovereign state functions, the Legislature and Administration may be able to account for any deficiency in Cal Grant funds that may occur as a result of a bankruptcy filing through the Budget Act or other laws. The Administration can also choose to become involved in the discussions with the public institution for resolving that public institution's bankruptcy case.

Further, the State's ability to protect its interests in a situation in which a public institution, outside of bankruptcy, becomes financially challenged serves to protect against the improper use of Cal Grant funds for unauthorized purposes. The Commission staff, therefore, considers this option to provide a level of assurance consistent with the obligation of public officials to exercise due care and reasonable diligence over State funds, that Cal Grant funds will remain the property of the State and will not be used for unauthorized purposes, until they are properly payable to eligible students enrolled at institutions.

The State does not have a comparable ability to protect its interests relating to private institutions. There is no comparable process by which the State can affect a private institution that has filed a bankruptcy petition under Chapter 7 or 11. A private institution's bankruptcy filing under these Chapters does not allow for the deference to State interests that the Bankruptcy Code affords under Chapter 9. For example, it is

problematic whether the Legislature and Governor could recover Cal Grant amounts through legislation affecting the private institution. Further, in private institution bankruptcy cases, creditors seek to increase the size of the bankruptcy estate, and thus are more likely actively to oppose any State attempt to recover funds outside the bankruptcy court's jurisdiction.

In addition, the State lacks the ability to intervene to protect its interests when a private institution becomes financially challenged, providing no assurance against the improper use of Cal Grant funds. The Commission staff, therefore, cannot recommend that private institutions be treated in the same way as public institutions.

### **Recommendation by the Commission's Grant Advisory Committee**

#### **Commingling Option for Interest Bearing Accounts: The GAC recommends that the commingling option be available to campuses in all segments.**

A workgroup of the Grant Advisory Committee (GAC) recommended, and GAC officially supported at its February 17, 2007 meeting, that the requirement for holding Cal Grant funds in an account follow the options provided by the federal government for federal student financial aid. Federal regulations permit commingling federal funds with funds from other sources if the institution's accounting records (e.g., subsidiary ledger) can track the federal funds as readily as if those funds were in a separate account. The commingling option is in recognition that it is a more efficient way for large institutions to handle funds and allows for higher yielding investment practices in interest bearing accounts. The federal regulations also provide that a separate bank account can be required if institutions do not meet certain standards. The federal regulations apply equally to all five segments of higher education.

GAC members were displeased that the commingling option wasn't extended to the private segment and suggested that this option be made available to the private institutions as well.

The workgroup believed that most private and proprietary institutions are not at risk for bankruptcy or misuse of State funds, but would nevertheless be treated as if they were. The workgroup was comfortable providing Commission staff with discretion in how staff might identify at-risk institutions that would be required to establish separate bank accounts as long as the decision was not based on segment. However, staff felt they did not have the expertise or timely access to information on which to make such judgments.

The proposed IPA extends the commingling option to public institutions but does not do so to private institutions. As noted above, the State's legal authority to intervene in private institutions' financial affairs and in bankruptcy actions is much more constrained in comparison to public institutions. Thus, Commission staff cannot conclude that the State's ability to protect State funds advanced to private institutions against unauthorized use or in bankruptcy satisfies the due care or reasonable diligence standard that would protect against personal liability for any loss of State funds, unless the Commission requires private institutions to the State funds in trust in separate accounts.

A recent case of bankruptcy illustrates this point. The Court Reporting Institute declared for bankruptcy in the fall of 2006, but not before the fall advance of \$78,367 was sent to the institution. The Commission was not aware of the bankruptcy until February 2007 when court paperwork was sent along with the 2005 invoice from the institution's lawyer. It is highly unlikely that the Commission will recover the Cal Grant funds from the bankruptcy.

Thus, Option 2 would require private institutions to maintain separate accounts, with no commingling of Cal Grant funds with other funds of the institutions, but allow flexibility to public institutions.

### **IPA Workshop**

The requirement for separate accounts was not included in the 2007-2008 IPA. The Commissioners strongly urged that staff work together with GAC to reach a resolution on this issue before the September meeting with the hopes of finalizing the new IPA at that time. In an effort to re-evaluate and gain new perspective on the three remaining issues, an IPA workshop with stakeholders was held on May 24, 2007, by Commission staff. A GAC meeting followed the IPA workshop. There were two sessions conducted and facilitated by Commission staff on the separate accounts issue. The discussion centered on whether non-public institutions should be required to maintain Cal Grant funds in separate accounts with no commingling.

During the morning session, participants questioned the motivation behind separate accounts with no commingling since the Commission had never raised this concern in the past. They wondered if there were other reasons for separate accounts that the Commission was not disclosing to the public.

The Commission staff developed the IPA proposals because the Commission is responsible for protecting State funds and for ensuring that State funds are used only for the purposes for which they are authorized. The Commission is not free to ignore a problem upon becoming informed of it, just because nothing had been done when the Commission was unaware of the problem. Being unaware of a problem in the past does not excuse the Commission from conforming its actions to its obligations.

Many stakeholders argued that to enforce separate accounts to all non-public institutions would be an extreme measure considering that actual Cal Grant losses from bankruptcies have been minimal and only by a few institutions. They asserted that only ten institutions have declared bankruptcy with approximately \$200,000 in Cal Grant losses in over twelve years, and that only a small percentage of institutions could be considered high-risk. Thus, imposing separate account requirements on all private institutions would be unfair,

They also argued that separate accounts would not necessarily guarantee that Cal Grant funds would be recovered and returned to the state during bankruptcy cases since the court ultimately decides which creditors are entitled for repayment, if at all. They pointed out that separate accounts may increase the chances for restitution, but there is no assurance that the courts will rule in favor of the Commission.

They were also concerned that private institutions will incur additional costs to set up and maintain the separate accounts, including accounting and bookkeeping costs, and that actions by their boards would be required for this type of account.

Stakeholders argued that the changes to the Grant Delivery System to implement a real-time process would eliminate the need for advances for most private institutions, and therefore, the costs imposed by the separate account requirement for such a limited time was not justified.

They noted that interest earned for the State from the separate accounts could be lower than interest earned on a commingled account due to the higher interest rate on higher balances.

Finally, they asserted that there was a possibility that Cal Grant funds to students could be delayed since the funds would need to be transferred twice.

At a workgroup meeting and a GAC meeting both held on July 19, 2007, GAC members and Commission staff continued their discussion on separate accounts with the hopes of reaching a resolution before the next Commission meeting in September. GAC commended staff on their efforts in writing the updated issue paper and disseminating it to the members in a timely fashion. The issue paper included a summary of the May IPA workshop, further clarification on bankruptcy principles and staff's recommendation that all non-public institutions switch to separate accounts for the 2008-2009 IPA. Staff's position on separate accounts for non-public institutions has not changed since its initial recommendation to the Commissioners at the April, 19 2007 meeting.

The subject of negative interest and netting of interest as it pertains to Cal Grant funds in an interest-bearing account was raised again by GAC members. The interest-bearing account requirement for all Cal Grant participating institutions was added to the current 2007-2008 IPA after Commission approval at the April meeting. During the meeting, discussion of negative interest and offsetting banks costs from interest revenue was presented to the Commissioners, but was not included in the 2007-2008 IPA as the Commission did not have the statutory authority to make that decision. GAC members felt it was necessary to readdress the issue for the 2008-2009 IPA due it impending impact to institutions. The GAC workgroup recommended that staff pursue statutory changes that would allow for netting out of administrative costs relating to separate accounts and for negative interest.

GAC maintained their position on separate accounts and concluded that non-public institutions should not be singled out to this requirement. GAC members also endorsed that any program changes should apply to all segments and to eliminate any type of differential treatment. In addition, requiring non-public institutions to switch to a separate Cal Grant account may cause additional bank and administrative expenses. GAC reiterated their belief that other preventive measures should be used to protect state funds rather than separate accounts.

