

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95811-6549
(916) 445-8752
<http://www.cccco.edu>

**MEMORANDUM**

August 11, 2009

**Via E-mail Only
FS 09-06**

To: Chief Business Officers

From: Frederick E. Harris, Assistant Vice Chancellor
College Finance and Facilities Planning

Subject: Application for Exemption from the 50 percent law

Fifty Percent Law: Education Code (EC) Section 84362 requires all community college districts to spend at least half of their “current expense of education” for “salaries of classroom instructors.” That law and the implementing regulations in the California Code of Regulations (CCR) Title 5, beginning at section 59200, provide for exemptions under certain circumstances. All districts reporting deficiencies on the 50 Percent Law report in the Annual Financial and Budget Report CCFS-311 will be included in the Board of Governors agenda for the 50 Percent Law in their March 2010 meeting, whether or not an application for exemption is filed. Therefore, if your district spent less than fifty percent of the “current expense of education” for “salaries of classroom instructors” in 2008-09, in order to be given consideration for an exemption, your district governing board must file an application for exemption from EC 84362 into our office no later than September 15, 2009.

A copy of the ***Application for Exemption from the 50% Law (CCFS-350A)*** is attached. The application form provides space for the calculation of the deficit and for certification by the district. The instructions are on the second page of the form.

The second form ***Findings of the Local Governing Board Regarding Provisions of Education Code Section 84362 (50% Law) (CCFS-350B)*** with updated instructions is also attached. Before completing this form, districts must schedule a public hearing of the local governing board. The notice for this 50 Percent Law-related public hearing must be issued 30 days before the hearing. At this hearing, the district identifies the basis for requesting an exemption and records this result on the form. By December 1, 2009, the district must submit this form to the Chancellor's Office or, upon request by the district for an extension, by December 15, 2009. *Districts may choose as many categories as appropriate to support an exemption application.*

Modification of 50 Percent Law Calculation. Beginning with the 2008-09 CCFS-311 and 50 Percent Law reports, the 5900 and 6740 Activity Codes will not be included in the calculation of the 50 Percent Law.

In the development of the recent GASB 45 Accounting Advisory, staff from the Chancellor's Office and the ACBO Fiscal Standards and Accountability Committee focused on the accounting treatment for governmental funds, entity-wide statements, reporting requirements for the CCFS-311, and possible changes to the BAM. During that review it became clear that any past service amortization cost for retirees should not be included in the salaries for classroom instructors and the current expense of education (50 Percent Law) calculation, since the retirees no longer work for the district and are therefore not part of the current expense of education. Therefore, all expenditures for retiree benefits or the amortization of retiree past service expense should be excluded from the BOTH the salaries of classroom instructors AND the current expense of education calculation effective with the next CCFS-311 report due October 10, 2010.

Action/Date Requested: The ***Application for Exemption (CCFS-350A)*** form is due into our Office no later than September 15, 2009. As specified in CCR Title 5 Section 59207, the applying district must also provide a copy of the application to the exclusive representative of the district's faculty employees and to the district or college academic senate "...immediately, but not less than thirty days preceding the public hearing..." The results of this hearing are reported on the ***Findings of the Local Governing Board Regarding Education Code 84362 (CCFS-350B)***. This public hearing must be held by December 1, 2009 or by December 15, 2009, if the district requests an extension.

The academic employee organization(s) of the district have until December 29, 2009 to file with the Chancellor's Office a written objection opposing the district's exemption application (CCFS-350B). If also requested by the academic employee organization(s) of the district, the Chancellor's Office may hold a hearing regarding their objections to the application.

Contact: If you have questions about this memo, please contact Christine Atalig at (916) 327-5772 or catalig@cccco.edu.

Enclosures

California Community Colleges

APPLICATION FOR EXEMPTION FROM THE 50 PERCENT LAW

CCFS-350A

The _____ Community College District hereby applies for exemption from the requirement of *Education Code* Section 84362 for the 2008-09 fiscal year.

