



Commission on Higher Education

March 25, 2003

MEMORANDUM

To: Mr. Dalton B. Floyd, Jr., Chair, and Members
Commission on Higher Education

From: Ms. Susan Cole, Chair and Members
Student Services Committee

Determination of Rates of Tuition and Fees Proposed Regulatory Amendments

The Student Services Division is charged with providing technical assistance to residency officers throughout the public and private sector. As a result of conversations with these residency officers, we found many common areas that could be addressed by providing additional definitions and/or clarification to the current regulation. Accordingly, the Division undertook the task of updating the residency regulation.

In summary, the following issues were incorporated in the regulation:

- Acknowledged the role that residency plays in the eligibility criteria of the State's tuition assistance/scholarship programs;
- Incorporated language that would address the residency implications of the non-traditional family;
- Replaced time-line inferences that were open to interpretation with activity-based criteria; and
- Clarified other criteria to add more specificity.

The regulations include modifications to several definitions addressed by students/parents. These include:

- “Family’s Domicile in this State is Terminated” has been defined as a work-related transfer rather than a voluntary relocation.
- “Full-Time Employment” has been modified to allow for compliance when a person meets the eligibility requirements of the Americans with Disabilities Act and cannot work the requisite thirty-seven and one-half hours per week.
- “Guardian” was redefined to agree with current tax law that provides for eligibility of dependency of the minor child if 5 dependency tests can be passed. This definition provides an opportunity for students raised by grandparents, brother, sisters, uncles, aunts, etc. to meet the dependency criteria of the regulation and to have their residency established based on the person(s) upon whom they are truly dependent.
- “Immediately prior to enrollment” has been defined as “the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year.” This definition provides a finite point in time from which to measure the action and no longer calls on the judgment of the residency officer to determine what “immediately” means on his/her campus.
- “Parent” has been amended to include “Stepfather” and “Stepmother”.
- “Spouse” has been defined as the husband or wife of a married person in accordance with the South Carolina Code of Laws. And,
- “United States Armed Forces” has been amended to include the Air Force, Army, Marine Corps, Navy, and Coast Guard.

Other revisions include:

- A student claiming financial independence is allowed to use “loans” as a source of income. We have further defined this to specify a requirement that the loan be a “commercial loan” rather than a personal loan that may have come from a family member.
- For divorced parents, we acknowledged the establishment of “joint custody”.
- Court ordered payment of the “cost of (the students) college education” has been defined to include “at least the cost of (the students) tuition and fees”.
- Revised the regulation relative to a dependent non-resident alien to be consistent with the remainder of the regulation in that the residency of the

dependent is based upon the residency of the person upon whom they are dependent. This revision addresses the potential post 9/11 delays in the processing of permanent resident status and the potential for the parents receiving their “green card” prior to the student.

- Specified that non-citizens who may be eligible for the payment of in-state tuition and fees as a result of the holding of certain visa classifications were not and could not become eligible for state sponsored tuition assistance /scholarships.
- Acknowledged state guidelines in the timelines required to possess a state drivers license and vehicle registration as evidence of the intent to establish state residency. And,
- Acknowledged that transfer between the state’s colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree did not constitute a break in enrollment and, as such, would not cause the student to be considered a resident at one school and not at the school to which the student transferred or progressed.

Recommendation

The Student Services Committee recommends that the Commission on Higher Education approve the proposed amendments to the regulations for the Determination of Rates for Tuition and Fees. If approved, the amended regulation will be submitted to the General Assembly for approval under the Administrative Procedures Act.

ARTICLE V.

DETERMINATION OF RATES OF TUITION AND FEES

(Statutory Authority: 1976 Code Sections 59-112-10 to 59-112-100)

62-600. Rates of Tuition and Fees.

A. Resident classification is an essential part of tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state. The Commission on Higher Education hereby establishes regulations for the Statute Governing Residency for Tuition and Fee Purposes to be applied consistently by all South Carolina institutions of higher education. These regulations do not address residency matters relating to in-county categories used within the State's technical colleges.

B. Institutions of higher education are required by the Statute to determine the residence classification of applicants. The initial determination of one's resident status is made at the time of admission. The determination made at that time, and any determination made thereafter, prevails for each subsequent semester until information becomes available that would impact the existing residency status and the determination is successfully challenged. The burden of proof rests with the students to show evidence as deemed necessary to establish and maintain their residency status.

62-601. Code of Laws Governing Residence.

Rules regarding the establishment of legal residence for tuition and fee purposes for institutions of higher education are governed by Title 59, Chapter 112 of the 1976 South Carolina Code of Laws, as amended.

62-602. Definitions.