Staff understood GAC's recommendations to be:

1. GAC recommends that the Commission sponsor the following statutory changes:

- a. Authorize the Commission to allow institutions to deduct the costs incurred from establishing and maintaining interest-bearing accounts from the accrued interest.
  - b. Authorize the Commission to allow institutions to calculate the return of interest from Cal Grant accounts based on a formula which includes negative as well as positive balances.
2. GAC endorses the inclusion in the IPA of staff's language which indicates that the advances made to the institutions are State funds and owned by the state, but still has concerns about the legal interpretation that only allows the commingling option for public institutions. Therefore, GAC recommends that the Commission explore other mechanisms for determining at risk institutions instead of the implementation of separate accounts and allow all institutions to commingle their Cal Grant funds.

### Staff Analysis

Staff recognizes the legitimacy of these concerns. However, as noted earlier, public officials who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave public responsibility, and courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards upon such officials. (Stanson v. Mott, supra, 17 Cal. 3d at 225.)

The Commission's discretionary authority to allow private institutions to receive State funds before they are authorized to spend the funds provides an unusual benefit to those private institutions. Thus, the Commission's compliance with the stringent standards to protect taxpayers and State funds becomes even more significant. The Commission's responsibility for Cal Grant funds is at least as stringent as the requirements imposed by law on a trustee who is responsible for trust funds. A trustee has a duty to keep trust property separate from other property not subject to the trust, and to see that the trust property is designated as property of the trust. (See Prob. Code, § 16009.) Thus, the stakeholder assertion of a low risk of losing commingled Cal Grant funds through bankruptcy would not excuse the failure of the Commission to comply with its basic responsibility to keep Cal Grant funds separate from institutions' funds.

Further, just as a trustee has a duty to administer the trust funds solely in the interest of the trust beneficiaries, (see Prob. Code, § 16002; Restatement of the Law, Second, Trusts, § 170), the Commission must administer Cal Grant funds solely in the interests of taxpayers. Essentially, the Commission can accommodate private institutional concerns only to the extent they can be handled consistently with taxpayer interests; the Commission cannot accommodate those concerns if to do so would increase risk to State funds.

Commission staff acknowledges that separate accounts for Cal Grant funds would not provide absolute protection against unauthorized use or against an adverse bankruptcy court decision. In addition, Commission staff recognizes the low frequency of bankruptcy cases among participating Cal Grant private institutions. However, the

possibility that separate accounts may not provide absolute protection for all Cal Grant funds does not justify placing all funds at risk. Requiring separate accounts to hold State funds that are not yet eligible to be spent is a fundamental obligation of the Commission, which stands as a trustee of those funds on behalf of taxpayers.

Further, Commission staff acknowledges that some private institutions that elect to participate in the Cal Grant program may incur some level of costs relating to separate accounts. As a side note, Commission staff was unable to obtain information from stakeholders establishing the extent of the costs associated with separate accounts. In addition, staff has observed that stakeholders were not uniform in their concern about the costs. In an effort to determine the effect of separate accounts on institutions, staff conducted a phone survey of a sample of non-public institutions for their perspectives on the possible switch to separate accounts. The results of the survey were not based on a statistically significant sample, but they nevertheless demonstrated different reactions from the institutions. Some institutions commingled their accounts, while others preferred to keep their Cal Grant accounts separate from other financial aid funds. Institutions that maintained separate accounts indicated that costs were minimal and that it was easier for tracking and auditing purposes. Some institutions that used the commingled method cited concerns over higher expenses and staffing issues. Consequently, the survey outcome illustrates that there is not overwhelming opposition or support of separate accounts and the associated costs will not be that excessive.

At any rate, the additional costs to private institutions associated with maintaining separate accounts do not excuse the Commission from acting in the interests of taxpayers by taking the steps to protect State funds. Commission staff is unable to advise the Commission that the Commission's responsibility to administer Cal Grant funds solely in the interest of taxpayers allows the Commission to expose some Cal Grant funds to risk by not requiring separate accounts, in order to save the private institutions some cost.

Similarly, the potential for lower interest earned on Cal Grant funds held in separate accounts as compared to commingled accounts does not justify deviation from the Commission's obligation to protect Cal Grant funds by requiring them to be held in separate accounts. Commingling State funds with private institutions' funds places the State's ownership of the funds at risk. While earning interest on State funds is prudent and necessary when those funds are not being used, the possibility of earning slightly higher interest is not sufficient to override the fundamental responsibility to protect the State's ownership of those funds.

Commission staff agrees that changes to the Grant Delivery System (GDS) to implement a real-time process could eliminate the need for advances for most private institutions and that these changes might be implemented within a short time. However, the Commission is under a current obligation to protect State funds. Commission staff cannot recommend that the Commission withhold implementing the steps necessary to protect State funds in the possession of private institutions, thus exposing those State funds to risk of loss, in anticipation of a change in GDS, even if the change were to occur in a short time.

GAC has recommended that the Commission identify private institutions that display financial instability and may have "red flags" for school closures. Similarly, participants

at the May 24, 2007, workshop suggested that instead of dealing with the repercussions of bankrupt institutions, the Commission should take preventive measures to avoid Cal Grant losses from bankruptcies altogether. If the goal of the Commission is to protect State funds, there should be preliminary steps to identify high risk institutions before they close the institution or declare for bankruptcy. The workgroup compiled a list of possible red flags that the Commission could use to help pinpoint institutions that are "high risk."

Potential red flags

- Does the institution have accreditation problems?
- Have they been placed on probation by the Department of Education?
- Are they on the federal reimbursement program?
- Are they on the federal watch list?
- Is there a drop in enrollment versus cal grant term advances?
- Are they filing their audit with the Department of Education in a timely fashion?

In addition, the Commission could request pertinent documents that could assist in the identification process. One particular idea suggested that the Commission draft a survey which would ask questions to gauge a particular institution's financial status. The survey would be sent once a year and automated survey services like Survey Monkey could be used instead of paper. Based on the responses, the Commission could create a "watch list", similar to that of the Feds to monitor payments and reconciliation. In addition, the Commission could collect copies of the AR 133 report (federal audit) and financial statements from institutions.

Some proposed that the Commission mirror the federal Pell Grant program where institutions are reimbursed for the students that are paid on WebGrants. While others recommended that proprietary institutions be placed on a reimbursement program since this segment historically has incurred the most bankruptcies. One final suggestion urged the Commission to research trends, characteristics and patterns from the institutions that have declared for bankruptcy in the past. The study might reveal vital information to the Commission which could be used to develop basic criteria for institutions who wish to participate in the Cal Grant Program.

Commission staff considers these suggestions to be very useful and will explore using these mechanisms to determine institutional risk factors, with the possibility of imposing different levels of intervention necessary for the proper administration of the Cal Grant program. However, the Commission does not currently have the resources or expertise to implement the options presented at the workshop. For example, requesting AR 133 audit reports was one of the main suggestions from the workshop. Although it sounds like a feasible solution, it would require Commission staff to request, collect and analyze over 230 AR 133 reports on a yearly basis. Additional support staff would need to be hired to handle the administrative duties for this project. Other similar recommendations from the workshop would also require additional staff and resources.

Even were the necessary resources available to the Commission, the Commission would not be excused from compliance with its obligation to protect State funds by separating them from non-State funds. The workgroup suggestions could reduce, but not eliminate the risk to State funds, and therefore, not alleviate the need to keep the funds separate.

**Staff Recommendation**

Staff recommends Option 2. The requirements of separate accounts held in trust and the prohibition against commingling are necessary to protect state funds held by private institutions.

Staff also recommends that the Governance and Oversight Monitoring Committee consider the GAC recommendations for legislation.



