SUPPLEMENTAL MATERIALS

Committee on Academic and Workforce Success

AGENDA ITEM V-V (4)

Consideration of adopting the Commissioner's recommendation to the Committee relating to proposed amendments to Chapter 21, Subchapter B, Sections 21.21 – 21.30, Chart I, and Chart II of Board rules concerning the Determination of Resident Status

RECOMMENDATION: Approval

Background Information:

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 21, Subchapter B, Determination of Resident Status, Sections 21.21 – 21.30.

Specifically, Section 21.21 is amended to specify Chapter 54 of the Texas Education Code (TEC) as the chapter requiring the Board to adopt these rules.

Section 21.22 is amended to remove outdated language and terms that are not used in Subchapter B, Determination of Resident Status, and to clarify certain definitions. Section 21.22 is also amended to add a definition for deferred action.

Section 21.23 is amended to clarify that the rules adopted by the Board in October 2016 are effective beginning with residency decisions made after the census date of the 2017 fall semester.

Section 21.24 is amended to add a new subsection (b), Texas Residency, to list required documentation to support a physical presence in the state. This language was formerly in Chart II, which is proposed for repeal. The following subsections are renumbered accordingly. Renumbered Section 21.24(c) removes the term "residence." For those persons trying to establish domicile under Section 21.24(a)(2) and (3), domicile is the defining factor in establishing whether a person may pay in-state tuition and a residence in this state merely lends support to the establishment and maintenance of domicile in Texas. Renumbered Section 21.24(d)(3) is amended to clarify that certain nonresident classifications are eligible to maintain domicile. Renumbered new Section 21.24(d)(5) is amended to delete "special agricultural worker" as that category was repealed by Sec. 219(ee)(1) of the Immigration and Nationality Act of 1994 (Pub. L. 103-416, 108 Stat. 4319, Oct. 25, 1994). Current subsection (e) is being re-designated as subsection (f), which is amended to clarify how a person who qualifies as a resident under Section 21.24(a)(2) and (a)(3) may establish and maintain a Texas domicile for the requisite number of months. Current Section 21.24(e)(1) through (e)(4) are proposed for repeal. New Sections 21.24(f)(1) and (f)(2) contain language from Chart II to provide more detailed information about how to establish and maintain domicile.

Section 21.25(b) is amended to delete the Attached Graphic titled, "Chart II, Documentation to Support Establishing and Maintaining Domicile in Texas," and the chart's key elements are integrated into Sections 21.24(b) and (f) in order to better tie the bases for establishing and maintaining domicile to relevant documentation. (Chart I will no longer be referred to as such since Chart II has been deleted. Rather, it will be referred to as Figure: 19 TAC §21.25(a)(1)(B), Affidavit.)

Section 21.26 is amended to more clearly state the instances when a student is entitled to remain classified as a resident of this state and when a student must provide updated information to prove he or she is entitled to resident tuition.

Section 21.27 is amended to remove the reference to Chart II and because the language in repealed Chart II is now in Section 21.24 and Section 21.25, adds a reference to Section 21.24.

Section 21.28 is amended to more closely align with the language of TEC Section 54.056. In accordance with this statutory provision, regardless of the reason, if an institution of higher education erroneously classifies a person as a nonresident of this state, the institution must refund to the person the amount of tuition the person paid in excess of resident tuition.

Section 21.29 is amended to clarify that an institution's Residence Determination Official is responsible for residency determinations for the institution.

Section 21.30 is amended to clarify that an institution must retain documentation proving that the person is a resident of this state for those individuals described in Section 21.25(a)(1)(B).

Corrections to rule structure and terminology were made throughout Subchapter B, as appropriate.

Kathy Cordova, Assistant General Counsel, will be available to answer questions.

Date approved by the Commissioner for publication in the *Texas Register:* August 1, 2016

Date Published in the *Texas Register:* August 12, 2016

The 30-day comment period with the *Texas Register* ended on: September 12, 2016

Comments were received regarding these proposed rules. Coordinating Board staff responses to the comments will be provided as supplemental materials prior to the meeting.

Comment: Texas State University suggested the addition of language to Section 21.21 to bolster the weight of Residency Determination Officials' decisions as their "judgment has always been implied, but needs to be put in the code to answer challenges."

Staff Response: Staff does not agree that additional language to Section 21.21 is necessary as this issue has been addressed in proposed 19 Texas Administrative Code (TAC) Section 21.29, which clarifies the role of the Residency Determination Official. No change was made in the rules as a result of this comment.