CALCULATION OF DEFICIENCY

2008-09 current expense of education (form CCFS-311, Analysis of Compliance with the 50 Percent Law, line 470, Col. 2) \$ _____

Amount that district is required to expend for *salaries of classroom instructors** per *Education Code* Section 84362 (Item 1 times 50%). \$ _____

Amount actually expended for *salaries of classroom instructors** in 2008-09 fiscal year (form CCFS-311, Analysis of Compliance with the 50 Percent Law, line 470, Col. 1) \$ _____

Amount designated as the deficiency and for which exemption is requested. (Item 2 minus Item 3) \$ _____

CERTIFICATION BY THE COMMUNITY COLLEGE DISTRICT: I hereby certify that the information contained in this application is true and correct. A copy of this application has been provided to the exclusive representative of the district's academic employees and the district or college academic senate.

Governing board of the _____ Community College District

By: _____ Title: _____

_____ Date: _____

**Salaries of classroom instructors* is defined in *Education Code* Section 84362.

California Community Colleges

APPLICATION FOR EXEMPTION FROM THE 50 PERCENT LAW

CCFS-350A

INSTRUCTIONS

This application must be filed no later than September 15, 2009.

The district applying for exemption shall immediately, but not less than thirty (30) days preceding the public hearing to determine the basis on which it will apply for exemption, provide the exclusive representative of the district's academic employees and the district or college academic senate with a copy of the application.

The governing board of the district shall hold a public hearing to determine the basis for the district's application for exemption. Notice of the meeting must be given at least thirty (30) days prior to the meeting. The governing board shall give interested parties a reasonable opportunity to be heard. The governing board shall then determine whether expenditure of the required amount would have resulted in serious hardship to the district or in the payment of salaries of classroom instructors in excess of the salaries of classroom instructors paid by other districts of comparable type and functioning under comparable conditions.

The district shall then, not later than December 1, 2009, or if the Chancellor's Office has granted an extension in writing, not later than December 15, 2009, transmit form CCFS-350B—Findings of the Local Governing Board Regarding Provisions of Education Code Section 84362 (50 Percent Law)—to the Chancellor's Office. The final figures used by the Chancellor's Office as the basis for determining the degree of compliance with *Education Code* Section 84362 shall be those submitted by the district as of December 1, 2009, or if granted an extension, December 15, 2009. Failure to comply with the provisions of this section shall void the district's application for exemption.

The academic employee organization(s) of the district have until December 29, 2009 to file a written objection to the Chancellor's Office opposing the district's exemption application (CCFS-350B). If also requested by the academic employee organization(s) of the district, the Chancellor's Office may hold a hearing regarding the objections to the application.

California Community Colleges

FINDINGS OF THE LOCAL GOVERNING BOARD REGARDING PROVISIONS OF EDUCATION CODE SECTION 84362 (50% LAW) CCFS 350B

The _____ Community College District hereby applies for exemption from the requirement of *Education Code* Section (EC) 84362 for the _____ fiscal year. The following is submitted pursuant to the *California Code of Regulations* (CCR), Title 5 Sections 59204 and 59208 as part of the application process.

A Designation of Apparent Deficiency

1. Current expense of education (form CCFS-311, Analysis of Compliance with the 50% Law, Line 470, Col. 2) \$ _____
2. Amount required to be expended for *salaries of classroom instructors* (Item A.1 times 50%) \$ _____
3. Amount actually expended for *salaries of classroom instructors* (form CCFS-311, Analysis of Compliance with the 50% Law, Line 470, Col. 1) \$ _____
4. Amount designated as the apparent current deficiency and for which this exemption application is filed (Item A.2 minus Item A.3) \$ _____

B Basis for Exemption Request: (Check the box(es) that apply and attach supporting documentation.)

- 'Serious Hardship' is defined in Title 5, section 59204(c). See Instructions for further detail.**
 - Increasing expenditures for salaries of classroom instructors would result in the district being unable to discharge financial liabilities.
 - Unanticipated, unbudgeted, and necessary expenditures resulted in the inability to expend 50 percent for salaries of classroom instructors.

