Hearing: December 3, 2009
J:mandates/02-TC-21/PsGs/DSA

ITEM ___

DRAFT STAFF ANALYSIS
REVISED DRAFT PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 68044, Subdivisions (a), (b), (c), 68051, 68074, 68075.5, 68076, Subdivision (d), 68077, 68078, Subdivision (b), 68082, 68083, 68084, 68121, 68130.5, and 76140

Statutes 1977, Chapter 36 (AB 447); Statutes 1980, Chapter 580 (AB 2567); Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070 (AB 2627); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapter 389 (AB 723); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)

California Code of Regulations, Title 5, Sections 54012, Subdivisions (b), (c), (d), 54024, Subdivisions (e), (f); 54030, 54032, Subdivision (a); 54041, 54045, Subdivisions (b), (c); 54045.5, subdivision (b); 54046, 54060, Subdivisions (a), (b)

Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)

Revised Guidelines and Information, "Exemption from Nonresident Tuition" Chancellor of the California Community Colleges, May 2002

Tuition Fee Waivers
02-TC-21

Contra Costa Community College District, Claimant

Executive Summary

On March 27, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision partially approving this test claim filed by the Contra Costs Community College District. The state-mandated test claim statutes and executive orders address the process for determining student residence status and nonresident student tuition fee charges or waivers at community colleges, including students who are members of the armed forces; military dependents, aliens; graduates of Bureau of Indian Affairs schools; public school employees holding a valid credential; Native Americans; amateur student athletes at the Olympic Training Center; federal civil service employees and dependents in California due to military mission realignments; nonresident California high school graduates; and dependents of victims of the September 11, 2001 terrorist attacks.

On April 1, 2009, the adopted Statement of Decision and draft parameters and guidelines were issued.

On April 28, 2009, claimant filed comments on staff's draft parameters and guidelines. Claimant objected to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements.

Objections to "boilerplate" language in sections IV, V, and VI of the parameters and guidelines

Within claimant's objections to the boilerplate language, claimant states, "Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past decisions."

Staff does not suggest any changes to the boilerplate language at this time. In addition, there is a pending request from the State Controller's Office to amend the boilerplate language in pre-existing parameters and guidelines. Staff recommends that all discussions about parameters and guidelines boilerplate occur when the State Controller's Office request is considered for community college district programs. This is scheduled for the January 2010 meeting.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines as modified by staff, beginning on page 13.
- Authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

Contra Costa Community College District

Chronology

5/23/03	Claimant Contra Costa Community College District files test claim
3/27/09	Commission determines test claim and adopts Statement of Decision
4/1/09	Commission issues Statement of Decision and staff's draft proposed parameters and guidelines
4/28/09	Claimant files comments on proposed parameters and guidelines

Background

Summary of the Mandate

The Commission determined that the test claim statutes, regulations, and executive order impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for community college districts to be reimbursed for the following:

District Governing Board Rules and Regulations on Nonresident Tuition

1. Adopt rules and regulations relating to the method of payment, and the method and amount of refund of nonresident tuition (Ed. Code, § 68051, Stats. 1990, ch. 1372).

Determining Residence Classification

2. Require student applicant to supply, and district to weigh, the residence determination factors: Require student applicants to supply, and for the district to weigh, the following information to determine the student's residence classification (Cal. Code Regs., tit. 5, § 54024, subd. (e)).[1]
   - Ownership of residential property
   - Registering to vote in California
   - Active membership in service or social clubs.
   - Being the petitioner for a divorce in California.
3. Require a student to supply, and for the district to weigh, information regarding whether the student or the parents of a minor student who relinquished California residence after moving from the state has reestablished residence by one full year of physical presence coupled with demonstrated intent to be a California resident. (Cal.Code Regs., tit. 5, § 54030, Register 82, No. 48 (Nov. 27, 1982) p. 637.)
4. Residence classification questionnaires: To revise the residence questionnaire based on a sample residence questionnaire provided by the Chancellor's Office (a one-time activity).

