

## **2007 Institutional Participation Agreement** *California Residency*

### **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 must pay the amount of tuition for California residents or out-of-state residents. Among the relevant sections in Part 41, the Education Code specifies the following:

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 section 68023 provides:

"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.

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.)

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Thus, the dates on which California residency is determined for purposes of Cal Grant eligibility for students in public institutions, are the same dates of residency used by those institutions for purposes of deciding whether the students qualify for in-state or out-of-state tuition.

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. However, CSAC staff administratively used March 2 as the residency determination date. 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 schools 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 returning the residency determination date to September 20 for private institutions and allow 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.

September 20 was proposed for private institutions as it was already a familiar date and because it fell within the dates used by public institutions.

### 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:

Education Code section 68060 provides:

Every person has, in law, a residence.

Education Code section 68061 provides:

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

Education Code section 68062 provides:

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).

Public institutions apply these laws to determine whether students qualify for in-state or out-of-state tuition. Education Code section 69433.5 allows for the governing boards of the public institutions to establish their own methodology for determining California residence. To staff's knowledge, UC has adopted procedures for determining residency. CSU has adopted regulations in Title 5, California Code of Regulations, 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.

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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 California Code of Regulations (CCR) § 41905).

For the CCC, the process is similar:

5 CCR § 54010 (b) provides:

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 § 54024 provides:

(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

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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.

**Recommendations by the Commission's 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:

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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.

An auxiliary concern raised was the portability of a Cal Grant between schools from different segments given the slightly differing dates. CSAC staff considers this to be an issue that can be resolved administratively.

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>

In its most recent meeting 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.

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

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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

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Grant (February 14, 2007, GAC Teleconference). CSAC staff is exploring changes to the Grant Delivery System which would tighten initial 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
  - i. (for public institutions) the residence determination date established by the applicable governing boards or district governing boards of the public institutions [CEC 68022, 68023], or
  - ii. (for private institutions) September 20 of the award year (i.e., September 20, 2007, for the 2007-08 award year).
  - iii. 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 institutions [CEC 68044].
  - iv. Private institutions may adopt the regulations in 5 CCR §§ 54020-54024 or they may develop and document their own policy which are not inconsistent with CCR § 54020-54024, including the resolving of conflicting information in the possession of the institution.
  - v. Indicators of conflicting information include but are not limited to: indicia on the ISIR that the student, or the student’s parent if the

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student is a minor, is not a resident; declaring nonresidence for income tax purposes; showing a state other than California as the home address on federal income tax forms; attending an out-of-state institution as a resident of that other state; graduating from an out-of state high school the year of or year prior to receiving a Cal Grant; licensing from another state for professional practice; possessing motor vehicle license plates or operator's license from a state other than California; maintaining permanent military address or home of record in another state while in the armed forces; or being the petitioner for a divorce in another state. No one indicator is controlling.

### **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 the IPA recognize the residency determination dates used by the public segments.

For private institutions, the use of September 20 of the award year as the residency determination date provides a date closely in line with the public segments and more consistent with the philosophy of residency for one year prior to the start of the term for which the Cal Grant is being used. CSAC staff recommends that the IPA establish September 20 of the Cal Grant award year as the single date of determination of residency for private institutions.

#### 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 believes Education Code § 68060-68062 already provides that definition and plans to list the code, verbatim, in Appendix A. Definitions.

The difference between the segments and CSAC staff arises in the actual method of determining residency. Again CSAC staff finds it incumbent, based on statute, to allow public institutions to continue to use the rules and regulations instituted by their respective governing boards for determining California residency.

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.

GAC's recommendation that the IPA include a single standard for defining conflicting information is impractical. Public institutions should continue to be governed by the

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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 in-state tuition based on California residency, and Cal Grant awards requiring California residency.

Second, for private schools, the factual circumstances in which student information received by an institution might conflict with an initial determination of California residency are too numerous to list completely. Any specific listing of facts that constitute conflicting information would be incomplete. Thus, the IPA would limit the instances in which institutions would be required to resolve conflicting information on residency only to those listed in the IPA, and the Commission would be excusing institutions from having to resolve conflicting information in all circumstances except those expressly listed. Since some of these unlisted circumstances could, if properly resolved, result in determinations that students were not California residents, and thus, do not qualify for Cal Grant awards, 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. 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.

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 requiring a private institution first, to develop 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, second, to use its judgment to determine whether information it receives about its student conflicts with the method the institution uses to determine the student's residency. Consistent with the federal approach, CSAC staff has also concluded that it

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is appropriate to provide examples of circumstances 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 authorize public institutions to use the residency determination dates approved by their governing boards, and private institutions to use September 20 of the award year as the residency determination date.

CSAC staff recommends that the IPA authorize public institutions to continue to use the rules and regulations instituted by their respective governing boards for determining California residency; and 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.

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.