**CAL GRANT PROGRAM  
RENEWAL  
INSTITUTIONAL PARTICIPATION AGREEMENT  
for 2008-09**

Name of Institution: \_\_\_\_\_

Address of Institution: \_\_\_\_\_

Office of Postsecondary Education  
Identification Number (OPE ID): \_\_\_\_\_

If using US Postal Service, please return to:  
California Student Aid Commission  
Program Administration & Services Division  
ATTN: IPA Renewal  
P.O. Box 419028  
Rancho Cordova, CA 95741-9028

If using another delivery service, return to:  
California Student Aid Commission  
Program Administration & Services Division  
ATTN: IPA Renewal  
10811 International Drive, 2<sup>nd</sup> Floor  
Rancho Cordova, CA 95670

Execution of this Agreement is mandatory for participation in the California Student Aid Commission's Cal Grant Programs.

## ARTICLE I

### Cal Grant Program Administration - Participation

The California Student Aid Commission ("Commission") and \_\_\_\_\_, hereafter referred to as the "Institution," agree to the terms contained in this Institutional Participation Agreement (Agreement).

The Institution desires to participate as an agent of the Commission for the limited purpose of taking part in the Commission's internal procedures of the administration of the Cal Grant Program. This Agreement governs the Institution's eligibility to participate as the Commission's limited agent in the Commission's internal procedures of the administration of all Cal Grant Program awards.

This Agreement applies only to campus(es) indicated on this Agreement as listed in Article IX. A new Agreement is required for the addition of any added campus(es).

This Agreement terminates and the Institution's participation in the Commission's internal procedures of the administration of the Cal Grant Program ends on the date of any shift in control or change of ownership as defined in Article VIII. If the new controlling party or new owner wishes to continue Cal Grant participation, a new Agreement must be completed and executed.

Federal or state law or regulations, as amended, shall prevail if the terms of this Agreement are not consistent with federal or state law or regulations, as amended.

## ARTICLE II

### Cal Grant Program Administration - General Provisions

- A. The Institution must satisfy the minimum requirements for participation in the Cal Grant Program for postsecondary institutions in California established in California Education Code (CEC) 69432.7(l) and Title 5 of the California Code of Regulations (CCR), Section 30009. To that end, the Institution certifies that it satisfies one of the following subsections:
- 1) The Institution is a California non-public postsecondary institution approved by the United States Department of Education (USED) to participate in the Federal Pell Grant program and two of the three federal campus-based student aid programs. The three federal campus-based programs are the Federal Work-Study, the Federal Perkins Loan and the Federal Supplemental Educational Opportunity Grant (SEOG) programs [CEC 69432.7(l)(1)]. Specifically, participation in the campus-based programs means the postsecondary institution has been allocated funds and is spending those funds at each additional location/campus/site/branch (campus) that Cal Grant recipients attend. These program requirements are set forth in 5 CCR 30009(b).
  - 2) The Institution is a nonprofit postsecondary institution headquartered and operating in California that: (a) expends at least ten (10) percent of the institution's operating budget, as demonstrated in an audited financial statement, for the purposes of institutionally funded student financial aid in the form of grants, (b) has demonstrated

- to the Commission that it has the administrative capability to administer the funds, and (c) is accredited by the Western Association of Schools and Colleges [CEC 69432.7(l)(2) and 5 CCR 30009 (c)].
- 3) The Institution is a California public postsecondary educational institution [CEC 69432.7(l)(3)].
- B. The Institution shall be deemed disqualified if it no longer possesses all of the requirements for a qualifying institution [5 CCR 30009(d)]. The Institution shall immediately notify the Commission whenever it fails to meet the minimum qualifications for participation stated in subsection A.
- C. The Institution agrees to maintain standards of administrative capability and financial stability in accordance with federal and state law and regulations as applicable.
- D. The Institution agrees to use and retain program and fiscal records (*Appendix B*) that demonstrate institutional and student eligibility, and that document the accuracy of the grant payments reported and the right of the Institution to receive or retain payments made by the Commission. The Institution shall retain these records for a period of three (3) years following the last day of the academic year for which the grant was intended or until outstanding audits are resolved.
- E. The Institution shall maintain written policies and procedures governing the administration and processing of Cal Grant funds under this Agreement.
- F. The Institution agrees to use Cal Grant funds transferred to it solely for the purposes specified, and in accordance with the provisions set forth in the respective program statutes, federal and state regulations and procedures, the California Grant Programs Manual (CGPM) including manual updates, Grant Operational Memos (GOM), Grant Special Alerts (GSA), Grant Policy Bulletins (GPB), and this Agreement.
- G. The Institution acknowledges that no Cal Grant funds are authorized for a fiscal year until such time as that fiscal year's budget has been adopted by the Legislature and signed by the Governor. It is further understood that if such funds are not approved for a fiscal year, the State and the Commission shall be relieved of further payments and this Agreement will be canceled; if proposed funding amounts are reduced, this Agreement is limited to the approved amounts only.
- H. The Institution agrees to maintain a current designation of individuals who are responsible for coordinating and communicating with the Commission on matters related to the provisions of this Agreement.
- I. The Institution agrees to make available at the time of program compliance review, or at any time at the request of the Commission staff, any records and personnel related to the administration of the Commission's Cal Grant Program.
- J. The Institution agrees that it is subject to and must comply with all current and applicable federal and state law and regulations in its implementation of the terms of this Agreement. The Institution agrees that noncompliance with any of these provisions may result in the termination of this Agreement and the privileges that are afforded under it.

**ARTICLE III****Cal Grant Program Administration - Account Maintenance – Institutional Responsibilities**

- A. The Institution agrees that participation in the administration of the Cal Grant Program is an Institution-wide responsibility. The Institution agrees that student information in the possession of any office or division of the Institution constitutes information in the possession of the Institution. The Institution agrees to manage its participation in the Cal Grant Program, and to coordinate information of Cal Grant funds and Cal Grant recipients, among all offices (i.e. financial aid office, accounting/bursar's office, registrar's office, admissions office, third party servicers, etc.).
- B. The Institution agrees to maintain a current designation of individuals who are responsible for Cal Grant account maintenance through adherence to accepted accounting principles and practices. The Institution also agrees to maintain a separation of function/duties between individuals who authorize and disburse Cal Grant funds so that no one individual is responsible for both functions.
- C. The Institution agrees to maintain an accounting system which conforms to generally accepted accounting principles and practices that includes such items as, but is not limited to, cash receipts and disbursement journals, bank account reconciliation, evidence of receipt of Cal Grant funds, disbursement of Cal Grant funds to recipients, and all other accounting records necessary to account for all transactions. All Cal Grant funds must be properly recorded and allocated to the appropriate award year for which the funds were advanced and disbursed.
- D. **OPTION 1**  
The Institution agrees that all Cal Grant funds, including term advances transferred by the Commission pursuant to CEC 69432.8, constitute State funds, owned by the State, and held in trust for the State, until the funds are withdrawn to be paid as an award for an eligible Cal Grant recipient or are withdrawn as directed by the Commission.
- 1) The Institution shall hold all Cal Grant funds in a separate, designated account identified as the property of the State.
    - i The separate account must be an interest-bearing account or an investment account at a financial institution with a presence in California whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) or secured by collateral of value reasonably equivalent to the amount of Cal Grant Program funds in the account.
    - ii Annual interest earned on Cal Grant funds in the separate account constitute State funds and must be remitted to the Commission on behalf of the State no later than March 1 following the award year for which the interest accrued (e.g. March 1, 2008, for calendar year 2007).
  - 2) The Institution shall not commingle any other funds with the Cal Grant funds in the separate account.
  - 3) The Institution has a fiduciary responsibility to ensure that Cal Grant funds are used only for the benefit of eligible students. Under no circumstances may the Institution

use Cal Grant funds in the separate account for any other purpose, such as paying operating expenses, collateralizing or otherwise securing a loan, or earning interest or generating revenue in a manner that risks the loss of Cal Grant funds or subjects Cal Grant funds to liens or other attachments (such as would be the case with certain overnight investment arrangements or sweeps).

