



# South Carolina Commission on Higher Education

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RESIDENCY WORKSHOP

2018

# Agenda

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9:30am	Welcome
9:35am	Review of the Regulation
10:35am	Current Issues/Questions
10:50am	Adjourn
11:00am	Scholarship and Grant Workshop

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

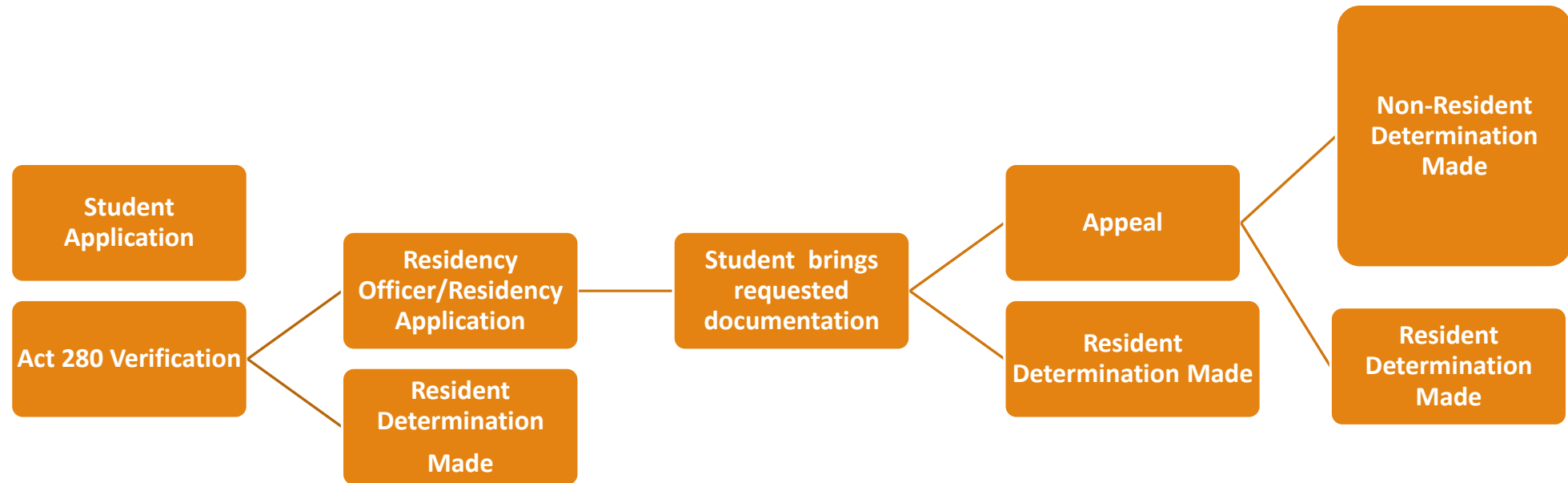
# Disclaimer!

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- \* The presentation will cover the newly approved residency regulation, which became effective on March 23, 2018. Although every single line may not be addressed, every section is represented in the presentation.
  - Red indicates point of emphasis in regulation
- \* This presentation will contain scenarios that occurred throughout the academic year. The scenarios are real, however, the locations and names of the institutions have been changed.
- \* There will be opportunities for discussion if needed. However, please be mindful that we may need to move on from a topic in order to ensure the entire workshop is covered.

# Sample S.C. Residency Process at Some Institutions

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Note: Act 280 verification is required for all students as a first step.

# Typical Steps to a Residency Determination

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## Moves into State and Establishes Domicile

- Establishes Domicile - Rent/Lease/Own - Need paperwork in file for audit purposes

## Check Important Document

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

## Check for Exceptions

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

## Wait 12 months

- If no exceptions are met, then 12 months from date of Domicile. Next term will be first term of eligibility for in-state rates

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# Review of Residency Regulation

# Section 62-600 Rates of Tuition and Fees

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- A. Resident classification is an essential part of **tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state**. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state.

## What does this mean?

Residency decisions impact multiple areas of institutional policy and procedure. For that reason, every institution, regardless of type or sector, should invest time and effort into developing their residency process.

# Section 62-600 Rates of Tuition and Fees

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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.

