

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE

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Note: This memorandum has been updated and reissued due to the approval of SB 85 (2017) and updated EC section 68075.7, which became effective for academic terms beginning after 7/1/17 (supersedes the guidance from the 8/4/15 version of this memorandum)

August 4, 2017

TO: Superintendents and Presidents
Chief Student Services Officers
Chief Business Officers
Admissions and Records Officers

FROM: Mario Rodriguez, Vice Chancellor
College Finance and Facilities Planning

A handwritten signature in blue ink, appearing to be "MR", is written next to the name Mario Rodriguez.

Pam Walker, Vice Chancellor
Educational Services

A handwritten signature in blue ink, appearing to be "Pam", is written next to the name Pam Walker.

SUBJECT: Update to Federal Dept. of Veterans Affairs Approval of GI Bill and Post 9/11 Educational Assistance Conditional on In-State Tuition Rate for Qualifying Veterans and other Qualifying Individuals (VACA H.R. 3230);

Veterans Access, Choice, and Accountability Act (VACA H.R. 3230)

In August 2014, President Obama signed the Veterans Access, Choice, and Accountability Act of 2014 ("VACA Act"), into law (Public Law No.: 113-146). Section 702 of the VACA Act (38 U.S.C. 3679(c)) requires the U.S. Department of Veterans Affairs (VA) to disapprove programs of education under the Montgomery GI Bill-Active Duty (MGIB-AD) and Post-9/11 GI Bill education benefit programs (Chapters 30 or 33, respectively, of Title 38, U.S. Code) at public institutions of higher learning if the school charges qualifying veterans and other qualifying individuals ("covered individuals") tuition and fees in excess of the in-state rate for resident students for terms beginning after July 1, 2015 (note: the U.S. Secretary of Veterans Affairs waived resident-rate requirements of this Act through December, 2015; however California Community Colleges proceeded to implement "in-state" rates for "covered individuals" effective for academic terms beginning after July 1, 2015 as required by then newly enacted Education Code (EC) section 68075.7).

However, in December 2016, the “VACA Act” has been amended by Public Law 114-315. The amendment makes two significant changes, and is effective for courses, semesters, or terms beginning after July 1, 2017. In summary, individuals using the Marine Gunnery Sergeant John David Fry Scholarship are no longer required to enroll within three years of the service member’s death, and there is no longer a requirement that the deceased service member’s death in the line of duty followed a period of active duty service of 90 days or more. Additionally, a new category of “covered individuals” was added to section 3679; the new category of consists of individuals using transferred Post-9/11 G.I. Bill benefits while the transferor is on active duty in the uniformed services. Thus under the updated provisions effective after July 1, 2017, a “covered individual” for purposes of compliance with the VACA Act and EC section 68075.7 is defined as follows and are subject to the continuity provisions provided under item 5:

1. A veteran eligible for educational assistance under either the Montgomery GI Bill-Active Duty (MGIB-AD) or Post-9/11 GI Bill education benefit programs who resides (lives) in California (regardless of his/her formal state of residence) and enrolls in the community college within three years of discharge from a period of active duty service of 90 days or more.
2. An individual eligible for transferred education benefits under either the Montgomery GI Bill-Active Duty (MGIB-AD) or Post-9/11 GI Bill education benefit programs who resides (lives) in California (regardless of his/her formal state of residence) and enrolls in the community college within 3 years of the transferor’s discharge from a period of active duty service of 90 days or more.
3. [New category] An individual eligible for transferred Post-9/11 G.I. Bill benefits while the transferor is on active duty who resides (lives) in California (regardless of his/her formal state of residence) as described in 38 USC 3679(c)(2)(B)(ii)(II). The 3-year enrollment period limitation does not apply to eligible dependents of active duty service members. This is a new “covered individual” category which was added by the December 2016 VACA Act change.
4. An individual eligible for benefits under the Marine Gunnery Sergeant John David Fry Scholarship (provides Post-9/11 GI Bill benefits to the children and surviving spouses of service members who died in the line of duty while on active duty) who resides (lives) in California (regardless of his/her formal state of residence). Prior to the December 2016 VACA Act change, individuals using the Marine Gunnery Sergeant John David Fry Scholarship were required to enroll within 3 years of the service members death, and there was a requirement that the deceased service member’s death in the line of duty followed a period of active duty service of 90 days or more. These two requirements were deleted effective July 1, 2017.
5. If applicable, after expiration of the three year period following discharge as described in 38 U.S.C. 3679(c)(2)(B)(i) or (c)(2)(B)(ii)(II), A student who qualifies under the applicable requirements above shall maintain “covered individual” status as long the student remains continuously enrolled at the community college, even if the student enrolls in multiple programs, and the student shall continue to be exempt from paying nonresident tuition and other fees that are exclusively applicable to nonresident students. “Continuously enrolled” means enrolled for at least the fall and spring semesters of an academic year, or for at least three of the quarters in an academic year for an institution using the quarter system (pursuant to California Code of Regulations, Title 5 section 55701, the academic year does not include summer or other intersessions).