**D. OPTION 2**

The Institution agrees that all Cal Grant funds, including term advances transferred by the Commission pursuant to CEC 69432.8, constitute State funds, owned by the State, and held in trust for the State, until the funds are withdrawn to be paid as an award for an eligible Cal Grant recipient or as otherwise directed by the Commission.

- 1) The Institution shall hold all Cal Grant funds in a designated account identified as the property of the State according to one of the following two designations:
  - i. Public Institutions may hold Cal Grant funds in a separate bank account or may commingle Cal Grant funds with funds from other sources, but must identify the Cal Grant funds through a subsidiary ledger.
    - a. Absent a separate bank account, the Public Institution must ensure that its accounting records clearly reflect that it identifies Cal Grant funds as readily as if those funds were in a separate account; and
    - b. The Public Institution must identify earnings on Cal Grant funds in the Institution's bank or investment account.
  - ii. Private non-profit and for-profit Institutions must hold Cal Grant funds in a separate account. The Institution shall not commingle any other funds with the Cal Grant funds in the separate account.
- 2) The account in which Cal Grant funds are held must be an interest-bearing account or an investment account at a financial institution with a presence in California whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) or secured by collateral of value reasonably equivalent to the amount of Cal Grant Program funds in the account.
- 3) Annual interest earned on Cal Grant funds constitute State funds and must be remitted to the Commission on behalf of the State no later than March 1 following the award year for which the interest accrued (e.g. March 8, 2008, for calendar year 2007).
- 4) Both Public Institutions and Private Institutions have a fiduciary responsibility to ensure that State funds are used only for the benefit of eligible students. Under no circumstances may a Public or Private Institution use State funds for any other purpose, such as paying operating expenses, collateralizing or otherwise securing a loan, or earning interest or generating revenue in a manner that risks the loss of State funds or subjects State funds to liens or other attachments (such as would be the case with certain overnight investment arrangements or sweeps).

- E. Should the Institution close, lose federal financial aid eligibility, or no longer meet the statutory definition of an eligible institution, or upon termination of this Agreement, the Institution agrees to return any undisbursed funds or pay any outstanding invoices immediately.
- F. The Institution shall not request State funds from the Commission unless the funds are payable as Cal Grant awards for specific recipients enrolled in the Institution, and only after the Institution has determined, based on all information in the possession of the Institution, that the Cal Grant awards to those recipients are properly payable.

**ARTICLE IV**

**Cal Grant Program Administration - Disbursement - Institutional Responsibilities**

A. Confirmation of Eligibility: Confirm that the recipient meets eligibility and program requirements specified in this Agreement at the time Cal Grant funds are paid to the recipient or the recipient's account using all existing information [including but not limited to Institutional Student Information Record (ISIR), student self-certification, federal verification documentation] in the possession of the Institution [CEC 69432.7(k)]. Resolve and report to the Commission prior to disbursement any conflicting information (pursuant to the 2007-08 *FSA Handbook* Vol. 1, p. 14 and the October 2005 *The Blue Book*, Chapter 10, pp. 142-143) that may affect the disbursement of Cal Grant funds.

- 1) The recipient is a U.S. citizen or an eligible non-citizen [CEC 69433.9 (a)].
- 2) The recipient has met U.S. Selective Service requirements [CEC 69433.9 (b)].
- 3) The recipient has a valid Social Security number [CEC 69433.9 (a)].
- 4) The recipient is not in default on any Title IV educational loan or owes a refund on any Title IV grant (e.g. Federal Pell or Federal SEOG) or any State grant program administered by the Commission (CEC 69507.5) (CEC 69517.5) [CEC 69433.9 (d)].
- 5) The recipient is not incarcerated [CEC 69433.9 (c)].
- 6) The recipient is a legal California state resident for at least one year [CEC 69433.5(a)] as of the residence determination date.
  - i. If the governing board of a public institution has adopted by regulation or policy a residence determination date [CEC 68023], that date shall be used for Cal Grant purposes

**OTHERWISE**

The first day of instruction of the term for the award year in which the student is enrolled as a Cal Grant recipient shall be the residence determination date for Cal Grant purposes

**OR**

The date CSAC uses to make the preliminary determination of California residency for purposes of offering a Cal Grant shall be the residence determination date for Cal Grant purposes.<sup>1</sup>

<sup>1</sup> Institutions shall apply the same residence determination date(s) to all their students uniformly.  
 Draft August 24, 2007

- ii. Public institutions shall continue to use the procedures or rules and regulations instituted by their respective governing boards for determining California residency, including resolving conflicting information in the possession of the institution [CEC 68044].
  - iii. Private institutions may adopt the regulations in 5 CCR 54020-54024 or they may develop and document their own policy which is not inconsistent with 5 CCR 54020-54024 and CEC 68060-68062, including the resolving of conflicting information in the possession of the institution (see Appendix C).
  - iv. Conflicting information may include indicators on the ISIR such as
    - Permanent mailing address in a state other than CA
    - Driver's license issued by a state other than CA
    - Student's state of address not CA
    - Date of residence not more than a year prior to residence determination date
    - (If minor) parent's state of address not CA
    - (If minor) parent's date of residence not more than a year prior to residence determination date
- OR
- Any other information available at the institution which shows inconsistency with a claim of CA residency.
- 7) The recipient is enrolled in an eligible program or course of study [CEC 69433.5 (e)].
  - 8) The recipient does not have a bachelor's or professional degree before receiving a Cal Grant (except for post baccalaureate students enrolled in teaching credential programs) [CEC 69433.5 (d) (2)].
  - 9) The designated recipient's participation in an eligible post-graduate teaching credential or mandatory 5<sup>th</sup> year program is approved by the Commission [CEC 69433.6 (b)&(c)].
  - 10) The enrollment status for each recipient on the grant roster is at least part-time as defined in CEC 69432.7 and in accordance with the established institutional policies and requirements in the CGPM, including manual updates, policy bulletins, operations memos, special alerts, and this Agreement. [CEC 69434.(b)(6), 69435.3(a)(6), 69436.(b)(6), 69437.3(c)]
  - 11) The recipient demonstrates financial need at the Institution according to federal financial need methodology [CEC 69432.9 (b)].
  - 12) The recipient with a new award has family income and assets at/below the published Cal Grant ceilings [CEC 69432.7 (k)].
  - 13) The recipient is complying with the Institution's satisfactory academic progress policies [CEC 69433.5 (a)].
  - 14) The California Community College Transfer Entitlement recipient randomly selected for verification pursuant to CEC 69436 (d)(3)(B) meets eligibility criteria.

B. Disbursement of Cal Grant Funds

- 1) Establish and maintain a written disbursement policy and schedule that includes the Institution's enrollment/payment periods reported to the Commission and is in accordance with the applicable requirements specified for each educational program.
  - i. Disburse "Access" and "Books and Supplies" payments within ten (10) business days of determination of enrollment status.
  - ii. Disburse no more than that which the recipient is eligible to receive per academic term.
  - iii. Report payment transactions through WebGrants or data files as early as practicable, but no later than sixty (60) days following the end of the term.
  - iv. Correct any overawards by adjusting other financial assistance, excluding tuition waivers, offsetting subsequent term payments within the same award year, or, if necessary, returning the overage to the Commission.
  - v. Make all disbursements and adjustments no later than December 31, following the end of the award year (e.g. December 31, 2008, for award year 2007-08).
- 2) Establish and maintain a written refund policy that includes the Cal Grant Program(s).
  - i. In the case of a refund (i.e. if a recipient withdraws, drops out or is expelled for a term for which a payment has been made), recalculate based upon the Institution's refund policy and determine the portion to be returned to the Commission on behalf of the State.
  - ii. Cal Grant funds may not be used for reimbursement to the federal government.
- 3) Establish and publish a policy that informs students of their options regarding receipt of Cal Grant "Access" or "Books and Supplies" funds. (i.e. If institutional policy is to apply "Access" or "Books and Supplies" to outstanding balances on the student's account, the student must have the ability to request personal receipt of the funds prior to disbursement.)