## What this means?

Each institution (not CHE) is responsible for making residency decisions according to state law & regulations provided by CHE and vetted by the SC General Assembly. Institutions should take into account that they should be fair and consistent in their decisions. Institutions should ask for any and all documentation they feel necessary to render a fair decision.



## 62-602. Definitions

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

## 62-603 Citizens and Permanent Residents

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A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in state tuition and fees. The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62- 605 entitled “Establishing the Requisite Intent to Become a South Carolina Domiciliary.” The twelve month residency period cannot start until the absence of indicia in other states is proven. Absences from the State during the twelve month period may affect the establishment of permanent residence for tuition and fee purposes.

## 62-603 Citizens and Permanent Residents

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B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person's support and claims or, only in the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, qualifies to claim the dependent person as a dependent for federal income tax purposes. Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.

# IRS Tests for Dependency – How one would “qualify to claim”

[https://www.irs.gov/publications/p501/ar02.html#en\\_US\\_2015\\_publink1000220886](https://www.irs.gov/publications/p501/ar02.html#en_US_2015_publink1000220886)

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## Qualifying Child

- Relationship - Your child, stepchild, foster child, grandchild, siblings, half-siblings, step-siblings, niece or nephew
- Age – under 19 or student up to 24 and younger than filer
- Residency – lived with you more than half the year
- Support – You must provide more than half person's support
- Joint Return – child can't file joint return for year

## Qualifying Relative

- Not a Qualifying Child of another taxpayer
- Member of Household or Relationship – Lives with you or related to you in a legal manner
- Gross Income – makes less than \$4050 for year (2017)
- Support – You must provide more than half person's support

*\*No age restriction on Qualifying relative*

# Scenario

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“Dear Mr. Hampton,

My wife and I bought a home in Aikenville, SC earlier this month. My wife is planning to stay in Texas this year while my son graduates from High School. I was planning on moving down and working out of the new home while managing upgrades to the home. My work allows me to reside in either state. If I received a SC Driver's license and permanently switched my work location to SC thus paying state income tax, would that be considered as having residency in SC for college tuition purposes?

Appreciate your feedback.”



# Response

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Thank you for your email to CHE regarding legal residency. I encourage you to work with the residency office/officer at the school your student plans to attend. That office is responsible for reviewing all documentation and determining residency classification for your student, using regulations, guidance and statutes established by CHE and the SC General Assembly.

From a CHE staff point of view, based solely on your email, I believe that it would be important to make sure that the intent to be a SC resident is established by **both** parents, unless your wife is listed as your dependent on your income tax form. This would mean that you and your wife would need to make sure that all relevant documentation reflects intent to be SC residents. This would include both drivers licenses. In addition, all vehicle registrations would need to reflect SC residency within all relevant deadlines and timelines.

I hope this helps. If you need the contact information to a residency officer at a SC institution, please let me know.

## 62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

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

- (1) Statement of full-time employment;
- (2) Designating South Carolina as state of legal residence on **military record**;
- (3) Possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card. Failure to obtain this within **90 days\*** of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until a South Carolina driver's license is obtained;
- (4) Possession of a valid South Carolina vehicle registration card **for every vehicle the independent person is in sole or partial ownership**. Failure to obtain this within **45 days\*** of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until the applicant obtains a valid South Carolina vehicle registration card;

\* Please note that the Drivers License and Vehicle time limits are State requirements, established in SC Code of Laws

## 62-605. Establishing the Requisite Intent to Become a S.C. Domiciliary

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- (5) Maintenance of **an established and current** domicile in South Carolina;
- (6) Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
- (7) Ownership of principal residence in South Carolina;
- (8) Licensing for professional practice (if applicable) in South Carolina.

**D. The individual seeking residency must ensure that no item from the list above or any other item, reflects residency or intent to be a resident in another state or country. Having any one item from the list above or any other item(s) reflecting residency in another state or country will delay the beginning date of residency.** The absence of indicia in other states or countries is required before the student is eligible to pay in state rates.