VACA Act and EC Section 68075.7 Compliance, SB 81 (2015) and SB 85 (2017)

Please note that the VA cannot require a public university or college to charge covered individuals the in-state resident rate for tuition and fees; however, it can and will disapprove funding from the above noted education benefit programs for all beneficiaries if in-state tuition and fee rates are not offered to every “covered individual.” To prevent VA disapproval from occurring, and to align state statutes with federal law, Senate Bill 81 (2015) was approved by Governor Brown on June 24, 2015 and, among other things, added EC section 68075.7. This section became effective upon his signature, but aligns with the VACA Act which states that the provisions are effective for terms beginning after July 1, 2015. As a follow-up to this prior state legislation, Senate Bill 85 (2017) was approved by Governor Brown on June 27, 2017 and modified EC section 68075.7 to reflect amendments made to the VACA Act by Public Law 114-315, effective July 1, 2017. In other words, effective July 1, 2017, the version of EC section 68075.7 as approved by SB 85 (2017) supersedes and replaces the version of the same section previously approved by SB 81 (2015). Please note that the updated provisions should not result in significant changes at the district level from current VACA Act nonresident tuition exemption practices (i.e., the only change is that the definition of “covered individual” has been expanded as described above).

Specifically, EC section 68075.7 requires the California Community Colleges and the California State University to exempt eligible “covered individuals” from paying nonresident tuition or any other fee that is exclusively applicable to nonresident students and also allows community college districts to report the attendance generated by these exempted students for purposes of state apportionment funding.

In 2014, AB 13 (Conway, 2014) was also enacted to address aligning state policies with the VACA Act by updating EC section 68075.5, but lacked clarity in terms of residence classification and apportionment eligibility status for affected students. The language of subsequently approved EC section 68075.7 resolves these previous implementation issues.

Please note that AB 13 (Conway, 2014) amendments to EC section 68075.5 remain in effect. However, since the provisions of EC section 68075.7 fully align California law with the VACA Act, it is clear that the still-existing provision of EC section 68075.5(c) that requires community college districts to update and adopt local policies to conform and comply with the VACA Act is no longer applicable. Instead, community college districts are now required to simply carryout the provisions of EC section 68075.7 as it relates to VACA Act compliance.

Therefore, towards ensuring compliance with the VACA Act, community college districts are required by EC section 68075.7 to grant a full exemption from the nonresident fee for all nonresident students verified to be “covered individuals” per the above criteria and that are eligible to use Montgomery GI Bill-Active Duty or Post-9/11 GI Bill education benefits (Chapters 30 and 33, respectively, of Title 38, U.S. Code) while residing (living) in California. Students granted such an exemption should not be charged any other fee that is otherwise also exclusively chargeable of nonresident students, such as the “capital outlay fee” under EC section 76140 or the “processing fee” under EC section 76142.

Eligibility Determination

The determination of whether a student qualifies for “covered individual” status is made at the beginning of a term as is currently done for other nonresident tuition fee exemptions (i.e., the student must qualify for “covered individual” status as of the “residence determination date” applicable to the term in question as provided by California Code of Regulations, Title 5 section 54002). If a student veteran is not VACA eligible at the start of a term and becomes VACA eligible during that term, the student does not qualify as a “covered individual” for that term. However, the student is eligible for “covered individual” status under the VACA Act for the subsequent term.