[1] Register 82, No. 48 (Nov. 27, 1982), Register 91, No. 23 (April 5, 1991) p. 334, Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

5. To require the student to supply, and for the district to weigh, the following information in a residence questionnaire to determine the student's residence classification:
   - Where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subdivision (f) of section 54024 of the title 5 regulations, i.e., has maintained voter registration in another state and voted in another state; was a petitioner for a divorce in another state, as attended an out-of-state institution as a resident of that other state; has declared nonresidence for state income tax purposes.
   - For each student under 19 years of age, consideration of where the parent has lived for the last two years and where the parent has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations.
   - If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024.[2] (Cal.Code Regs., tit. 5, § 54012, subds. (b), (c) & (d).)[3]
6. Financial independence: Determine whether the student is financially independent or dependent, in accordance with Education Code section 68044, when a student is seeking reclassification as a resident who was classified as a nonresident in the preceding term. (Cal. Code Regs., tit. 5, § 54032, subd (a).)[4]
7. Determine whether the student seeking reclassification as a resident who was classified as a nonresident in the preceding term is financially dependent or independent, by requiring the student to supply, and the district to weigh, information on whether the student (1) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (2) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent

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[2] Section 54024, subdivision (e), of the title 5 regulations states: "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."

[3] Register 82, No. 48 (Nov. 27, 1982) pp. 635-636; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333.

[4] Register 82, No. 48 (Nov. 27, 1982) p. 637; Register 91, No. 23 (April 5, 1991) p. 335; Register 95, No. 19 (May 19, 1995) p. 334.

in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (3) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application. (Ed. Code, § 68044, subds. (a), (b) & (c); Stats. 1981, ch. 102, Stats. 1982, ch. 1070.)

Nonresident Tuition Fee

8. Provide nonresident students with notice of nonresident tuition fee charges during the spring term before the fall term in which the change will take effect, and to consider nonresident tuition fees of public community colleges in other states in determining nonresident tuition fees, and to make nonresident tuition fee increases gradual, moderate, and predictable. (Ed. Code, § 76140, subd. (d), Stats. 1989, ch. 985.)

Exceptions to Determination of Nonresidence

The following are entitled to resident tuition or are exempted from paying nonresident tuition:

9. Dependent of member of armed forces: Classify as residents for the purpose of determining the amount of tuition and fees those dependents (defined as a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces) of military personnel who retire from active duty after the residence determination date until the student dependent has resided in the state the minimum time necessary to become a resident. (Ed. Code, § 68074, Stats. 1980, ch. 580, Stats. 1989, ch. 900, Stats. 2000, ch. 571.)

10. Require applicants claiming residence status pursuant to section 68074 of the Education Code (dependent member of the armed forces) to supply, and for the district to weigh, the following documentation in determining the applicant's residence:

    - A statement from the military person's commanding officer or personnel officer that: (1) the military person's duty station is in California on active duty as of the residence determination date; or (2) that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or (3) that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States.
    - A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes (Cal.Code. Regs., tit. 5, § 54041).[5]

11. Member of armed forces after discharge: Classify as a resident a student who was a member of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged from the armed forces, for the length of time he or she lives in California after being discharged up to the minimum time necessary to become a resident (Ed. Code, § 68075.5, Stats. 1995, ch. 389).

[5] Register 82, No. 48 (Nov. 27, 1982) p. 638; Register 83, No. 24 (Jun. 11, 1983) p. 638. Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 335.

12. Dependent of California resident for more than one year: Classify as a resident a student who (a) has not been an adult resident of California for more than one year and (b) is either the dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at a community college (Ed. Code, § 68076, Stats. 1988, ch. 753, Stats. 1991, ch. 455, Stats. 1993, ch. 8).

13. Graduate of Bureau of Indian Affairs school: Classify a student as a resident if he or she has graduated from any school located in California that is operated by the United States Bureau of Indian Affairs, so long as continuous attendance is maintained by the student at a community college (Ed. Code, § 68077, Stats. 1989, ch. 424, Stats. 1993, ch. 8).

14. Student holding emergency permit or public school credential: Classify as a resident a student who holds a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements. This classification is only for the purposes of determining the amount of tuition and fees for no more than one year. (Ed. Code, § 68078, subd. (b), Stats. 2000, ch. 949).