Comment: Texas State University suggests the addition of the following language to the definition of "gainful employment" in proposed Section 21.22(11) to clarify what documentation may be considered earnings to support a claim of gainful employment: pensions, veterans' benefits, social security, and savings from previous earnings.

Staff Response: Staff agrees with the institution's comment and has amended the definition of "gainful employment" to include pensions, veterans' benefits, social security, and savings from previous earnings as examples of what may constitute earnings for the purpose of determining gainful employment.

Comment: Texas State University suggests the addition of language to the definition of "temporary absence" in proposed Section 21.22(29) to expand its applicability to anyone who has established residency in this state. Currently, it's limited to those who have established domicile and excludes those who have met the criteria for in-state residency through the 36-month approach.

Staff Response: Staff agrees with the institution's suggestion and has amended the definition of "temporary absence" to indicate the definition applies to those who have previously met the criteria for in-state residency.

Comment: Texas State University suggests a change to the example of what is considered a short duration from 30 days to one year since a person must generally live in Texas for a year to establish residency.

Staff Response: Staff agrees with the institution's suggestion and has amended the definition of "temporary absence" to change the example of what is considered a short duration from 30 days to one year.

Comment: Texas State University suggests staff clarify whether a person granted Deferred Action for Childhood Arrival (DACA) status is able to establish and maintain domicile as is indicated in proposed Section 21.24(d)(5) ("a person granted deferred action status by USCIS").

Staff Response: Staff agrees with the institution's comment. The definition of a person granted deferred action status by USCIS as described in Section 21.24(d)(5) could be clearer. Therefore, staff has added a definition of "deferred action status" to Section 21.22, Definitions.

Comment: Texas State University suggests adding language to subsection 21.24(f)(1)(A)(i) to specify what may be considered earnings to support a claim of gainful employment for purposes of establishing residency.

Staff Response: Staff agrees with the institution's suggestion and has added additional examples of what constitutes earnings to proposed Section 21.24(f)(1)(A)(i).

Comment: Texas State University commented that the proposed change to Section 21.30 implies the new rule requires retention of ALL residency-related documentation, but the actual rule language seems to only address the affidavit.

Staff Response: Staff believes the proposed rule is clear as to which documentation must be retained. Section 21.30 references Section 21.25(a)(1)(B), which only refers to a student's submission of an affidavit if the person qualifies for residency under Section 21.24(a)(1). No change was made in the rules as a result of this comment.

Comment: Texas State University suggest the proposed rule should also specify institutions retain records until students who establish domicile under Section 21.24 have actually achieved permanent resident status (whether via green card, or I-797 receipt for I-485 application).

Staff Response: TEC Section 54.053(3)(B), establishes the requirement for persons who are not citizens or permanent residents to submit an affidavit to their institutions if they are trying to establish a claim to residency under TEC Section 54.052(a)(3). It further indicates that the affidavit is to state, "that the person will apply to become a permanent resident of the United States as soon as the person becomes eligible to apply." Staff believes the institution's obligation is met once the student submits an application for Permanent Resident status. No change was made to the rules as a result of this comment.

Comment: The University of Texas (UT) System expressed its objection to the repeal of the definition in Section 21.22 of "Erroneously classifies a person as a nonresident" as it believes the applicable statute requiring the refund of excess tuition charged a student who the institution classifies as a nonresident and who should have been classified as a resident "pertains only when 'an institution of higher education erroneously classifies a person as a nonresident of the state,' not when the student is the source of the error."

Staff Response: The proposed rule change will align residency rules with TEC Section 54.056(b), which states that "[r]egardless of the reason for the error," an institution must refund a student erroneously charged nonresident tuition. No change was made in the rules as a result of this comment.

Comment: The UT System expressed its objection to the proposed change to the existing definition of "temporary absence" in Section 21.22(29). UT System believes the proposed change "will introduce ambiguity likely to make the rule more difficult to administer."

Staff Response: Staff believes that five years is too long a period of absence to be considered "temporary," however, staff is in agreement with another stakeholders' suggestion that one year is a more appropriate timeframe than 30 days. Therefore, although the agency recognizes there may be circumstances in which a longer term may be considered temporary, staff has amended the proposed language in this definition to one year.