As it relates to verifying student eligibility for “covered individual” status and qualification for Montgomery GI Bill-Active Duty or Post-9/11 GI Bill education benefits (Chapters 30 and 33, respectively, of Title 38, U.S. Code), districts will need to rely on actual evidence and not a self-certification that the student meets the above criteria. In this regard, it is our understanding that students eligible for VA education benefits are provided a “Certificate of Eligibility” (COE) by the VA that will confirm the approved education benefits for the “covered individual.” The COE validates the “covered individual’s” eligibility to participate in Chapters 30 or 33 and, for dependents of active duty members, reflects that the service member (benefit transferee) is still on active duty. A “Post-9/11 GI Bill Statement of Benefits” that contains the VA seal is also an official document that can be accepted in lieu of the COE. In the case of veterans or dependents of veterans, the DD Form 214, Certificate of Release or Discharge from Active Duty, generally referred to as a “DD 214”, may also be of assistance in confirming “covered individual” status as it will show the effective date of the veteran’s discharge or death as described in 38 U.S.C. 3679(c). Districts may want to revise its local residency questionnaire to help identify potentially eligible students.

Residence classification, Attendance Reporting and Apportionment and State Financial Aid Eligibility

Exempted “covered individuals” should be classified as nonresident students unless and until they meet applicable physical presence and intent requirements for resident status re-classification. However, because of the express provision of EC section 68075.7.(c), districts may claim apportionment for credit courses taken by the nonresident “covered individuals” who are exempted from the payment of nonresident tuition in accordance with the provisions of EC section 68075.7. (Note: FTES generated by these exempted students would be reported as “Resident FTES” on the Apportionment Attendance Report—CCFS-320). To be clear, districts are only permitted to claim state apportionment for properly exempted nonresident students in accordance EC section 68075.7 and that meet the requirements to be considered a “covered individual” as outlined above. Finally, the exemption from paying nonresident tuition in this EC section does not extend to eligibility or entitlement to state financial Aid. Exempted “covered individuals” classified as nonresidents are not eligible for state aid including but not limited to the BOG enrollment fee waiver.

Action Requested

Districts are urged to continue to carry out the provisions of EC section 68075.7, including in consideration of the updates noted above, which again are effective for enrollment in terms starting after July 1, 2017 (there is no need for district Governing Boards to take action to put these provisions into effect). The repercussions for not doing so will not only mean noncompliance with state law, but also that college courses and programs will no longer be approved for the above noted federal

educational benefit programs as the VA continues to administer the provisions of the VACA Act. Obviously, the effect of this on veteran students and their families would be grave. To assist districts in this effort, below are links to the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016” (H.R. 6416), the VACA Act (H.R. 3230), SB 81 (2015), and SB 85 (2017). It is imperative that the district fully review all of the provisions of the VACA Act and all related implementation guidance provided by the VA. The Chancellor's Office will provide districts with updated information as it becomes available and if it results in any changes from the guidance provided in this memorandum.

- [Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, H.R. 6416 \(refer to sections 401, 409, and 417\)](#)
- [VACA Act, H.R. 3230 \(click on the “Text” tab and go to section 702\)](#)
- [Senate Bill 81 \(2015\) \(scroll to section 68075.7\)](#)
- [Senate Bill 85 \(2017\) \(scroll to section 68075.7\)](#)

Contact: For questions concerning attendance accounting and reporting for apportionment purposes, please contact Natalie Wagner at nwagner@ccccco.edu or (916) 327-1554. For questions concerning federal education benefits for veterans or questions specific to VACA Act compliance, please contact Kimberly Cortijo at kcortijo@ccccco.edu or (916) 327-5192. For admissions questions, please contact Michael Quiaoit at mquiaoit@ccccco.edu or (916) 327-6222. For questions regarding financial aid matters, please contact Tim Bonnel at tbonnel@ccccco.edu or (916) 445-0104.