15. For students claiming residency status pursuant to section 68078 of the Education Code, require the student to supply, and for the district to weigh, the following:

    - A statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. (Cal. Code Regs., tit. 5, § 54046; Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.) This section is state-mandated new program or higher level of service for students claiming residence under subdivision (a) of section 68078,[6] as well as subdivision (b) (student holding a valid emergency permit, as specified).

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[6] Subdivision (a) of section 68078 provides:

(a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution is entitled to resident classification if that student meets any of the following requirements:

(1) He or she holds a provisional credential and is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

(2) He or she holds a credential issued pursuant to Section 44250 and is enrolled at an institution in courses necessary to fulfill credential requirements [§ 44250 states that the commission (on teacher credentialing) issues only the following two types of credentials: "(a) A teaching credential. (b) A services

- Any teaching credential (except a provisional credential). Require the student to show he or she will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements. (Former Cal. Code Regs., tit. 5, § 54036; Register 77, No. 45 (Nov. 5, 1977) p. 638.2. Cal. Code Regs., tit. 5, § 54046.)[7]

16. Native American student: Classify as a resident a Native American student who attends a school administered by the Bureau of Indian Affairs located within the community college district (Ed. Code, §68082, Stats. 1977, ch. 36).

17. Amateur student athlete in training at U.S. Olympic Training Center: Classify as a resident for tuition purposes any amateur student athlete (as defined in Ed. Code, § 68083, subd. (b))[8] in training at the United States Olympic Training Center in Chula Vista, until he or she has resided in the state the minimum time necessary to become a resident (Ed. Code, § 68083, Stats. 1997, ch. 438).

18. Federal civil service employee in state due to military mission realignment: Classify as a state resident a federal civil service employee and his or her natural or adopted dependent children if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees, until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education (Ed. Code, § 68084, Stats. 1998, ch. 952).

19. Nonresident California high school graduates: Exempt a student (other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code) from paying nonresident tuition if he or she meets the following criteria: (1) high school attendance in California for three or more years; (2) graduation from a California high school or attainment of the equivalent thereof; (3) registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002; (4) in the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so; and (5) completion of a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment verifying eligibility for this

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credential. The commission may issue an internship teaching or services credential.]

(3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259. [§ 44259, subd. (b), specifies the minimum requirements for the preliminary multiple or single subject teaching credential.]

[7] Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.

[8] "'Amateur student athlete,' for purposes of this section, means any student athlete who meets the eligibility standards established by the national governing body for the sport in which the athlete competes." (§ 68083, subd. (b).)

nonresident tuition exemption. (Ed. Code, § 68130.5, Stats. 2001, ch. 814, & Cal.Code Regs., tit. 5, § 54045.5, subd. (b); Register 02, No. 25 (Jun. 21, 2002) p. 335.)[9] For these students:

- Retain indefinitely, as Class 1 permanent records, the original certified affidavit and other materials utilized by a district in meeting the certification requirements; or, copying or reproducing by photograph, microphotograph or reproduced on film or electronically the original certified affidavit and other materials utilized by a district in meeting the certification requirements (Chancellor of the California Community Colleges, "Revised Guidelines and Information on AB 540 Exemption From Nonresident Tuition" May 2002, p. 4, par. 20).
- Refund the student's nonresident tuition if the student is determined eligible for the exemption after he or she has paid nonresident tuition (*Id.*, p. 2, par. 8).
- Discard and replace old questionnaire forms with the newly prescribed Chancellor's form in printed materials for Summer or Fall 2002, unless the district's form is part of a major preprinted document such as a Schedule of Classes. This is a one-time activity (*Id.* at p. 3, par. 14).

20. Alien students: Require a student alien to supply, and for the district to weigh, information on whether the student is precluded from establishing domicile. An alien is precluded from establishing domicile in the United States if the alien: (1) entered the United States illegally; (2) entered the United States under a visa requiring that the alien have a residence outside the United States; or (3) entered the United States under a visa that permits entry solely for some temporary purpose. And for the community college district to determine, for an alien who is precluded from establishing domicile in the United States pursuant to subdivision (b) of section 54045 of the title 5 regulations, whether that alien has (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service[10] to a classification which does not preclude establishing domicile, and (2) met the residence requirements of sections 54020-54024[11] of the title 5 regulations related to physical presence and the intent to

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[9] On September 15, 2008, California's Third District Court of Appeal issued an opinion on section 68130.5 (Stats. 2001, ch. 814). The opinion reverses a lower court's decision to grant a demurrer, and holds that plaintiffs stated a viable claim that section 68130.5 conflicts with and is preempted by federal title 8 U.S.C. sections 1623 and 1621. (*Martinez v. Regents of the University of California* (2008) 166 Cal.App.4th 1121.) The case was remanded back to the trial court. If the court ultimately finds that section 68130.5 is invalid, the statute would become void. At that point reimbursement for activities under section 68130.5 would end on the date the court's decision becomes final.