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS

Section

- 21.21. Authority and Purpose.
- 21.22. Definitions.
- 21.23. Effective Date of Subchapter.
- 21.24. Determination of Resident Status.
- 21.25. Information Required to Establish Resident Status.
- 21.26. Continuing Resident Status.
- 21.27. Reclassification Based on Additional or Changed Information.
- 21.28. Errors in Classification.
- 21.29. Residence Determination Official.
- 21.30. Special Procedures for Documenting Compliance.

21.21. Authority and Purpose.

Texas Education Code, §54.075, requires the Board to adopt rules to carry out the purposes of Texas Education Code, <u>Chapter 54</u>, Subchapter B, concerning the determination of resident status for tuition purposes.

21.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) (3) (No change.)
- (4) Core Residency Questions--The questions promulgated by the Board to be completed by a person and used by an institution <u>as a significant aid in determining</u> [to determine] if the person is a Texas resident. [For enrollments prior to the 2008-2009 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the ApplyTexas Application, or the core questions set forth in current Board rules or posted on the Texas Higher Education Coordinating Board web site.] The core questions [to be used for enrollments on or after the 2008-2009 academic year] shall be those set forth [the core questions] in the ApplyTexas Application or [core questions] posted on the Board web site.
- (5) Deferred action--Discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. An individual who has received deferred action is authorized by Department of Homeland Security (DHS) to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect.

- (6)[(5)] Dependent--A person who:
- (A) is less than 18 years of age and has not been emancipated by marriage or court order; or
- (B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.
- (7)[(6)] Domicile--A person's principal, permanent residence to which the person intends to return after any temporary absence.
- (8)[(7)] Eligible for Permanent Resident Status--A person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by the United States Citizenship and Immigration Services (USCIS) showing that his or her I-485 has been reviewed and has not been rejected.
- (9)[(8)] Eligible Nonimmigrant--A person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish and maintain domicile in the United States.
- [(9) Erroneously classifies a person as a nonresident. An action done if an institution, in spite of information to the contrary that is provided by the student by the census date of a given semester, fails to classify an otherwise eligible student as a resident.]
- (10) Established domicile in Texas--Physically residing in Texas, with the intent to maintain domicile in Texas, for at least the 12 consecutive months immediately preceding the census date of the term of enrollment, allowing for documented temporary absences.
- [(11) Financial need—An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.]
- (11)[(12)] Gainful employment--Employment intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care) that is sufficient to provide at least one-half of the individual's tuition, fees and living expenses as determined in keeping with the institution's student financial aid budget or that represents an average of at least twenty hours of employment per week. A person who is self-employed or who is living off his/her earnings (present or past such as pensions, veterans' benefits, social security, and savings from previous earnings) may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance.

Employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment for purposes of residency determination.

- (12)[(13)] General Academic Teaching Institution--As [the term is] defined in Texas Education Code[7] §61.003(3).
- (13)[(14)] Independent institution--As defined in Texas Education Code[$_7$] §61.003(15).
- (14)[(15)] Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code[$_7$] §61.003(8).
- (15)[(16)] Legal guardian--A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.
- (16)[(17)] Maintain domicile--Physically residing [To physically reside] in Texas such that the person always intends to [always] return to the state after a temporary absence. The maintenance of domicile is not interrupted by a temporary absence from the state[, as provided in paragraph (30) of this section].
- (17)[(18)] Managing conservator--A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.
- (18)[(19)] Nonresident tuition--The amount of tuition paid by a person who is not [does not qualify as] a Texas resident and who is not entitled or permitted to pay resident tuition under this subchapter [unless such person qualifies for a waiver program under Subchapter SS of this title (relating to Waiver Programs for Certain Nonresident Persons)].
- (19)[(20)] Nontraditional secondary education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.
- (20)[(21)] Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a stepparent.
- (21)[(22)] Possessory conservator--A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.
 - (22)[(23)] Private high school--A private or parochial school in Texas.
- (23)[(24)] Public technical institute[-or college]--As defined in Texas Education Code [7] Section 61.003(7) [The Lamar Institute of Technology or any campus of the Texas State Technical College System].

(24)[(25)] Regular semester--A fall or spring semester, typically consisting of 16 weeks.