# Scenario (Sent on 5/1/2018)

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“Scenario – I have a student with a SC license issued 10-13-16; lease 2-22-15, and he completed 2017 SC State and Federal taxes. His vehicle was registered in NC and was transferred and registered in SC with an issue date for 4-19-18. He is employed full-time in SC. Does he meet the requirement for in-state tuition with a vehicle being registered in another state at one point this year?

- He also informed us the vehicle was registered in another state because his brother used the vehicle while he was serving in the military. He is not receiving VA benefits and has not submitted any military order verifying this.”

# Response

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- Based on the information provided in your email, it seems like he became eligible for instate rates on 4-19-18, because of the full-time employment exemption.

# Scenario

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“Hi CHE,

We have an interesting situation, so I'd like your guidance and input. A non-traditional student applied last year who by all measures, except for tax filing, was a South Carolina resident. The reason for her non-South Carolina tax filing status was related to a domestic violence issue in Utah. She was in witness protection; therefore, she continues to file state taxes in Utah to prevent the perpetrators in her attempted murder (who apparently have relatives who work for the IRS) to deduce her location. It was quite an interesting situation to navigate! I feel as if she has a valid reason for not filing. what do you suggest we do with *her?!?!?*”

# Response

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## 62-602 Definitions

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D. "Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. **Housing provided on an academic session basis for students at institutions shall be presumed not to be a place of principal residence**, as residency in such housing is by its nature temporary.

## 62-603 Citizens and Permanent Residents

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C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who **claims** the dependent person as a dependent for tax purposes; **or**

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

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

# What does this mean

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

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

# Scenario

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“I have a student that has applied for in-state residency. Parents are living apart and intend to remain as such. Dad lives in Mississippi, mom has moved to South Carolina. The student lives in Mississippi with dad, and dad completed the FAFSA. Mom works part-time and will have been in South Carolina for 1 year before school starts. Mom filed in South Carolina and is claiming the student. Dad files taxes in Mississippi. Dad has been in contact with our financial aid office and has said the student lives with him and he is supporting her. They do not have any formal separation papers yet. Would student qualify for in-state tuition?”



# Response

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The student would be classified as out-of-state. There is no document of legal divorce or separation. Student would not be able to apply under section 62-603 (C) of the regulation, regarding divorced/separated parents. This means you may have to base your residency determination on one parent, as they file separately. There is significant documentation pointing to Mississippi as the state of residency. The fact that the student is being claimed on a South Carolina tax return is one indicator pointing to South Carolina. However, the entire weight of the evidence of the establishment of intent is key. A possibility could be to ask if legal separation document is forthcoming.

# Examples of Documentation for Verification

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

Note: Documents from a notary public do not count as examples for verification

## 62-606. Maintaining Residence

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

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

## 62-606. Maintaining Residence

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

# Scenario

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Hi! I have a scenario that I do not know how to resolve and would like your input. Please see the information below and let me know what you think. I had originally denied the student instate tuition but she says that the “effect of marriage” would grant her instate tuition and that she and her husband are very surprised because her husband serves the United States of America and this is punishment. Thank you for your help!

Husband is in the US Army. His leave and earnings statement lists SC and they filed an SC tax return.

Husband was ordered to Fort Benning, Georgia in 2015 where he is currently stationed and is ordered to Fort Drum, NY in July of 2018. Husband has a FL driver’s license, which was issued 10/22/2015.

Student lives in Red City, SC; Student has an Alabama driver’s license which was issued 2/29/2016

Student is a homemaker and a dependent of the husband.

# Response

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Here I am going to highlight in red are the only parts here that truly matter for residency purposes:

- Husband is in the US Army, Leave and earnings statement list SC and they filed an SC tax return.
- Student is a dependent of the husband.

If student is a legal permanent resident of the US, and is dependent on someone who is active duty military and lists SC as his state of residency on their LES, military member and his dependents are SC residents for tuition and fee purposes. Nothing else is needed. Even if other items point elsewhere. However, if he were to ever change his LES, she might have an issue.