C. Reconciliation of Cal Grant Funds

- 1) Establish a written reconciliation policy that details the procedures for reconciling Cal Grant funds received and disbursed by the Institution for each award year.
- 2) Term Reconciliation
  - i. Institutions are required to reconcile payments no later than sixty (60) days after the end of the term.
  - ii. Term reconciliation does not preclude adjustments or payments after that date.

3) Final Reconciliation

- i. All Cal Grant funds must be properly recorded and allocated to the appropriate award year for which the funds were advanced and disbursed.
  - ii. Reconcile all award year Cal Grant funds received and disbursed by the Institution no later than December 31 following the award year (e.g. December 31, 2008, for the 2007-08 award year). The Institution must report adjusted payment transactions for payment transactions previously reported in error.
  - iii. The final reconciliation of Cal Grant program expenditures is to be on a student-by-student basis.
  - iv. Upon final award year reconciliation by the Institution, the Institution may, at any time prior to invoicing, repay any Cal Grant funds in excess of the reconciled amount to the Commission.
  - v. Upon final reconciliation by the Commission, if the Institution has any outstanding balances, the Institution shall be invoiced for those funds. The invoice shall be due and payable to the Commission within 30 days of the invoice date. The Institution agrees to resolve any reconciliation discrepancies with the Commission.
  - vi. Certify the accuracy of all payment transactions submitted to the Commission to reflect the current status of the student at the time of disbursement.
  - vii. Any excess or undisbursed Cal Grant funds must be returned to the Commission upon final reconciliation or invoicing.
  - viii. The Institution may not apply excess Cal Grant funds to any other student's account or to any prior or future year accounts.
  - ix. Agree to pay any institutional liability that is determined as a result of a program compliance review within the time specified in the program review report.
  - x. Liability to the Commission for the Institution's actions or omissions under this Agreement shall not exceed the actual amount of Cal Grant funds that the Institution is not entitled to retain.
  - xi. Failure by the Institution to take action on Cal Grant funds that the Institution is ineligible to retain, after all appeals are exhausted or settled, may constitute noncompliance and may result in the termination of this Agreement thereby terminating the Institution's participation in the Cal Grant Programs.
- D. Submit annual College Cost Estimate forms to the Commission by the deadline specified.

**ARTICLE V****Cal Grant Program Administration - Commission's Responsibilities**

- A. Maintain the Grant Delivery System (GDS).
- B. Maintain WebGrants.
- C. Maintain WebGrants for Students.
- D. Make a preliminary determination of an applicant's eligibility for Commission-administered grant programs by evaluating his or her financial information and program specific data as provided on the Free Application for Federal Student Aid (FAFSA), the verified Grade Point Average (GPA), and any other selection criteria.
- E. Act as the central repository of high school graduation confirmation received from a variety of sources, placing all new high school Entitlement participants on hold until receipt of confirmation that the student is, in fact, a high school graduate or the equivalent. (This does not absolve institutions of the requirement under Article IV, A to resolve conflicting information.)
- F. Make a preliminary determination that Community College Transfer Entitlement Award recipients are residents of California at the time of high school graduation or its equivalent through use of a student self-certification under penalty of perjury [CEC 69436 (d)(3)(A)].
- G. Provide the Institution with information, training and ongoing assistance with respect to the Institution's participation in the administration of the Cal Grant Program.
- H. Develop forms, publications, and training curriculum for use in administering the Cal Grant Program.
- I. Generate and provide electronic data files and Grant Rosters to the Institution of potentially eligible recipients that include names, unique identifiers and payment amounts.
- J. Provide the Institution with procedures for completing payment transactions.
- K. Notify the Institution of accepted and rejected payment transactions.
- L. Reconcile accepted payment transactions.
- M. Provide the State Controller's Office with the documentation needed to issue Electronic Funds Transfer (EFT) or mail warrants for payment to the Institution.
- N. Provide the Institution with regularly updated electronic data and Grant Rosters identifying reconciled payments.
- O. Invoice the Institution for funds due the Commission as a result of the final reconciliation process and notify the Institution if funds will be withheld pending the return of delinquent repayments.

- P. Notify and instruct the Institution of any Cal Grant Program changes due to statute and/or procedure through Grant Operational Memos, Grant Special Alerts, Grant Policy Bulletins, and CGPM updates.
- Q. Perform program review of the Institution's management of Cal Grant funds for compliance with federal and state law and regulations and this Agreement.

**ARTICLE VI**

**Cal Grant Program Administration - Information Security**

The Information Security components of this Agreement are to control access to the Commission's information processing facilities and data by the Institution, as well as require (per FTC Safeguards Rule) certain levels of Information Security and privacy compliance for Institutions that access, retrieve, store, use, modify, transfer, dispose of, destroy, or delete Commission data. For purposes used within this Agreement, Non-public Personal Information (NPI), Personally Identifying Information (PII) and financial information shall be identified as Confidential information.

**Information Security – Institutional Responsibilities**

The Institution will comply with all applicable federal, California and local information security, confidentiality and privacy laws and regulations, Commission policies and requirements pertaining to the proper access, creation, modification, handling, storage, transfer, transmission, dissemination, sharing or destruction of confidential information pertaining to the Commission.

The Institution will additionally abide by the following requirements as a condition of access to the Commission's data and network. The Commission reserves the right to monitor or revoke access to the Commission's network and data to the Institution or individual staff member(s).

**Institution's Administrative Authorization for Access and Roles/Responsibilities**

- A. The Institution will maintain a historical record that identifies to the Commission or its representative, the identification of the individual(s) who is granted access to the Commission's network or creates or updates WebGrants (GDS) transactions with the Commission's data for three (3) years following the last day of the award year.
- B. The Institution will designate a single individual as the Authorized Official (AO), who will then designate a maximum of two other individuals as the Institution's System Administrator(s) (SA).
- C. The Institution's AO will grant authority to the Institution's SA(s) to create or disable individual user accounts for that Institution's staff to access the Commission's network and data. The AO will not have SA authority or responsibility.
- D. The AO and SA(s) will be required to submit an accurate and complete "Information Security and Confidentiality Agreement" and "System Administrator's Access Request Form" to the Commission before access to the Commission's network and data is granted. If the AO and SA(s) are different at each Institution location (campus), separate "Confidentiality Agreement" and "System Administrator's Access Request Form(s)" must

be completed and sent to the Commission. Copies of this documentation shall also remain at the Institution.

- E. Any change in the designation of the Institution's AO or SA(s) will require that a new "Information Security and Confidentiality Agreement" as well as new copies of the "System Administrator's Access Request Form" be sent to the Commission immediately. Copies of this documentation of this shall also remain at the Institution.
- F. The Institution's SA(s) will immediately disable the password and ID of any employee or agent of the Institution whose change in employment status or duties no longer requires access to the Commission's network or data. Copies of this documentation of this action shall remain at the Institution.
- G. The Institution's SA(s) will ensure that all Institution employees or agents that require WebGrants (GDS) access will sign a "Grant Delivery System (GDS) WebGrants User Access Request Form", prior to being granted access to the WebGrants System. Such access will be granted for a period of time not to exceed one (1) year, and shall be renewed upon completion of annual Commission-supplied training in areas of information security, privacy and confidentiality. Copies of this documentation shall remain at the institution.

