

COLORADO COMMUNITY COLLEGE SYSTEM PRESIDENT'S PROCEDURES

VERIFICATION OF LAWFUL PRESENCE

SP 4-15

EFFECTIVE: August 1, 2007
REVISED: June 24, 2009
REVISED: June 9, 2010

REFERENCES: C.R.S. 24-76.5-101, *et seq.*, C.R.S. 23-7-110

ISSUED BY:

S/Nancy McCallin, System President

Application

The procedure applies to the state system of community colleges.

Basis

The Colorado Community Colleges System (CCCS) Verification of Lawful Presence sets practice in compliance with Colorado Revised Statute.

Procedure

Although similar, the HB 06S-1023 verification of lawful presence is a separate process from the review for in-state tuition classification as well as for College Opportunity Fund eligibility as set forth in their own policies and guidelines approved by the Colorado Commission on Higher Education. Since a student must prove lawful presence to receive a state benefit, a student must meet both criteria; lawfully present in the United States and a state resident in order to receive in-state tuition and the College Opportunity Fund stipend. However, a student's lawful presence status is not dependent upon his/her parents' lawful presence status in the United States.

Student populations to which HB 06S-1023 applies:

- Students receiving in-state tuition. Including, Colorado residents, students and their dependents who are active duty military, and Olympic athletes receiving tuition waivers.
- Students receiving the Colorado Opportunity Fund (COF) stipend.
- Students who are receiving state financial aid are considered verified through the FAFSA process.
- Students who receive an institutional/departmental scholarship that is funded with State dollars.
- Concurrent enrollment and ASCENT program students under 21 are exempt from verification of lawful presence.

- Any high school student who is in a PSEO or Fast Track program that uses state funds must supply documentation of lawful presence if he or she turns 18 on or before the following dates for each semester: fall - September 15th, spring - February 15th, summer - June 1st.
- Students who are enrolled at Colorado colleges and universities through reciprocal programs such as the Western Undergraduate Exchange (WUE) and reciprocity agreement with other states are subject to the requirements of HB 06S-1023 (e.g., New Mexico/Colorado Reciprocity Agreement).

Rules for Evidence of Lawful Presence (source: Dept. of Revenue 1 CCR 201-17)

1. Identification Documents

1.1 A first time Applicant or Applicant seeking to reapply for Public Benefits on or after August 1, 2006 may demonstrate lawful presence by both executing the affidavit required in C.R.S. 24-76.5-103(4)(b) and producing:

1.1.1 One of the forms of identification set forth in C.R.S. 24-76.5-103(4)(a) as amended:

- I. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.;
- II. A United States military or a military dependent's identification card;
- III. A United States Coast Guard Merchant Mariner card;
- IV. A Native American tribal document; or
- V. A document described in paragraphs 2.1.3 or 2.1.4 below.

1.1.2 For purposes of C.R.S. 24-76.5-103(4)(a)(I), a valid Colorado driver's license or identification card includes only a current driver's license, minor driver's license, probationary driver's license, commercial driver's license, restricted driver's license, instruction permit or identification card.

1.1.2.1 In the case of a resident of another state, the driver's license or a state-issued identification card from the state of residence, if that state requires that the applicant prove lawful presence prior to issuance of a document.

1.1.3 Benefit Agencies may also accept the listed forms of identification published by the Office of the Federal Register, National Archives and Records Administration, in the full Code of Federal Regulations (CFR) governing the specific services provided. In the absence of specific governing CFR regulations, Benefit Agencies shall accept the listed forms of identification published in Attorney General's Order Number 2129-97 *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, as issued by the Department of Justice, Federal Register, November 17, 1997, Vol.62, No. 221 and which are incorporated by reference. Attachments A and B provide lists of documents acceptable per this federal publication.

Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Director, Motor Vehicle Division, of the Department of Revenue, 1881 Pierce Street, Room 100, Lakewood, Colorado, telephone: 303-205-5935 during regular business hours. Copies of materials may also be examined at any state publication depository library. Certified copies shall be provided at cost, upon request.

2. Waiver Process

- 2.1 A first time Applicant or Applicant seeking to reapply for Public Benefits on or after August 1, 2006, may demonstrate lawful presence by executing both the affidavit required in C.R.S. 24-76.5-103(4)(b) and by executing a Request for Waiver. The Request form, seeking a determination of lawful presence by the Department, may be completed by the Applicant or the Applicant's representative. The Request for Waiver must be accompanied by all documents that Applicant is then able to produce to verify name and proof of lawful presence. The Request for Waiver may be filed in person, by mail, or on-line.
 - 2.1.1 Benefit Agencies shall refer those Applicants who do not have any identification documents listed in Sections 2.1, 2.1.3, or 2.1.4 to the Department to request a waiver.
 - 2.1.2 Upon receipt of a Request for Waiver, the Department will verify lawful presence of the Applicant.
 - 2.1.3 The Department shall make a decision approving or denying a waiver within one business day of receipt of the response from federal databases or other verifying entities. Information as to the waiver decision shall be made available to the benefit agency, if known.
 - 2.1.4 The following constitute reasons for denial of a waiver:
 - 2.1.4.1 The SAVE verification fails to clear the Applicant;
 - 2.1.4.2 The documents presented by the Applicant cause the Department to reasonably believe that the documents have been tampered with, altered or are not otherwise genuine; or
 - 2.1.4.3 The statements and/or documents provided by the Applicant are inconsistent and the Applicant is unable to reasonably explain the inconsistencies.
 - 2.1.5 The referring Benefit Agency is responsible for verifying that the Applicant is the same individual indicated as the person who is requesting the waiver.
 - 2.1.6 Waivers are assumed to be permanent, but may be rescinded and cancelled if, at any time, the Department becomes aware of the Applicant's violation of immigration laws. Upon making a decision to rescind and cancel a waiver, the Department will notify the Applicant and the appropriate County Department of Human Services.

- 2.1.6.1 Individuals whose waivers are rescinded and cancelled shall have the right to appeal such decision by the Department. Individuals may appeal by requesting a hearing within thirty days of the waiver being rescinded or cancelled by making a written request for hearing to the Hearings Section of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.
- 2.1.6.2 The Hearings Section shall hold the hearing in accordance the provisions of the State Administrative Procedure Act and the provisions of Title 42 of the Colorado Revised Statutes.
- 2.1.6.3 The only issue at hearing shall be whether the applicant has violated immigration laws.
- 2.1.6.4 The hearing officer shall issue a written decision within fifteen (15) business days of the completion of the hearing, and shall constitute final agency action, and is subject to judicial review as provided by C.R.S. 24-4-106.
- 2.1.7 Waivers issued by the Department since August 1, 2006, but prior to approval of this rule, will continue in effect unless otherwise rescinded or cancelled by the Department, as authorized in Section 3.1.6.