- (25)[(26)] Residence--A person's home or other dwelling place; where a person resides.
- (26)[(27)] Residence Determination Official--The primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.
- (27)[(28)] Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.
- (28)[(29)] Residential real property--Real property on which a dwelling <u>fit for long-term human habitation</u> is located.
- (29)[(30)] Temporary absence--Absence from the State of Texas by a person who previously met the criteria for in-state residency [has established domicile in the state], with the intention to return, generally for a period of short duration (i.e., less than one year). However, in some situations, the absence can be significantly longer [less than five years]. For example, the temporary absence of a person or a dependent's parent from the state for the purpose of service in the U. S. Armed Forces, U. S. Public Health Service, U. S. Department of Defense, U. S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that Texas is his permanent residence [or her domicile].
- (30)[(31)] United States Citizenship and Immigration Services (USCIS)--The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.
- 21.23. Effective Date of this Subchapter.

[Each institution shall apply this subchapter beginning with enrollments for the Fall Semester, 2006.] Changes to this subchapter adopted in October 2016 [January 2011] are effective with residency decisions made after the census date of the Fall Semester, 2017 [2011].

- 21.24. Determination of Resident Status.
- (a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:
 - (1) a person who:

- (A) graduated from a public or accredited private high school in this state or [, as an alternative to high school graduation,] received the equivalent of a high school diploma in this state, including the successful completion of a nontraditional secondary education, and
 - (B) (No change.)
- (2) (3) (No change.)
- (b) <u>Texas Residency: The following is a list of documents that may provide support to</u> a claim of physical residence in Texas.
 - (1) Utility bills for the 12 consecutive months preceding the census date;
 - (2) Cancelled checks that reflect a Texas residence for the 12 consecutive months preceding the census date;
 - (3) A current credit report that documents the length and place of residence of the person or the dependent's parent to be in Texas and the length of residence to be at least 12 consecutive months preceding the census date;
 - (4) Texas voter registration card that was issued at least 12 months prior to the census date;
 - (5) Lease or rental of residential real property in the name of the person or the dependent's parent for the 12 consecutive months immediately preceding the census date;
 - (6) Texas high school transcript for full senior year immediately preceding the census date or a transcript from a Texas institution of higher education showing presence in the state for the 12 consecutive months preceding the census date.
- (c) The student has the burden of proof to show by clear and convincing evidence that [residence or]domicile[, as appropriate,] has been established and maintained as required by subsections (a)(2) and (a)(3) [in accordance with subsection (a)] of this section.
- $\underline{(d)}[(c)]$ The following non-U. S. citizens are eligible to establish and maintain domicile in this state for the purposes of subsection (a)(2) or (3) of this section:
 - (1) (2) (No change.)
 - (3) <u>a</u> [an eligible] nonimmigrant who holds one of the types of visas <u>identified</u> as eligible to domicile[posted on the Coordinating Board's web site];
 - (4) (No change.)

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, [Special Agricultural Worker,] and a person granted deferred action status by USCIS;

(6) - (7) (No change.)

- (e)[(d)] The domicile of a dependent's parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.
- (f) [(e)] Although not conclusive or exhaustive, the following factors occurring throughout a consecutive 12-month period prior to [at least 12 consecutive months immediately preceding] the census date of the semester in which a person seeks to enroll may lend support to a claim regarding his/her intent to establish [and maintain] domicile in Texas. Continued presence in the state from the end of that period until the census date of the semester in which a person seeks to enroll, except for temporary absences as defined in §21.22(28), may lend support to a claim of maintaining domicile in Texas:

(1) Establishment of Domicile:

(A) Significant Gainful Employment:

- (i) An employer's statement of dates of employment in Texas (beginning and current or ending dates) that encompass at least 12 consecutive months prior to the census date of the term in which the person enrolls or pay stubs for 12 consecutive months prior to the census date, reflecting significant gainful employment in Texas, or proof of other earned income such as pensions, veterans' benefits, social security, and savings from previous earnings for 12 consecutive months prior to the census date. However, employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment for the purposes of this subchapter.
- (ii) For a person who is unemployed and living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the person for the 12 consecutive months prior to the census date of the term in which the person enrolls.
- (B) Residential Real Property. Sole or joint marital ownership of residential real property in Texas with documentation to verify 12 consecutive months of ownership prior to the census date of the term in which the person enrolls, such as a Warranty Deed, with the person or the dependent's parent having established and maintained domicile at that residence.