#### **Essential Practices in Promoting and Implementing Information Security**

- H. Passwords and user identification numbers (IDs) are to be treated as Confidential information. Employees or agents of the Institution shall not share passwords and IDs. Passwords will be changed on a regular basis, as required by the Commission.
- I. Confidential Commission data or assets that are no longer required for use by the Institution, for Commission compliance reviews or unless otherwise determined by the Commission, based upon a mutually agreeable time or contract, shall be returned or destroyed in a secure manner, ensuring that no reconstruction or derivation of the data, media or materials is possible.
- J. The Institution shall establish training programs and acceptable use policies for Institution employees regarding information security, privacy and confidentiality to include Commission data.
- K. The Institution will establish and enforce policies to ensure that Commission data and network access are conducted from secured systems onsite within the Institution, or via encrypted networks from offsite locations. Offsite locations shall have encrypted hard drives and storage devices and shall not provide a bridging capability from unsecured networks into Commission networks.
- L. The Institution will notify the Commission immediately of any security, integrity or confidentiality incident(s) involving Commission data or network exposure by contacting the Commission's ITS Help Desk at 888-294-0148. Such incidents may include, but are not limited to unauthorized or accidental modification, destruction, disclosure, loss, or access to automated files and databases, as well as incidents involving loss, damage or misuse of information assets. Such incidents shall be followed up with a written report of the incident, signed by the AO and the Institution's Chief Executive Officer and submitted to the Commission's Information Security Officer (ISO) within ten (10) business days after the Institution's awareness of the incident.

- M. No Commission data or assets shall be transferred to a third party or its agents without express written permission by the Commission's ISO. Verification of individual data with the respective individual or their lawfully designated agent(s) is permissible.
- N. To the extent authorized by law and caused by the negligence or intentional misconduct of itself, its employees or agents, the Institution will accept liability for any direct or consequential damages to the Commission, its network or data.
- O. The Institution will ensure that information transmitted electronically or otherwise to the Commission has been examined and is complete and accurate to the best of its knowledge.
- P. No faxes or unencrypted email containing Confidential data shall be sent to the Commission.
- Q. All storage media or electronically transferred correspondence sent between the Institution and the Commission containing Confidential data must be encrypted or transferred via an encrypted communications session. Passwords, decryption devices, or decryption methods required to access the data must be sent separately via a different communications method.

**Information Security – Commission’s Responsibilities**

The Commission will comply with all applicable federal, California and local information security, confidentiality and privacy laws, regulations and requirements pertaining to the proper access, creation, modification, handling, storage, transfer, transmission, dissemination, sharing or destruction of confidential information pertaining to the Institution.

- A. Account changes submitted by the Institution will be reviewed, acknowledged and incorporated within three (3) business days.
- B. The Commission shall require that passwords are changed on a regular basis.
- C. The Commission shall issue periodic communications to address Information Security concerns.
- D. The Commission will ensure that information transmitted electronically or otherwise to the Institution has been examined and is complete and accurate to the best of its knowledge.
- E. No faxes or unencrypted email containing Confidential data shall be sent to the Institution.
- F. All correspondence transferred electronically or on storage media between the Commission and the Institution containing Confidential data must be encrypted or transferred via an encrypted communications session. Passwords, decryption devices, or decryption methods required to access the data must be sent separately via a different communications method.
- G. The Commission will periodically audit the security-related records of the Commission and the Institution to ensure that proper levels of access to the Commission’s data and

networks by proper individual(s) identified by the Institution is correct, current and complete.

## **ARTICLE VII**

### **Corrective Measures**

- A. The Institution is subject to the following corrective measures for failure to comply with the terms of this Agreement.
  - 1) The Commission may halt the processing of future payment transactions for the Institution.
  - 2) The Commission may withhold issuing Cal Grant Funds to the Institution.
  - 3) The Commission may withhold term advances to the Institution for future academic years.
- B. The Commission shall provide the Institution written notice of its intent to impose one of these corrective measures thirty (30) calendar days prior to such action.
- C. The Institution shall be permitted to submit, and the Commission shall consider, a response to such notice, including any legal and factual reasons why such corrective measure should not be imposed. Such response shall be submitted within fifteen (15) days of receipt of Commission's written notice of its intent to impose such measure.
- D. The Commission may also terminate this Agreement as provided in Article VIII, section B.

## **ARTICLE VIII**

### **Agreement Duration**

This Agreement is effective when it is executed by the Commission's representative. This is generally later than its execution by the Institution's representative. It supersedes any prior Agreements executed between the Commission and the Institution.

- A. The Agreement automatically terminates with any of the following occurrences.
  - 1) The Institution closes or stops providing eligible educational programs.
  - 2) The Institution's federal Program Participation Agreement is terminated.
  - 3) The Institution's accrediting agency has withdrawn its approval.
  - 4) The Institution undergoes a change which results in one of the following:
    - i. a shift in control,
    - ii. change of ownership,

- iii. or any other significant change in the control of the institution (excluding change of Chancellor, Chief Executive Officer, or President).
  - 5) The Institution or additional location no longer possesses all of the requirements for a qualifying institution.
  - 6) The Institution's Chief Executive Officer requests termination of this Agreement in writing.
  - 7) June 30, 2012
- B. The Commission's representative may terminate this Agreement in writing for the following occurrences.
- 1) The Institution does not demonstrate that they can provide adequate administration of the Cal Grant Program(s).
  - 2) The Institution does not demonstrate financial stability.
  - 3) The Institution has not returned Cal Grant funds addressed in either a Cal Grant institution review or any outstanding invoices within the required time frame.
  - 4) The Institution fails to comply with the terms of this Agreement.
- C. The Commission shall provide the Institution written notice of its intent to terminate the Agreement forty-five (45) calendar days prior to such action.
- D. The Institution shall be permitted to submit, and the Commission shall consider, a response to such notice, including any legal and factual reasons why such termination should not occur. Such response shall be submitted within fifteen (15) days of receipt of Commission's written notice of termination.



**FOR ALL INSTITUTIONS**

Please indicate which of the following section(s) establish your Institution’s eligibility to participate in the Cal Grant Programs. Many institutions’ eligibility is established through Section 69432.7(l)(1) or (3) or 69440(a) of the CEC.

If your Institution is seeking to establish eligibility through Section 69432.7(l)(2) of the CEC, please complete the “Financial Statement and Demonstration of Administrative Capability to Participate in the Cal Grant Programs” form.

Initial any box(es) applicable to your Institution:

**FOR PRIVATE/INDEPENDENT POSTSECONDARY INSTITUTIONS**

Section 69432.7(l)(1) of the CEC states: “Qualifying institution” means the following:

***“Any California private or independent postsecondary educational institution that participates in the Pell Grant program and in at least two of the following federal campus-based student aid programs: (A) Federal Work-Study, (B) Perkins Loan Program, [and] (C) Supplemental Educational Opportunity Grant Program [SEOG].” Participation in the campus-based programs means the Institution or site has applied for, been allocated funds, and is spending those funds. Participation in the Federal Pell Grant program means that students are eligible to be paid Federal Pell Grant funds for attendance at the Institution.***

This Institution meets the requirements of Section 69432.7(l)(1) of the CEC.

**OR**

Section 69432.7(l)(2) of the CEC states: “Qualifying institution” means the following:

***“Any nonprofit institution headquartered and operating in California that certifies to the commission that ten (10) percent of the institution’s operating budget, as demonstrated in an audited financial statement, is expended for the purposes of institutionally funded student financial aid in the form of grants, that demonstrates to the commission that it has the administrative capacity to administer the funds, that is accredited by the Western Association of Schools and Colleges.***

This Institution meets the requirements of Section 69432.7(l)(2) of the CEC.

**FOR PUBLIC POSTSECONDARY INSTITUTIONS**

Section 69432.7(l)(3) of the CEC states: “Qualifying institution” means the following:

***“Any California public postsecondary educational institution.”***

This Institution meets the requirements of Section 69432.7(l)(3) of the CEC.

**Additional requirements:**

**FOR ALL INSTITUTIONS**

Section 66290 of the CEC states:

*“Prior to receipt of any state financial assistance or state student financial aid, a postsecondary educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the postsecondary educational institution will be conducted in compliance with this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary educational institution, may be provided for all the programs and activities conducted by a postsecondary educational institution.”*

This Institution meets the requirements of Section 66290 of the CEC.