A. "Academic Session" is defined as a term or semester of enrollment. (62-607.B)

B. "Continue to be Enrolled" is defined as continuous enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions. (62-607.A)

C. "Dependent Person" is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian and who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person's college education. A dependent person's residency is based upon the residency of the person upon whom they are dependent. (62-602.G) (62-602.N) (62-603.B) (62-605.C) (62-607.A)

D. "Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. Housing provided on an academic session basis for student at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary. (62-602.E) (62-602.K) (62-602.M) (62-602.N) (62-603.A) (69.603.B) (62-605.B) (62-605.C) (62-607.A) (62-607.B) (62-608.A) (62-608.C) (62-608.D) (62-609.A.3) (62-609.A.4)

E. "Family's Domicile in this State is Terminated" is defined as an employer-directed transfer of the person upon whom the student is dependent and is not construed to mean a voluntary change in domicile. (62-607.A)

F. "Full-time employment" is defined as employment that consists of at least thirty-seven and one-half hours a week on a single job in a full-time status. However, a person who works less than thirty-seven and one-half hours a week but receives or is entitled to receive full-time employee benefits shall be considered to be employed full-time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full-time employment. (62-605.C.1) (62-609.A.2) (62-609.A.3)

G. "Guardian" is defined as one legally responsible for the care and management of the person or property of a minor child or one qualified to claim a dependent person based upon the five tests for dependency prescribed by the Internal Revenue Service; provided, however, that where circumstances indicate that such guardianship or custodianship was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or dependent person, it shall not be given such effect. (62-602.C) (62-602.E) (62-602.I) (62-602.M) (62-603.B) (62-605.C)

H. "Immediately Prior" is defined as the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year. (62-607.A)

I. "Independent Person" is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order. An independent person must provide more than half of his or her support during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested. An independent person cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian for the year in which resident status is requested. (62-602.N) (62-603.A) (62-605.C) (62-607.B) (62-608.B)

J. "Minor" is defined as a person who has not attained the age of eighteen years. An "emancipated minor" shall mean a minor whose parents have entirely surrendered the right to the care, custody and earnings of such minor and are no longer under any legal obligation to support or maintain such minor. (62-602.G)

K. "Non-resident Alien" is defined as a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status "non-resident aliens" generally do not have the capacity to establish domicile in South Carolina. (62-602.M) (62-604.A)

L. "Parent" is defined as the father, mother, stepfather, stepmother, foster parent or parent of a legally adopted child. (62-602.C) (62-602.E) (62-602.I) (62-602.J) (62-602.M) (62-603.B) (62-603.C) (62-605.C)

M. "Reside" is defined as continuous and permanent physical presence within the State, provided that absences for short periods of time shall not affect the establishment of residence. Excluded are absences associated with requirements to complete a degree, absences for military training service, and like absences, provided South Carolina domicile is maintained. (62-603.A) (62-606.B) (62-609.A) (62-609.A.3) (62-609.A.4) (62-609.B)

N. "Resident" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, notwithstanding other provisions of the Statute. (62-600.A) (62-600.B) (62-602.I) (62-602.K) (62-602.M) (62-603.A) (62-603.B) (62-603.C) (62-604.A) (62-605.A) (62-605.C) (62-605.C.7) (62-606.A) (62-606.A.5) (62-606.B) (62-607.A) (62-608.B) (62-609.A.3) (62-610.A) (62-610.B) (62-611.A) (62-611.B)

O. "Spouse" is defined as the husband or wife of a married person in accordance with Title 20, Chapter 1 of the 1976 South Carolina Code of Laws, as amended. (62-602.C) (62-602.E) (62-602.I) (62-602.M) (62-603.B) (62-605.C)

P. "Temporary Absence" is defined as a break in enrollment during a fall or spring semester (or its equivalent) during which a student is not registered for class. (62-606.A)

Q. "Terminal Leave" is defined as a transition period following active employment and immediately preceding retirement (with a pension or annuity), during which the individual may use accumulated leave. (62-609.A.4)

R. "United States Armed Forces" is defined as the United States Air Force, Army, Marine Corps, Navy, and Coast Guard. (62-606.B) (62-609.A(1))

62-603. Citizens and Permanent Residents.

A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in-state tuition and fees. The twelve-month residency period starts when the independent person establishes the intent to become a South Carolina resident per section 62-605 entitled "Establishing the Requisite Intent to Become a South Carolina Domiciliary." Absences from the State during the twelve-month period may affect the establishment of permanent residence for tuition and fee purposes.

B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person's support and claims or qualifies to claim the dependent person as a dependent for federal income tax purposes. Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.

C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who claims the dependent person as a dependent for tax purposes; or based on the resident status of the parent who has legal custody or legal joint custody of the dependent person; or based on the resident status of the person who makes payments under a court order for child support and at least the cost of his/her college tuition and fees.

62-604. Non-Resident Aliens, Non-Citizens, and Non-Permanent Residents.

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

B. Title 8 of the Code of Federal Regulations (CFR) serves as the primary resource for defining visa categories.

62-605. Establishing the Requisite Intent to Become a South Carolina Domiciliary.

A. Resident status may not be acquired by an applicant or student while residing in South Carolina for the sole purpose of enrollment in an institution or for access to state-supported programs designed to serve South Carolina residents.