- (C) Marriage to a Person who has Established and Maintained Domicile in Texas Marriage Certificate or Declaration of Registration of Informal Marriage with documentation to support that spouse has established and maintained domicile in Texas for 12 consecutive months prior to the census date of the term in which the person enrolls.
- (D) Ownership of a Business Entity. Documents that evidence the organization of the business in Texas that reflect the ownership interest of the person or dependent's parent, and the customary management of the business by the person or dependent's parent without the intention of liquidation for the foreseeable future.
- (2) Maintenance of Domicile: A person who established domicile through one of the actions described in paragraph (1) of this subsection and continues to reside in the State of Texas, except for temporary absences as defined in §21.22(29) of this subchapter, is considered to have maintained domicile in Texas for that period of time unless he or she takes specific steps to change his or her domicile to a different location.
- [(1) sole or joint marital ownership of residential real property in Texas by the person seeking to enroll or the dependent's parent, having established and maintained domicile at that residence;]
- [(2) ownership and customary management of a business by the person seeking to enroll or the dependent's parent, in Texas which is regularly operated without the intention of liquidation for the foreseeable future;]
- [(3) gainful employment in Texas by the person seeking to enroll or the dependent's parent;]
- [(4) marriage, by the person seeking to enroll or the dependent's parent, to a person who has established and maintained domicile in Texas.]
- (g)[(f)] An individual whose initial purpose for moving to Texas is to attend an institution of higher education as a full-time student will be presumed not to have the required intent to make Texas his or her domicile; however, the presumption may be overruled by clear and convincing evidence.
- (h)[(g)] An individual shall not ordinarily be able to establish domicile by performing acts which are directly related to fulfilling educational objectives or which are required or routinely performed by temporary residents of the State.
- (i)[(h)] A member of the United States Armed Services whose Home of Record with the military is Texas is presumed to be a Texas resident, as are his or her spouse and dependent children. A member whose Home of Record is not Texas but who provides the institution Leave and Earnings Statements that show the member has claimed Texas as his or her place of residence for the 12 consecutive months prior to enrollment is presumed to be a Texas resident, as are his or her spouse and dependent children.

- 21.25. Information Required to Initially Establish Resident Status.
- (a) To initially establish resident status under §21.24 of this title (relating to Determination of Resident Status),
 - (1) a person who qualifies for residency under §21.24(a)(1) shall provide the institution with:
 - (A) a completed set of Core Residency Questions; and
 - (B) if the person is not a Citizen of the United States or a Permanent Resident of the U.S., the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit (in the form provided in Chart I, which is incorporated into this subchapter for all purposes), stating that the person will apply to become a Permanent Resident of the U.S. as soon as the person becomes eliqible to apply.

Figure: 19 TAC §21.25(a)(1)(B)

- (2) (No change)
- (b) An institution may request that a person provide documentation to support or clarify the answers to the Core Residency Questions. Appropriate documents are not limited to those listed in §21.24 of this subchapter (related to Determination of Resident Status) [Chart II, which is incorporated into this subchapter for all purposes]. In addition, the institution may request documents that support the information the student may provide in the Core Residency Questions, Section H.

[Figure: 19 TAC §21.25(b)]

- (c) (No change.)
- 21.26. Continuing Resident Status.
- (a) Except as provided under subsection (b) [(e)] of this section, a person classified by an institution of higher education as a resident of this state under this subchapter is entitled, without submitting the information required by §21.24 and §21.25 of this subchapter, to be classified as a resident by any institution in each subsequent academic term in which the person enrolls unless the person provides information to the institution that indicates a change in resident status is appropriate as indicated in §21.27 of this subchapter. [who was enrolled in an institution for any part of the previous state fiscal year and who was classified as a resident of this state under Chapter 54, Subchapter B, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the following fall semester. If an institution acquires documentation that a person is a continuing student who was classified as a resident at the previous institution, no additional documentation is required. The person is not required to complete a new set of Core Questions.]