**FOR ALL INSTITUTIONS**

I certify that the Institution is eligible to participate in the Cal Grant Programs and will immediately notify the Commission if the Institution ceases to be eligible under Sections 69432.7(l)(1), (2) or (3), 69440(a) of the CEC, or Article VI of this Agreement.

\_\_\_\_\_  
**Signature: Chancellor/Chief Executive Officer/President of Institution**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Type or Print Name and Title**

\_\_\_\_\_  
**Signature: Chief, Program Administration & Services Division**

\_\_\_\_\_  
**Date**

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**Academic Year:** An "academic year" is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included as defined in CEC 69432.7(a). See "Award Year."

**Access:** Component of Cal Grant B award that is intended to be used for student living expenses.

**Administrative Capability:** In order to participate in the Cal Grant programs schools must be financially responsible and have the resources to properly administer the requirements of the program.

**Advances, Cal Grant Funds:** Each year after the state budget is passed, or in mid-August, whichever is later, the Commission may advance money to each participating school in order for schools to begin making payments to eligible students.

**Assets:** Cash on hand in checking and savings accounts; trusts, stocks, bonds, other securities; real estate (excluding home), income-producing property, business equipment, and business inventory. Considered in determining Expected Family Contribution (EFC).

**Attendance Status:** The amount of time the student is currently attending school. For the purposes of Cal Grant payment reporting, students can be enrolled full-time, half-time, or three-quarter time.

**Authorized Official (AO):** A single individual that is designated by the Institution's Financial Aid Director to select up to two (2) separate individuals as System Administrator(s) for the Institution. Respective Institution campus locations may have their own AO's. The AO does not perform System Administrator functions.

**Award Year:** One academic year, or the equivalent, of attendance at a qualified institution as defined in 69432.7(c). See "Academic Year."

**Books and Supplies:** Component of the Cal Grant C award that students can use for educational related expenses.

**California Code of Regulations or CCR:** The body of regulations promulgated to administer and regulate California laws. Commonly referred to as the "regulations."

**California Education Code or CEC:** The legal statutes that authorize the Student Aid Commission and Cal Grant programs. Commonly referred to as the "law."

**Citizen, U.S.:** Cal Grant awards are available only to students who, in addition to being California residents, are U.S. Citizens or eligible non-citizens. The definition of U.S. Citizen and eligible non-citizen for the purposes of Cal Grant is the same as the requirement for federal Title IV student financial assistance.

**College Cost Estimate Form:** Submitted to the Commission by the Institution annually to update cost of attendance figures for use in determining new Cal Grant applicant eligibility.

**Compliance Review:** A review performed by Commission auditors to verify compliance with Cal Grant and Specialized Programs laws and policies. Penalties for being out of compliance can include reimbursement of funds, suspension and termination from the Cal Grant program.

## **APPENDIX A**

**Confidential:** Broad classification assigned to data or systems used to transfer such data. Such a classification denotes a level of value for which disclosure can bring some level of harm or damage.

**Decryption:** The process or ability to remove encryption from data, thereby making the data readable or usable.

**Department of Education, U.S. (USED):** The section of the federal government that administers federal assistance to students enrolled in postsecondary educational programs. USED programs include: Federal Pell Grant, Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Family Education Loan (FFEL) Programs, and William D. Ford Federal Direct Loan (Direct Loan) Program.

**Disbursement of Funds:** Cal Grant funds are disbursed when a school credits a student's account with funds or pays a student directly.

**EFT:** Electronic Funds Transfer. Process by which Cal Grant funds are automatically transferred directly from the state Controller's Office to the participating Institution into the Institution's specified account.

**Electronically Transferred Correspondence:** Any electronic transfer or transmission of data between two or more parties. This can include, but is not limited to email, zipped files or other attachments, ftp transfers, telnet sessions, etc.

**Encrypted Hard drives:** Hard disk drives contained within or attached to a computer system that are encrypted and do not allow any readable access to the data contained on it without the application of a password or decryption device, typically upon boot-up. USB and similar memory storage devices appear as a disk drive to computers and should be encrypted as well.

**Encrypted Networks:** Computer networks (virtual or real) utilizing encryption to provide a path for data transmission without the ability to eavesdrop on the data being transmitted.

**FAFSA:** See Free Application for Federal Student Aid.

**Federal Pell Grant:** A federal grant program for needy postsecondary students who have not yet received a baccalaureate or first professional degree; administered by the U.S. Department of Education.

**Federal Perkins Loan:** A long term, low interest loan program for both undergraduate and graduate students at a current interest rate of 5 percent. The Perkins loan is one of the "campus-based" programs that can be used to qualify for Cal Grants on an institutional basis.

**Federal Supplemental Educational Opportunity Grant (FSEOG):** One of the campus-based programs; grants to undergraduate students of exceptional financial need who have not completed their first baccalaureate degree. Priority for FSEOG awards must be given to Federal Pell Grant recipients with the lowest EFCs. FSEOG is one of the "campus-based" programs that can be used to qualify for Cal Grants on an institutional basis.

**Federal Verification:** A process by which a financial aid office substantiates the data that a financial aid applicant has reported on a financial aid application. Additional information from the student, a spouse, and the parents is used to confirm previously submitted data.

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**Federal Work-Study Program (FWS):** One of the campus-based programs; a part-time employment program which provides jobs for undergraduate and graduate students who are in need of such earnings to meet a portion of their educational expenses. Federal Work-Study is one of the “campus-based” programs that can be used to qualify for Cal Grants on an institutional basis.

**Financial Need:** The difference between the Institution’s cost of attendance and the family’s ability to pay (i.e., Expected Family Contribution). Ability to pay is represented by the expected family contribution for federal need-based aid and for many state and institutional programs.

**Final Reconciliation:** The reconciliation of all award year Cal Grant funds received and disbursed by the Institution no later than December 31 following the award year (e.g., December 31, 2007, for the 2006-2007 award year).

**Free Application for Federal Student Aid (FAFSA):** The federal financial aid application completed by the student and the student’s parents (if applicable) that collects household and financial information. The FAFSA is the foundation document for all federal need analysis computations and database matches performed for a student.

**FSEOG:** See Federal Supplemental Educational Opportunity Grant.

**GPA:** Grade Point Average. For Cal Grant purposes the GPA must be calculated in accordance with state regulations

**Grade Point Average (GPA):** An average of a student’s grades, converted to a 4.00 scale (4.00 is an A, 3.00 is a B, and 2.00 is a C). Submission of a verified GPA is required for Cal Grant A and Cal Grant B consideration.

**Grant Roster:** List of eligible Cal Grant recipients at a particular school.

**Independent Postsecondary Institution:** Private, non-profit educational institution legally authorized to operate in the state of California.

**Information Security:** Protection of information systems against unauthorized access to or modification of information, whether in storage, processing or transit, and against the denial of service to authorized users or the provision of service to unauthorized users, including those measures necessary to detect, document, and counter such threats.

**Institutional Participation Agreement (Agreement or IPA):** This is the contractual agreement between the Student Aid Commission and the schools that participate in the Cal Grant program. Schools must have a signed IPA on file with the Commission to participate in the Cal Grant program. The IPA is updated about every three years.

**Institutional Student Information Record (ISIR):** Institutional Student Information Record. The electronic record produced when the FAFSA is processed. An ISIR is sent to each college listed on the FAFSA and the state agency in the student’s residence state. The ISIR contains all of the SAR data, plus the student’s National Student Loan Data System (NSLDS) records.

**Non-public Personal Information (NPI):** Such information includes

- A. Personally identifiable financial information -
  - (i) provided by a consumer to a financial institution;

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- (ii) resulting from any transaction with the consumer or any service performed for the consumer; or
  - (iii) otherwise obtained by the financial institution.
- B. Such term does not include publicly available information.

**OPE ID:** Office of Postsecondary Education Identification provided by the U.S. Department of Education. A six (6) digit number followed by a two (2) digit suffix.

**Overaward:** The condition of disbursing financial aid in excess of the amount for which the student is eligible.

**Payment:** Disbursing Cal Grant funds to a student directly, or depositing Cal Grants funds directly into the student's school account.