[10] The current name of this government agency is U.S. Citizenship and Immigration Services. See < http://www.uscis.gov> as of May 8, 2008.

[11] Section 54020 of the title 5 regulations requires "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."

Section 54022 of the title 5 regulations states:

make California home for other than a temporary purpose. (Cal. Code Regs., tit. 5, § 54045, subds. (b) & (c).)[12]

Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks

21. Surviving dependents of victims of 9/11 terrorist attacks: Waive mandatory systemwide fees or tuition of any kind for a student in an undergraduate program who is the surviving dependent (as defined)[13] of any individual killed in the September 11, 2001, terrorist attacks

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Section 54022 of the title 5 regulations states:

> (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."

Section 54024 of the title 5 regulations states:

> (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 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).
>
> [Subdivision (e) lists 12 objective manifestations of intent to establish California residence. Subdivision (f) lists 4 acts of conduct inconsistent with a claim of California residence.]

[12] Register 86, No. 10 (Mar. 8, 1986) p. 638.1, Register 91, No. 23 (April 5, 1991) p. 336; Register 92, No. 4 (Jan. 24, 1992) p. 336, Register 95, Nos. 19-20 (May 19, 1995) p. 335.

[13] "'Dependent,' for purposes of the section, is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim

on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if the student is determined eligible by the California Victim Compensation and Government Claims Board. The waiver lasts until January 1, 2013, unless the dependent is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, in which case the tuition and fees are waived until the person obtains the age of 30 years (Ed. Code, § 68121, Stats. 2002, ch. 450).

Notifying Students of Classification Decision and Appeal Procedure

22. Notification and appeal of classification decision: Notify a student of his or her residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later. (Cal. Code Regs., tit. 5, § 54060, subd. (a); Register 82, No. 48 (Nov. 27, 1982) p. 638.2.)

23. Establish procedures for appeals of residence classifications (Cal Code Regs., tit. 5, § 54060, subd. (b).)[14]

Procedural Background

On April 1, 2009, the adopted Statement of Decision and draft parameters and guidelines were issued for costs incurred beginning July 1, 2001, January 1, 2002, May 1, 2002, and June 21, 2002.

On April 28, 2009, claimant Contra Costa Community College District filed comments[15] on staff's proposed parameters and guidelines.[16] Claimant objects to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements.

Similar arguments are raised about the indirect cost rate language and record retention requirements.

Discussion

There is only one issue before the Commission:

> Should the Commission adopt the proposed parameters and guidelines with the "boilerplate" language in sections IV, V, and VI of the proposed parameters and guidelines?

Claimant objects to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements.

Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42)." (§ 68121, subd. (d)(1).)

[14] Register 82, No. 48 (Nov. 27, 1982) p. 638.2); Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.

[15] See Exhibit C.

[16] See Exhibit B.

Regarding source documentation language, claimant states the following:

> For the record and preservation of appeal rights, the test claimant objects to the boilerplate language regarding source documents, contemporaneous documents and corroborating evidence. It is a standard of general application without independent statutory or regulatory basis. It is a standard which generally exceeds the documentation methods utilized in the usual course of business for local agencies and the standard required for substantiation of the use of, or application for, other state funds by local agencies. It is a standard imposed retroactively upon claimants without prior notice. These and other objections were made before by local agency representatives in previous Commission proceedings. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines.[17]

Similar arguments are raised about the indirect cost rate language and record retention requirements.[18]

With respect to these objections, claimant further stated the following: *Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past decisions.*[19] (Emphasis added.)