- District pays salaries of classroom instructors higher than cohort as defined in Title 59204 (d) and (e). See instructions for further detail.**

Certification by the Community College District: *I hereby certify that the information reported above is true and correct. The basis for the district's application for exemption has been subject to public hearing in accordance with CCR, Title 5 59208(a). I further certify that all interested parties were provided a reasonable opportunity to be heard in the public hearing. A list of the issues raised at that hearing is attached.*

Governing board of the _____ Community College District

By: _____ Title: _____

District Chief Executive Officer or Officer of the Local Governing Board

Date: _____

CCFS-350B INSTRUCTIONS

In determining inability to discharge financial liabilities, consideration will be given to factors set forth below:

1. If the exemption request is based on serious hardship, the district must document and support its request for exemption by providing answers to the following questions.
 - **What is the net ending balance of unrestricted general funds reported on CCFS 311 for fiscal year for which an exemption is requested?**

 - **Are there noncash assets included in this ending balance? If so, what is the amount of noncash assets in the unrestricted general fund ending balance?**

 - **If the district has a reserve fund in addition to the net ending balance, what is the amount of this reserve?** _____
 - **How many FTES did the district report for the year for which an exemption is requested?** _____
 - **What would have been the consequence to the district of expending the amount of the deficiency on salaries of classroom instructors? (*Provide details of the number and classifications of staff and/or the type of operating expenses that would have been redirected to salaries of classroom instructors. Provide a listing of the tasks and functions the district would have been unable to perform as a result of redirecting funds to salaries of classroom instructors.*) Attach additional sheets to this form, as necessary.**
2. To the extent that unanticipated, unbudgeted, and necessary expenditures resulted in the district's inability to comply with the requirements of EC 84362, the district may request an exemption. For example, such expenditures may include expenditures resulting from arbitration or litigation; replacement or repair of utility services; an abnormal increase in the cost of energy, insurance, or security; or a cost increase mandated by State or federal law. The list of expenditures must accompany this exemption request.
3. A district cannot be required to pay salaries of classroom instructors above those paid by its cohort, as defined in law. This cohort is determined by the Chancellor's Office using Title 5 59204(e): 1) cohort includes only districts meeting the 50% law; 2) districts with Current Expense of Education per FTES within \$250 of district seeking exemption; 3) number of FTES within 30% of district seeking exemption; 4) if necessary, to identify 5 districts, increase CEE per FTES by \$50 increments and number of FTES by 5%. The average of the salaries of classroom instructors per FTES (SCI/FTES) of the 5 districts in the cohort is compared with the SCI/FTES of the district seeking exemption. Any difference between the two is then multiplied by the FTES for the district seeking the exemption. The possible outcomes for this comparison are:

- **District A** has a \$150,000 deficiency and pays SCI/FTES \$50,000 above cohort average. The district cannot be required to pay the \$150,000 deficiency in faculty salaries because that would result in the district paying salaries higher than the cohort salaries: \$50,000 above the average SCI/FTES of cohort plus an additional \$100,000. Therefore, this district is eligible for a \$150,000 exemption under the comparable salary justification, if the district applies for it.
 - **District B** has a \$20,000 deficiency and pays SCI/FTES \$50,000 above cohort average. District B is paying \$30,000 more in comparable salaries than its deficiency and would be eligible for a full exemption under the comparable salary justification, if the district applies for it.
 - **District C** has a \$100,000 deficiency and pays SCI/FTES \$25,000 below cohort average. The district would be eligible for an exemption for the deficiency amount remaining after it expended the cohort average amount: \$25,000 would be unexempted and \$75,000 would be exempted, if the district applies for it.
 - **District D** has a \$25,000 deficiency and pays SCI/FTES \$50,000 below cohort average. This district would not be eligible for an exemption under this category even if it applies for it. However, this district could apply for an exemption under one or more of the ‘serious hardship’ categories.
4. Districts with a deficiency that is not entirely exempted by the Board of Governors are subject to CCR Title 5 Section 59213. This section specifies that districts submit a plan, by June 30 of the current fiscal year, projecting how the amount of the unexempted deficiency will be timely expended for salaries of classroom instructors. This plan may include an agreement with faculty specified in paragraph (f) which allows expenditures to be counted in the numerator that are not normally counted in the numerator. The amount of the unexempted deficiency will be held in the district’s County Treasury until this plan is received or the district retires the entire deficiency.
 5. Per CCR Title 5 Section 59214, if the district fails to comply with EC 84362 within two years following the year for which exemption is being sought, an amount equal to the nonexempt amount or the amount by which the district failed to comply (whichever is less) shall be deducted from apportionments made to the district on a one-time basis during the third year following the year of the deficiency.

By December 1, please send this form and supporting documentation to:

California Community Colleges Chancellor’s Office
Fiscal Services Unit
1102 Q Street, 4th Floor
Sacramento, CA 95811
FAX 916.323.3057