## 62-609 Exceptions

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

# 62-609 Exceptions

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1. “Military Personnel and their Dependents”: Members of the United States Armed Forces **who are permanently assigned in South Carolina on active duty and their dependents** are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled or transfer to an eligible institution during the term or semester, excluding summer terms, immediately following their enrollment at the previous institution. In the event of a transfer, the receiving institution shall verify the decision made by the student’s previous institution in order to certify the student’s eligibility for in-state tuition rates. It is the responsibility of the transferring student to ensure that all documents required to verify both the previous and present residency decisions are provided to the institution.



## 62-609 Exceptions (No. 1 Continued)

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Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month “physical presence” requirement for them or their dependents to qualify to pay in state tuition and fees.

# What does this mean

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

## 62-609 Exceptions Continued

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

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

Note 2: These individuals would not qualify for State Scholarships or Grants until intent to be a SC resident was established.

## 62-609 Exceptions Cont'd

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(3) **“Residents with Full Time Employment and their Dependents:”** Persons **who reside, are domiciled, and are full time employed with an employer that is physically located 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”).

## 62-602.(F) Full time employment

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

# Examples of Documentation for Verification

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

Note: Two part-time jobs do NOT equal one full-time job

# Scenario

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“We have a student that was a SC resident until 2017 and previously attended our school in Fall of 2014. He moved to Nevada in January of 2017 to January of 2018 for a job. He moved back to SC and is now working from home for the same Nevada based company full-time, but living in SC. He has a SC DL, SC Vehicle Reg. and SC Voter registration. Is he eligible for the full-time employment exception if he is working from home for a company outside of SC? Would we need to get proof of domicile and the employment letter to verify?”

# Response

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The full time employment exception is only for companies based in South Carolina or with physical branches or offices in South Carolina. The new regulation was changed to clarify this.

A few questions for consideration: Is the company willing to write in the letter that the employee's home serves as the SC branch for the company? And, has the employee registered the home as a place of business?



# 62-609 Exceptions Continued

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(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.

## 62-609 Exceptions Cont'd (NEW)

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### **(5): Covered Individuals Receiving Specific Education Benefits:**

Covered individuals living in South Carolina, who are enrolled in a public institution of higher education and receiving educational assistance under Chapter 30 and Chapter 33, Title 38 of the United States Code, are entitled to pay in-state tuition and fees without regard to the length of time the covered individual has resided in this State. For purposes of this subsection, a covered individual is defined as:

## 62-609 Exceptions Cont'd (NEW)

- a) a veteran who served ninety days or longer on active duty in the Uniformed Service of the United States, their respective Reserve forces, or the National Guard and who enrolls within three years of discharge;
- b) a person who is entitled to and receiving assistance under Section 3319, Title 38 of the United States Code by virtue of the person's relationship to the veteran described in subitem (a) who enrolls within three years of the veteran's discharge;
- c) a person using transferred benefits under Section 3319, Title 38 of the United States Code while the transferor is on active duty in the Uniformed Service of the United States, their respective Reserve forces, or the National Guard; or
- d) a person who is entitled to and receiving assistance under Section 3311(b)(9), Title 38 of the United States Code.

## 62-609 Exceptions Cont'd (NEW)

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At the conclusion of the applicable three-year period described in this section, a covered individual shall remain eligible for in-state rates as long as he remains continuously enrolled in an in-state institution or transfers to another in-state institution during the term or semester, excluding summer terms, immediately following his enrollment at the previous in-state institution. In the event of a transfer, the in-state institution receiving the covered individual shall verify the covered individual's eligibility for in-state rates with the covered individual's prior in-state institution. It is the responsibility of the transferring covered individual to ensure all documents required to verify both the previous and present residency decisions are provided to the in-state institution.

## Scenario

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“One of our out-of-state veterans who was living on campus during the year benefiting from the veteran’s choice rate (in-state) is completing a study abroad experience during Maymester (a three to four week mini-term during the month of May). She is using VA benefit during this term, but she will not be “domiciled” in South Carolina. Is this considered an allowable temporary absence, in which she would retain eligibility for the veteran’s choice rate during her time abroad?”

# Response

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Per the Act, individuals must be living in South Carolina during the time they are using the benefits at the institution. If the student is not living in South Carolina, they may not be eligible under the Act to receive the in-state tuition and fees.