Staff does not suggest any changes to the boilerplate language at this time. There is also a pending request from the State Controller's Office to amend the boilerplate language in pre-existing parameters and guidelines. Staff recommends that all discussions about parameters and guidelines boilerplate occur when the State Controller's Office request is considered for school district and community college district programs..[20]

Therefore, staff concludes that the Commission should adopt the proposed parameters and guidelines with the *boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirement, which are consistent with past decisions.*

Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines as modified by staff, beginning on page 13.
- Authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.

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[17] See Exhibit C, p. 2.

[18] See Exhibit C.

[19] *Ibid*

[20] On January 29, 2010, the Commission will consider proposed amendments to 7 school district and community college district programs.

PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 68044, Subdivisions (a), (b), (c), 68051, 68074, 68075.5, 68076, Subdivision (d), 68077, 68078, Subdivision (b), 68082, 68083, 68084, 68121, 68130.5, and 76140

Statutes 1977, Chapter 36 (AB 447); Statutes 1980, Chapter 580 (AB 2567); Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070 (AB 2627); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapter 389 (AB 723); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)

California Code of Regulations, Title 5, Sections 54012, Subdivisions (b), (c), (d), 54024, Subdivisions (e), (f); 54030, 54032, Subdivision (a); 54041, 54045, Subdivisions (b), (c); 54045.5, subdivision (b); 54046, 54060, Subdivisions (a), (b)

Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)

Revised Guidelines and Information, "Exemption from Nonresident Tuition" Chancellor of the California Community Colleges, May 2002

Tuition Fee Waivers
02-TC-21

Contra Costa Community College District, Claimant

I. SUMMARY OF THE MANDATE

The test claim statutes, regulations and executive order involve determining student residence status and nonresident student tuition fee charges or waivers at community colleges, including students who are members of the armed forces; military dependents, aliens; graduates of Bureau of Indian Affairs schools; public school employees holding a valid credential; Native Americans; amateur student athletes at the Olympic Training Center; federal civil service employees and dependents in California due to military mission realignments; nonresident California high school graduates; and dependents of victims of the September 11, 2001 terrorist attacks.

On March 27, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim statutes and executive orders ~~legislation~~ imposes a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the reimbursable activities listed in Section IV. Reimbursable Activities, on page 3:

II. ELIGIBLE CLAIMANTS

Any "community college district" as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Contra Costs Community College District filed the test claim on May 23, 2003, establishing eligibility for reimbursement on or after July 1, 2001. The costs incurred for compliance with most of the mandated activities are reimbursable on or after July 1, 2001. However, portions of the Education Code, the registers, and the revised guidelines from the Chancellor's Office became effective on different dates after July 1, 2001. Therefore costs incurred for compliance with the mandated activities found in these sections are reimbursable on the following dates:

1. Education Code section 68130.5 (Stats. 2001, ch. 814), became effective on January 1, 2002. Therefore, the following activities are reimbursable on or after January 1, 2002.: exempt a student (other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code) from paying nonresident tuition if he or she meets the following criteria: (1) high school attendance in California for three or more years; (2) graduation from a California high school or attainment of the equivalent thereof; (3) registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002; (4) in the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.
2. Register 02, No. 25 became effective on June 21, 2002. Therefore the following activity is reimbursable on or after June 21, 2002: completion of a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment verifying eligibility for this nonresident tuition exemption.
3. The Chancellor's Revised Guidelines and Information on AB 540 Exemption from Nonresident Tuition became effective on May 1, 2002. Therefore the following activities are reimbursable on or after May 1, 2002:
    - Retain indefinitely, as Class 1 permanent records, the original certified affidavit and other materials utilized by a district in meeting the certification requirements; or, copying or reproducing by photograph, microphotograph or reproduced on film or electronically the original certified affidavit and other materials utilized by a district in meeting the certification requirements (Chancellor of the California Community Colleges, "Revised Guidelines and Information on AB 540 Exemption From Nonresident Tuition" May 2002, p. 4, par. 20).
    - Refund the student's nonresident tuition if the student is determined eligible for the exemption after he or she has paid nonresident tuition (*Id.*, p. 2, par. 8).
    - Discard and replace old questionnaire forms with the newly prescribed Chancellor's form in printed materials for Summer or Fall 2002, unless the

district's form is part of a major preprinted document such as a Schedule of Classes. This is a one-time activity (*Id.* at p. 3, par. 14).