B. If a person asserts that his/her domicile has been established in this State, the individual has the burden of proof. Such persons should provide to the designated residency official of the institution to which they are applying any and all evidence the person believes satisfies the burden of proof. The residency official will consider any and all evidence provided concerning such claim of domicile, but will not necessarily regard any single item of evidence as conclusive evidence that domicile has been established.

C. For independent persons or the parent, spouse, or guardian of dependent persons, examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:

- (1) Statement of full-time employment;
- (2) Possession of a valid South Carolina voter registration card;
- (3) Designating South Carolina as state of legal residence on military record;
- (4) Possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility.
- (5) Possession of a valid South Carolina vehicle registration card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility.
- (6) Maintenance of domicile in South Carolina;
- (7) Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
- (8) Ownership of principal residence in South Carolina; and
- (9) Licensing for professional practice (if applicable) in South Carolina.

D. The absence of indicia in other states or countries is required before the student is eligible to pay in-state rates.

62-606. Maintaining Residence.

A. A person's temporary absence from the State does not necessarily constitute loss of South Carolina residence unless the person has acted inconsistently with the claim of continued South Carolina residence during the person's absence from the State. The burden is on the person to show retention of South Carolina residence during the person's absence from the State. Steps a person should take to retain South Carolina resident status for tuition and fee purposes include:

- (1) Continuing to use a South Carolina permanent address on all records;
- (2) Retaining South Carolina voter's status;
- (3) Maintaining South Carolina driver's license;
- (4) Maintaining South Carolina vehicle registration;
- (5) Satisfying South Carolina resident income tax obligation. Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country.

B. Active duty members of the United States Armed Forces and their dependents are eligible to pay in-state tuition and fees as long as they continuously claim South Carolina as their state of

legal residence during their military service. Documentation will be required in all cases to support this claim. South Carolina residents who change their state of legal residence while in the military lose their South Carolina resident status for tuition and fee purposes.

62-607. Effect of Change of Residency.

A. Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated immediately prior to his/her enrollment may enroll at the in-state rate. A student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in-state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

B. If a dependent or independent person has been domiciled in South Carolina for less than three years, eligibility for in-state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in-state rates in subsequent semesters.

62-608. Effect of Marriage.

A. In ascertaining domicile of a married person, irrespective of gender, such a review shall be determined just as for an unmarried person by reference to all relevant evidence of domiciliary intent.

B. If a non-resident marries a South Carolina resident, the non-resident does not automatically acquire South Carolina resident status. The non-resident may acquire South Carolina resident status if the South Carolina resident is an independent person and the non-resident is a dependent of the South Carolina resident.

C. Marriage to a person domiciled outside South Carolina shall not be solely the reason for precluding a person from establishing or maintaining domicile in South Carolina and subsequently becoming eligible or continuing to be eligible for residency.

D. No person shall be deemed solely by reason of marriage to a person domiciled in South Carolina to have established or maintained domicile in South Carolina and consequently to be eligible for or to retain eligibility for South Carolina residency.

62-609. Exceptions.

A. Persons in the following categories qualify to pay in-state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of class of the term for which payment of in-state tuition and fees is requested.

(1) "Military Personnel and their Dependents": Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in-state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in-state tuition and fees for an additional twelve months. Such persons (and their dependents) may also be eligible to pay in-state tuition and fees for a period of twelve months after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month "physical presence" requirement for them or their dependents to qualify to pay in-state tuition and fees.

(2) "Faculty and Administrative Employees with Full-Time Employment and their Dependents": Full-time faculty and administrative employees of South Carolina state-supported colleges and universities and their dependents are eligible to pay in-state tuition and fees.

(3) "Residents with Full-Time Employment and their Dependents:" Persons who reside, are domiciled, and are full-time employed in the State and who continue to work full-time until they meet the twelve-month requirement and their dependents are eligible to pay in-state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in section 62-605 entitled ("Establishing the Requisite Intent to Become a South Carolina Domiciliary").

(4) "Retired Persons and their Dependents:" Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in-state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in-state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.

B. Persons participating in Southern Regional Education Board-sponsored programs, including the Contract for Services and the Academic Common Market programs must have continuously resided in the State for other than educational purposes for two years immediately preceding application for consideration and must meet all residency requirements during this two-year period.

62-610. Application for Change of Resident Status.

A. Persons applying for a change of resident classification must complete a residency application/petition and provide supporting documentation prior to a reclassification deadline as established by the institution.

B. The burden of proof rests with those persons applying for a change of resident classification who must show required evidence to document the change in resident status.

62-611. Incorrect classification.

A. Persons incorrectly classified as residents are subject to reclassification and to payment of all non-resident tuition and fees not paid. If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out-of-state rate. The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

B. Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.

62-612. Inquiries and Appeals.

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

B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official. Neither the primary residency official nor appellate official(s) may waive the provisions of the Statute or regulation governing residency for tuition and fee purposes.