## 62-602. Definitions

H. “Independent Person” is defined as one in his/her majority (**eighteen years of age or older**) or an emancipated minor, whose predominant source of income is **his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order** and for the purposes of determining residency for tuition and fees, an independent person:

1. **must provide more than half of his or her support, which shall include the institutional cost of attendance as defined by Title IV**, during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested;
2. **cannot claim the domicile of another individual** as their own for the purposes of establishing intent to become a South Carolina resident;

## 62-602. Definitions

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3. must have established his/her own domicile and provide documentation of establishing his/her own domicile for twelve months to include documentation of renting a domicile if applicable, prior to receiving in-state tuition and fees; and
4. 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)



## Scenario

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Student is seeking residency as an independent, he receives federal loans and a few scholarships to meet the 51% threshold. Parents have paid his tuition for the past 12 months. He indicated that he has a savings account and an investment account his parents set up. He reported \$3,000 of income last year. Mom and dad put his name on the title to a house in the area two years ago. Student put that he pays nothing for living in the house. Student has a SC DL and drives a vehicle owned by his parents. Is this student a SC resident?

# Response

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The issue with the home is something that needs to be examined closely here. According to the regulations, a student cannot claim someone else's home as your own, which is what the student may be trying to do. If the student can show that they paid for their portion of the sale price (if the home is paid in full) or if they legitimately pay for the monthly mortgage that could be considered. In addition, the student would need to prove that they are earning the funds to maintain the home themselves.

If you are encountering these types of scenarios where parents are adding students to the mortgage or lease, how are you handling them? Do you seek property tax information in these cases?

## 62-602. Definitions

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

## 62-607 Effect of Change of Residency

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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 immediately prior to his/her enrollment** may enroll at the in state rate and may continue to be enrolled at such rate even if the parent, spouse or guardian upon whom he is dependent moves his domicile from this State. The student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

## 62-602. (H) - Definition of Immediately prior

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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 Effect of Change of Residency

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

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

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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 United States Citizenship and Immigration Services (USCIS) and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period.** Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.

## What does that mean?

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- Independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out-of-state rate.
- Refugees, asylees, and parolees may be entitled to in-state residency once they have received their Green card and met the SC Residency requirement.
- Time spent waiting for permanent resident status (time prior to getting your Green card) does not count towards the 12 month physical presence requirement.



## What does that mean?

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

# Approved Visa Classification Descriptions

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- A-1** Highest diplomatic officers and their families
- A-2** Staff under diplomatic officers and their families
- E-2** Investor assisting in operating an enterprise who also invests a large amount of capital (and their families)
- G-1** Principal representatives to international organizations (and their families)
- G-2** Other representatives of foreign governments or international organizations (and their families)
- G-3** Representatives of foreign governments (and their families)
- G-4** Officers and employees of international organizations (and their families)

## Approved Visa Classifications - Continued

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**H-1B** Temporary Professional Workers

**H-2A** Temporary Agricultural Workers

**H-2B** Temporary workers whose skills are needed in the U.S.

**H-3** Trainees or participants in a special education exchange program

**H-4** Dependents of H-1, H-2, H-3 employees

**K-1** Fiancée or Fiancé of U.S. Citizens\*

**K-2** Child of Fiancée or Fiancé of U.S. Citizens\*

\* There is a 90 day marriage or green card stipulation that the student must fulfill for the K Visas

## Approved Visa Classifications - Continued

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

<https://travel.state.gov/content/visas/en/immigrate.html> - Link to the U.S Department of State, Bureau of Consular Affairs's VISA page.

# Scenario

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“I have a question. We have a student who is questioning SC scholarship and SCTG eligibility. She and her family have lived in SC for 6 years. She will be graduating from a SC high school this spring. They own a home in SC, have SC driver’s license, vehicles registered in SC and file SC tax returns (all according to parent, have not requested any documentation be submitted at this time). The catch is they are Canadian residents with Work Visa’s. Does a work Visa make them eligible non-citizens for scholarship and grant purposes?”

# Response

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Currently, all the State Scholarships and Grants (you will want to check with SCTG to be sure about their award requirements) require a student to have at least legal permanent resident status in the US before they can be considered eligible for State aid. A student here on a VISA is not a legal permanent resident of the US and therefore would not be able to participate in the scholarship programs.