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

District Governing Board Rules and Regulations on Nonresident Tuition

- Adopt rules and regulations relating to the method of payment, and the method and amount of refund of nonresident tuition (Ed. Code, § 68051, Stats. 1990, ch. 1372).

Determining Residence Classification

- Require student applicant to supply, and district to weigh, the residence determination factors: Require student applicants to supply, and for the district to weigh, the following information to determine the student's residence classification (Cal. Code Regs., tit. 5, § 54024, subd. (e)).[1]

[1] Register 82, No. 48 (Nov. 27, 1982), Register 91, No. 23 (April 5, 1991) p. 334, Register 95, No. 19 (May 19, 1995) p. 333; Register 99, No. 20 (May 14, 1999) p. 333.

- Ownership of residential property
- Registering to vote in California
- Active membership in service or social clubs.
- Being the petitioner for a divorce in California.

Require a student to supply, and for the district to weigh, information regarding whether the student or the parents of a minor student who relinquished California residence after moving from the state has reestablished residence by one full year of physical presence coupled with demonstrated intent to be a California resident. (Cal.Code Regs., tit. 5, § 54030, Register 82, No. 48 (Nov. 27, 1982) p. 637.)

- Residence classification questionnaires: To revise the residence questionnaire based on a sample residence questionnaire provided by the Chancellor's Office (a one-time activity).

  To require the student to supply, and for the district to weigh, the following information in a residence questionnaire to determine the student's residence classification:

  - Where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subdivision (f) of section 54024 of the title 5 regulations, i.e., has maintained voter registration in another state and voted in another state; was a petitioner for a divorce in another state, as attended an out-of-state institution as a resident of that other state; has declared nonresidence for state income tax purposes.
  - For each student under 19 years of age, consideration of where the parent has lived for the last two years and where the parent has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations.
  - If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of section 54024 of the title 5 regulations, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of section 54024. (Cal.Code Regs., tit. 5, § 54012, subds. (b), (c) & (d).)[2]

- Financial independence: Determine whether the student is financially independent or dependent, in accordance with Education Code section 68044, when a student is seeking reclassification as a resident who was classified as a nonresident in the preceding term. (Cal. Code Regs., tit. 5, § 54032, subd (a).)[3]

  Determine whether the student seeking reclassification as a resident who was classified as a nonresident in the preceding term is financially dependent or independent, by requiring the student to supply, and the district to weigh, information on whether the student (1) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (2) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent

[2] Register 82, No. 48 (Nov. 27, 1982) pp. 635-636; Register 91, No. 23 (April 5, 1991) p. 334; Register 95, No. 19 (May 19, 1995) p. 333.
[3] Register 82, No. 48 (Nov. 27, 1982) p. 637; Register 91, No. 23 (April 5, 1991) p. 335; Register 95, No. 19 (May 19, 1995) p. 334.

in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (3) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application. (Ed. Code, § 68044, subds. (a), (b) & (c); Stats. 1981, ch. 102, Stats. 1982, ch. 1070.)

Nonresident Tuition Fee

- Provide nonresident students with notice of nonresident tuition fee charges during the spring term before the fall term in which the change will take effect, and to consider nonresident tuition fees of public community colleges in other states in determining nonresident tuition fees, and to make nonresident tuition fee increases gradual, moderate, and predictable. (Ed. Code, § 76140, subd. (d), Stats. 1989, ch. 985.)

Exceptions to Determination of Nonresidence

The following are entitled to resident tuition or are exempted from paying nonresident tuition:

- Dependent of member of armed forces: Classify as residents for the purpose of determining the amount of tuition and fees those dependents (defined as a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces) of military personnel who retire from active duty after the residence determination date until the student dependent has resided in the state the minimum time necessary to become a resident. (Ed. Code, § 68074, Stats. 1980, ch. 580, Stats. 1989, ch. 900, Stats. 2000, ch. 571.)