**Pell Grant:** Federal financial aid program. The amount of the Pell Grant awarded to a renewal student must be subtracted from a renewal Cal Grant student's financial need.

**Personally Identifying Information (PII):** Any piece of information which can potentially be used to uniquely identify, contact, or locate a single person.

**Proprietary Postsecondary Institution:** Private, for-profit educational institution legally authorized to operate in the state of California.

**Public Post-secondary Institution:** The public institutions of higher education in California include the UC system, CSU system and California Community College system.

**Recipient:** Student who has been awarded a Cal Grant by the Commission and has received a payment, taken a leave of absence from payment, or has been placed on Community College Reserve.

**Reconciliation:** Verification that Cal Grant funds are being disbursed to each student in the correct amounts and that all payments have been properly reported to the California Student Aid Commission. See "Term Reconciliation" and "Final Reconciliation."

**Residence:** Every person has, in law, a residence. (CEC 68060)

Every person who is married or 18 years of age, or older, and under no legal disability to do so, may establish residence. (CEC 68061)

In determining the place of residence the following rules are to be observed:

- (a) There can only be one residence.
- (b) A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (c) A residence cannot be lost until another is gained.
- (d) The residence can be changed only by the union of act and intent.
- (e) A man or woman may establish his or her residence. A woman's residence shall not be derivative from that of her husband.
- (f) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried minor child. When the minor lives with neither parent his or her residence is that of the parent with whom he or she maintained his or her last place of abode, provided the minor may establish his or her residence when both parents are deceased and a legal guardian has not been appointed.

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(g) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act, by the appointment of a legal guardian, or by relinquishment of a parent's right of control.

(h) An alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) from establishing domicile in the United States.

(i) The residence of an unmarried minor alien shall be derived from his or her parents pursuant to the provisions of subdivisions (f) and (g). (CEC 68062)

**SEOG:** See Federal Supplementary Educational Opportunity Grant

**Security, Integrity or Confidentiality Incidents:** Any event that reflects an unauthorized access, loss, disclosure, destruction, modification or misuse to a computer system, network or data. Each incident must be reported immediately to the Commission, with a followup written report of the incident signed by the AO and the Institution's Chief Executive Officer submitted within 10 business days to the Commission's Information Security Officer.

**Selection:** The Commission's review of applicant eligibility and awarding of Cal Grants.

**State Controller's Office (SCO):** State agency that authorized and issues payment and advances of Cal Grant funds to participating schools.

**Storage Media:** Any device capable of holding information. This can include paper records, CDROM/DVD type devices, USB/memory-type devices or disk drives.

**System Administrator (SA):** Individual tasked to perform System Administrator-related tasks on the GDS WebGrants system on behalf of the Institution (ie, account create/delete). There are a maximum of two (2) SA's assigned per Institution, however, individual campus locations may have their own respective SA's, provided they perform such tasks as specified above for the individuals attending the Institution at that campus location.

**TCP:** Teaching Credential Program, as used in relation to the Cal Grant program a post-baccalaureate program of study that leads to a California teaching credential. Cal Grant benefits for students in a Teaching Credential Program are referred to as TCP benefits.

**Term:** Refers to a school's academic term or Cal Grant payment period in the case of a non-term based institution.

**Term Reconciliation:** The reconciliation of all term Cal Grant funds received and disbursed by the Institution no later than sixty (60) days after the end of each term.

**Title IV Programs:** Those federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended. Includes: the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work Study, Federal Perkins Loan, Federal Stafford Loan, Federal PLUS Loan, Direct Loan, Direct PLUS Loan, the Leveraging Educational Assistance Partnership (LEAP), and the Special Leveraging Educational Assistance Partnership (SLEAP).

**USED:** United States Department of Education (Also, DOE, USDE, ED)

**Unencrypted:** Data that has not been encrypted to prevent potential unauthorized use or disclosure.

**WebGrants:** The Student Aid Commission’s Internet based access to the Cal Grant Delivery System database. Schools can review their Cal Grant rosters and report payments and student demographic changes to the Commission.

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**APPENDIX B****PROGRAM AND FISCAL RECORDS**

**Program and Fiscal Records** include, but are not limited to:

A. Student eligibility:

- 1) Documentation of California residency
- 2) Financial aid applications and forms
- 3) Need analysis and packaging information for each recipient to support renewal unmet need reported to Commission and to support final award package
- 4) Award letters and Institutional Student Information Record (ISIR)
- 5) Full academic transcripts and Add/Drop Screens (SAP and enrollment verification)
- 6) Enrollment agreements (if applicable)
- 7) Declaration of academic major/program
- 8) Cost of Attendance (Student Expense Budgets)
- 9) Documentation of Professional Judgment (if applicable)

B. Institution Eligibility

- 1) The current authority to operate from the California Bureau for Private Postsecondary and Vocational Education, if applicable
- 2) Written policies and procedures
- 3) All application school catalogs and term academic calendars
- 4) The most recent Independent Auditors Report (Financial Statements and OMB Circular A-133 Compliance) and the Institution's audit response
- 5) The latest Fiscal Operation Report and Application to Participate (FISAP), Part VI, Section A (Program Summary for Award Year)

C. Fiscal Administration

- 1) Detailed Cal Grant fund ledger(s) that show the deposit of Commission advances and disbursement of grant awards for the award year. Ledgers must contain a beginning and ending balance.
- 2) Bank statements identifying the deposit of Cal Grant advances for the award year. If Cal Grant deposits combined with other deposits, keep deposit slips detailing each item deposited.
- 3) Chart of accounts and financial aid account related codes
- 4) Individual student account ledgers
- 5) Proof of receipt of "Access" and "Books and Supply" funds by student, such as:
  - i. Front and back copies of negotiated checks
  - ii. School bank statement used for tracking each students' payment(s), or
  - iii. Written authorization from the student to credit payment to other school charges
- 6) Accounting procedures necessary to explain the application or distribution of Cal Grant funds
- 7) Refund payments made to the Commission

D. WebGrants Information Security and Confidentiality Agreement and user forms

E. Your current organizational chart

F. Any other records that the school feels are pertinent to explaining the Institution's administration of the grant program

**APPENDIX C COMMUNITY COLLEGE RESIDENCY REGULATIONS**

Title 5, California Code of Regulations (CCR) 54020-54024:

54020: In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the home for other than a temporary purpose.

54022: (a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

54024: (a) Intent to make California the home for other than a temporary purpose may be manifested in many ways. No one factor is controlling.

(b) A student who is 19 years of age or over, and who has maintained a home in California continuously for the last two years shall be presumed to have the intent to make California the home for other than a temporary purpose unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f)

(c) A student who is under 19 years of age shall be presumed to have the intent to make California the home for other than a temporary purpose if both the student and his or her parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subdivision (f).

(d) A student who does not meet the requirements of subdivision (b) or subdivision (c) shall be required to provide evidence of intent to make California the home for other than a temporary purpose as specified in subdivision (e).

(e) Objective manifestations of intent to establish California residence include but are not limited to:

- (1) Ownership of residential property or continuous occupancy of rented or leased property in California.
- (2) Registering to vote and voting in California.
- (3) Licensing from California for professional practice.
- (4) Active membership in service or social clubs.
- (5) Presence of spouse, children or other close relatives in the state.
- (6) Showing California as home address on federal income tax form.
- (7) Payment of California state income tax as a resident.
- (8) Possessing California motor vehicle license plates.
- (9) Possessing a California driver's license.
- (10) Maintaining permanent military address or home of record in California while in armed forces.
- (11) Establishing and maintaining active California bank accounts.
- (12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:

- (1) Maintaining voter registration and voting in another state.
- (2) Being the petitioner for a divorce in another state.
- (3) Attending an out-of-state institution as a resident of that other state.
- (4) Declaring nonresidence for state income tax purposes.

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