## 62-611. Incorrect Classification

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- 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

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



# What does this mean?

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

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

# Topics for Additional Discussion

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## Other Important Topics

- SC Illegal Immigration Reform Act Review
- DACA
- Guidance for SC Residency Considerations

# SC Illegal Immigration Reform Act

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SECTION 17. Chapter 101, Title 59 of the 1976 Code is amended by adding:

## Section 59-101-430

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

# SC Illegal Immigration Reform Act

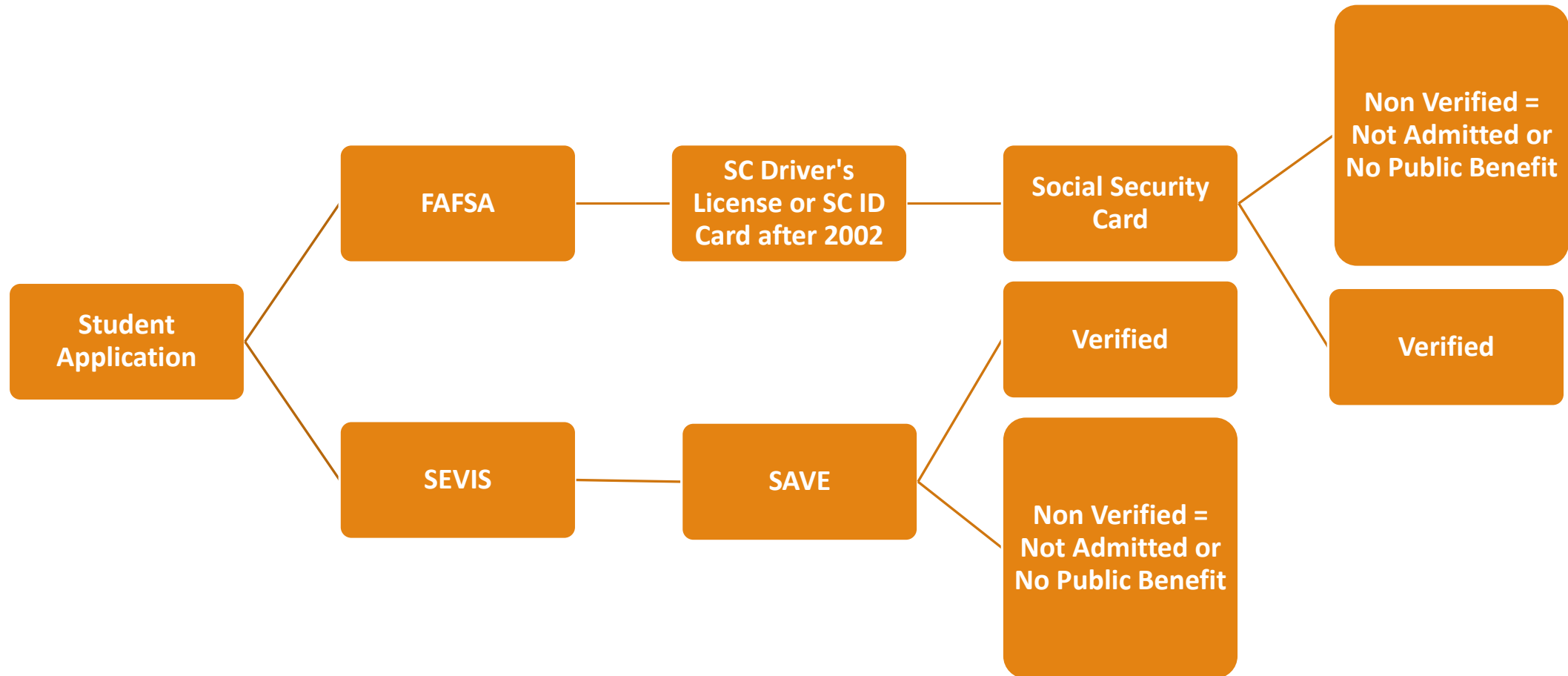
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(B) An alien unlawfully present in the United States is not eligible on the basis of residence for a public higher education benefit including, but not limited to, scholarships, financial aid, grants, or resident tuition.