  Require applicants claiming residence status pursuant to section 68074 of the Education Code (dependent member of the armed forces) to supply, and for the district to weigh, the following documentation in determining the applicant's residence:

  - A statement from the military person's commanding officer or personnel officer that: (1) the military person's duty station is in California on active duty as of the residence determination date; or (2) that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or (3) that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States.
  - A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes (Cal.Code. Regs., tit. 5, § 54041).[4]

- Member of armed forces after discharge: Classify as a resident a student who was a member of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged from the armed forces, for the length of time he or she lives in California after being discharged up to the minimum time necessary to become a resident (Ed. Code, § 68075.5, Stats. 1995, ch. 389).

- Dependent of California resident for more than one year: Classify as a resident a student who (a) has not been an adult resident of California for more than one year and (b) is either the

[4] Register 82, No. 48 (Nov. 27, 1982) p. 638; Register 83, No. 24 (Jun. 11, 1983) p. 638. Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 335.

dependent child of a California resident who has had residence in California for more than one year prior to the residence determination date, or has a parent who has both contributed court-ordered support for the student on a continuous basis and has been a California resident for a minimum of one year. This exception shall continue until the student has resided in the state the minimum time necessary to become a resident, so long as continuous attendance is maintained at a community college (Ed. Code, § 68076, Stats. 1988, ch. 753, Stats. 1991, ch. 455, Stats. 1993, ch. 8).

- Graduate of Bureau of Indian Affairs school: Classify a student as a resident if he or she has graduated from any school located in California that is operated by the United States Bureau of Indian Affairs, so long as continuous attendance is maintained by the student at a community college (Ed. Code, § 68077, Stats. 1989, ch. 424, Stats. 1993, ch. 8).
- Student holding emergency permit or public school credential: Classify as a resident a student who holds a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements. This classification is only for the purposes of determining the amount of tuition and fees for no more than one year. (Ed. Code, § 68078, subd. (b), Stats. 2000, ch. 949).

  For students claiming residency status pursuant to section 68078 of the Education Code, require the student to supply, and for the district to weigh, the following:

  - A statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. (Cal. Code Regs., tit. 5, § 54046; Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.) This section is state-mandated new program or higher level of service for students claiming residence under subdivision (a) of section 68078, as well as subdivision (b) (student holding a valid emergency permit, as specified).
  - Any teaching credential (except a provisional credential). Require the student to show he or she will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or holds a credential issued by the Board of Governors and is enrolled in courses necessary to fulfill credential requirements. (Former Cal. Code Regs., tit. 5, § 54036; Register 77, No. 45 (Nov. 5, 1977) p. 638.2. Cal. Code Regs., tit. 5, § 54046.)[5]
- Native American student: Classify as a resident a Native American student who attends a school administered by the Bureau of Indian Affairs located within the community college district (Ed. Code, §68082, Stats. 1977, ch. 36).
- Amateur student athlete in training at U.S. Olympic Training Center: Classify as a resident for tuition purposes any amateur student athlete (as defined in Ed. Code, § 68083, subd. (b)) in training at the United States Olympic Training Center in Chula Vista, until he or she has resided in the state the minimum time necessary to become a resident (Ed. Code, § 68083, Stats. 1997, ch. 438).

[5] Register 82, No. 48 (Nov. 27, 1982) p. 638.1; Register 91, No. 23 (April 5, 1991) p. 337; Register 95, No. 19 (May 19, 1995) p. 335.

- Federal civil service employee in state due to military mission realignment: Classify as a state resident a federal civil service employee and his or her natural or adopted dependent children if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees, until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education (Ed. Code, § 68084, Stats. 1998, ch. 952).
- Nonresident California high school graduates: Exempt a student (other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of title 8 of the United States Code) from paying nonresident tuition if he or she meets the following criteria: (1) high school attendance in California for three or more years; (2) graduation from a California high school or attainment of the equivalent thereof; (3) registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002; (4) in the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so (activities are reimbursable on or after January 1, 2002).
- Completion of a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment verifying eligibility for this nonresident tuition exemption. (Ed. Code, § 68130.5, Stats. 2001, ch. 814, & Cal.Code Regs., tit. 5, § 54045.5, subd. (b); Register 02, No. 25 (Jun. 21, 2002) p. 335.) (This activity is reimbursable on or after June 21, 2002.)[6]

  For these students:

  - Retain indefinitely, as Class 1 permanent records, the original certified affidavit and other materials utilized by a district in meeting the certification requirements; or, copying or reproducing by photograph, microphotograph or reproduced on film or electronically the original certified affidavit and other materials utilized by a district in meeting the certification requirements (Chancellor of the California Community Colleges, "Revised Guidelines and Information on AB 540 Exemption From Nonresident Tuition" May 2002, p. 4, par. 20).
  - Refund the student's nonresident tuition if the student is determined eligible for the exemption after he or she has paid nonresident tuition (*Id.*, p. 2, par. 8).
  - Discard and replace old questionnaire forms with the newly prescribed Chancellor's form in printed materials for Summer or Fall 2002, unless the district's form is part of a major preprinted document such as a Schedule of Classes. This is a one-time activity (*Id.* at p. 3, par. 14). (These activities are reimbursable on or after May 1, 2002.)
- Alien students: Require a student alien to supply, and for the district to weigh, information on whether the student is precluded from establishing domicile. An alien is precluded from

[6] On September 15, 2008, California's Third District Court of Appeal issued an opinion on section 68130.5 (Stats. 2001, ch. 814). The opinion reverses a lower court's decision to grant a demurrer, and holds that plaintiffs stated a viable claim that section 68130.5 conflicts with and is preempted by federal title 8 U.S.C. sections 1623 and 1621. (*Martinez v. Regents of the University of California* (2008) 166 Cal.App.4th 1121.) The case was remanded back to the trial court. If the court ultimately finds that section 68130.5 is invalid, the statute would become void. At that point reimbursement for activities under section 68130.5 would end on the date the court's decision becomes final.

establishing domicile in the United States if the alien: (1) entered the United States illegally; (2) entered the United States under a visa requiring that the alien have a residence outside the United States; or (3) entered the United States under a visa that permits entry solely for some temporary purpose. And for the community college district to determine, for an alien who is precluded from establishing domicile in the United States pursuant to subdivision (b) of section 54045 of the title 5 regulations, whether that alien has (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and (2) met the residence requirements of sections 54020-54024 of the title 5 regulations related to physical presence and the intent to make California home for other than a temporary purpose. (Cal. Code Regs., tit. 5, § 54045, subds. (b) & (c).)[7]

Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks

- Surviving dependents of victims of 9/11 terrorist attacks: Waive mandatory systemwide fees or tuition of any kind for a student in an undergraduate program who is the surviving dependent (as defined) of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, D.C., or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if the student is determined eligible by the California Victim Compensation and Government Claims Board. The waiver lasts until January 1, 2013, unless the dependent is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, in which case the tuition and fees are waived until the person obtains the age of 30 years (Ed. Code, § 68121, Stats. 2002, ch. 450).

Notifying Students of Classification Decision and Appeal Procedure

- Notification and appeal of classification decision: Notify a student of his or her residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later. (Cal. Code Regs., tit. 5, § 54060, subd. (a); Register 82, No. 48 (Nov. 27, 1982) p. 638.2.)

  Establish procedures for appeals of residence classifications (Cal Code Regs., tit. 5, § 54060, subd. (b).)[8]

The Commission also finds that all other statutes, regulations, and executive orders in the test claim do not constitute a reimbursable state-mandated program.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

[7] Register 86, No. 10 (Mar. 8, 1986) p. 638.1, Register 91, No. 23 (April 5, 1991) p. 336; Register 92, No. 4 (Jan. 24, 1992) p. 336, Register 95, Nos. 19-20 (May 19, 1995) p. 335.

[8] Register 82, No. 48 (Nov. 27, 1982) p. 638.2); Register 91, No. 23 (April 5, 1991) p. 336; Register 95, No. 19 (May 19, 1995) p. 336.

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[9] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

An amount equal to 2 percent of the fees shall be waived and an amount equal to ninety-one cents ($0.91) per credit unit shall be waived (Ed. Code, § 76300 subd. (m)(2)) for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center in New York City, the Pentagon building in Washington, DC, or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if he or she meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply: (1) The dependent was a resident of California on September 11, 2001. (2) The individual killed in the attacks was a resident of California on September 11, 2001.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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[9] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Original List Date: 6/3/2003
Last Updated: 9/9/2009
List Print Date: 09/23/2009
Claim Number: 02-TC-21
Issue: Tuition Fee Waivers

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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