\*This Fall (2018) CHE will be requesting documentation of your process for verification, and the person responsible for that process.

# SC Illegal Immigration Reform Act Recommended Process for Verification

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# Deferred Action for Childhood Arrivals (DACA)

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# Deferred Action for Childhood Arrivals (DACA)

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

# DACA (continued)

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## Key Points:

- Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.
- Deferred action does not provide an individual with lawful status.
- Verification with a Federal Process is still required, per Act 280, the SC Illegal Immigration Reform Act.
- DACA students could be admitted, once status is verified through Federal Process.
- DACA students would not be considered SC residents and would pay an out of state rate.
- DACA students would not be eligible for state sponsored Scholarships or Grants.



## CHE Guidance Re: US Citizen Children with undocumented parents

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In determining the legal residency status of a student, South Carolina law differentiates between students who are independent and those who are still dependent on a parent or guardian. If the student is dependent, state law provides that the student is *presumed* to have the same residency status as the parent or guardian on whom he/she is dependent. S.C. Reg. § 62-603(B) specifically provides that "the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian."

## CHE Guidance Re: US Citizen Children with undocumented parents

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Therefore, in the typical case, where a student is dependent on a parent or guardian, that student's residency is *presumed* to be that of the parent or guardian. Where the student is dependent on a parent or guardian who has an undocumented immigration status, the preliminary residency decision will typically be that the student qualifies as a "non-resident alien." According to Commission regulations, a "non-resident alien" is defined as "a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status 'non-resident aliens' generally do not have the capacity to establish domicile in South Carolina." S.C. Reg. § 62-602(K).

## CHE Guidance Re: US Citizen Children with undocumented parents

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However, *where that student is also a United States citizen*, the Commission recommends that the analysis should not stop there. In that circumstance, the Commission recommends that the student should be informed that state law only presumes that he/she is a "non-resident alien" like the parent or guardian on whom he/she is dependent. That presumption is *rebuttable*, and the burden remains on the student to rebut that presumption, if possible, by presenting evidence to establish that that student is entitled to in-state residency status notwithstanding the undocumented status of his/her parent or guardian.

## CHE Guidance Re: US Citizen Children with undocumented parents

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The Commission recommends that the following information may be obtained from the student to form the basis for the determination by the college or university that the U.S. citizen student may be granted in-state residency status:

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

## CHE Guidance Re: US Citizen Children with undocumented parents

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4. Possession of a valid SC vehicle registration if the student owns a motor vehicle.
5. Proof that the student filed South Carolina tax returns as a resident for prior tax years.
6. Proof that the parent or guardian on whom the student is dependent filed South Carolina tax returns as a resident for prior tax years.
7. Other proof that the parent or guardian on whom the student is dependent is living in South Carolina, including evidence of employment in South Carolina, a lease showing a rental home or apartment in South Carolina, utility bills, and the like.

## CHE Guidance Re: US Citizen Children with undocumented parents

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This list is not intended to be exhaustive, and no single piece of evidence is necessarily conclusive. However, the Commission recommends that the institutional residency official weigh the evidence to make a determination whether the U.S. citizen student is domiciled in South Carolina. Students with an undocumented parent or guardian should not gain any advantage over other students whose parent or guardian on whom they are dependent qualify as a "non-resident," such as a resident of another state or country. However, a U.S. citizen student who can establish domicile in South Carolina should not be denied in-state residency status on the basis of his/her parent's undocumented status.

## CHE Guidance Re: US Citizen Children with undocumented parents

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The Commission further recommends that a U.S. citizen student who is denied in-state residency status by the institutional residency official should be advised of his/her right to appeal that decision to the institution's residency appeal committee.

## CHE Guidance Re: US Citizen Children with undocumented parents

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



# QUESTIONS?

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# Items on the CHE Website Pertaining to SC Residency

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

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Residency Law

Residency Regulation (In effect as of March 23, 2018)

Approved Visa Classifications

Frequently Asked Questions

June 15<sup>th</sup> Presentation on Act 11 of 2015

CHE Guidance pertaining to US Citizen Children with Undocumented Parents

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