- (b) If a person is not enrolled in an institution of higher education for two or more consecutive regular semesters, then the person must reapply for resident status and shall submit the information required in §21.24 and §21.25 of this subchapter and satisfy all the applicable requirements to establish residency.
- [(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at any institution.]
- [(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in §21.25 of this title, (relating to Information Required to Initially Establish Resident Status), and satisfy all the applicable requirements to establish resident.]
- 21.27. Reclassification Based on Additional or Changed Information.
- (a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation <u>such</u> as described in §21.24 and §21.25 [Chart II, which is incorporated into §] and §21.25[(b)] of this <u>subchapter</u> [title (relating to Information Required to Initially Establish Resident Status)].
 - (b) (d) (No change.)
- 21.28. Errors in Classification.
- (a) If an institution erroneously <u>classifies</u> [permits] a person <u>as a</u> [to pay] resident [tuition and the person is not entitled or permitted to pay resident tuition under this subchapter], the institution shall charge nonresident tuition to the person beginning with the semester following the date that the institution discovers the error.
 - (1) [(b)] Not earlier [later] than the first day of the following semester, the institution may notify the person that he or she must pay the difference between resident and nonresident tuition for each previous semester in which the student should not have paid resident tuition, if:
 - (A) [(1)] the person failed to provide to the institution, in a timely manner after the information becomes available or on request by the institution, any information that the person reasonably should know would be relevant to an accurate classification by the institution under this subchapter information; or
 - (B) [(2)] the person provided false information to the institution that the person reasonably should know could lead to an erroneous classification by the institution under this subchapter.
 - (2) [(c)] If the institution provides notice under paragraph (1) of this subsection [(b) of this section], the person shall pay the applicable amount to the institution not later than the 30th day after the date the person is notified of the person's liability for

the amount owed. After receiving the notice and until the amount is paid in full, the person is not entitled to receive from the institution a certificate or diploma, if not yet awarded on the date of the notice, or official transcript that is based at least partially on or includes credit for courses taken while the person was erroneously classified as a resident of this state.

- (b) If an institution erroneously classified a person as a nonresident of this state under this subchapter and the person is entitled or permitted to pay resident tuition, the institution shall charge resident tuition to the person beginning with the semester in which the institution discovered the error. Regardless of the reason for the error, the institution shall immediately refund to the person the amount of tuition the person paid in excess of resident tuition.
- [(d) If an institution erroneously classified a person as a resident of this state under this subchapter and the person is entitled or permitted to pay resident tuition under this subchapter, that person is not liable for the difference between resident and nonresident tuition under this section.]
- [(e) If an institution erroneously classifies a person as a nonresident and the person is a resident under this subchapter, the institution shall refund the difference in resident and nonresident tuition for each semester in which the student was erroneously classified and paid the nonresident tuition rate.]
- 21.29. Residence Determination Official.

Each institution shall designate an individual who is employed by the institution as a Residence Determination Official who shall be knowledgeable of the requirements set out in this subchapter and the applicable statutes and is responsible for residency determinations for the institution.

- 21.30. Special Procedures for Documenting Compliance.
- (a) For persons who must provide documentation in accordance with §21.25(a)(1)(B), [Signed affidavits, acquired by] public or independent institutions of higher education must retain such documentation [in keeping with §21.25(a)(1)(B) of this chapter, (relating to Information Required to Initially Establish Resident Status), must be retained] in [a] paper or electronic format either permanently [by the institution] or until the students (current and former) provide proof that they have applied for Permanent Resident status.
- (b) A public or independent institution of higher education that classifies a nonimmigrant [person who is not a Citizen or Permanent Resident of the United States] as a resident under §21.24(a)(1) of this chapter (relating to Determination of Resident Status) shall:
 - (1) instruct such students upon admission, annually while the students are enrolled, and upon graduation of their obligation to apply for Permanent Resident status as soon as the person is eligible to do so, and
 - (2) (No change.)

[(c) The provisions of this section apply to all persons who are nonimmigrants not Citizens or Permanent Residents of the United States and who are enrolled and classified as residents under §21.24(a)(1) of this chapter by a public or independent institution of higher education during any part of the 2011-2012 academic year or later.]

Figure: 19 TAC §21.25(a)(1)(B)

[Chart I] AFFIDAVIT		
STATE OF TEXAS	§	
	§	
COUNTY OF	§	
Before me, the under	rsigned Notary Public, on this day personally	appeared
		ho being by me duly sworn
upon his/her oath, deposed ar	nd said:	
My name is have personal knowledge of the control of the	ne facts stated herein and they are all true a	I am years of age. I and correct.
	te from a Texas high school or received my certificate in Texas] prior to the start of the	
	<u>led</u> in Texas for thirty-six months <u>preceding</u> ng my <u>State of Texas Certificate of High Sch</u>	
	e resided in Texas for the 12 months immed enroll in	
5. I have filed or will file an a I am eligible to do so.	(college/university) application to become a permanent resident	of the United States as soon as
In witness whereof, this	day of	_/·
	(Signature)	_
	(Printed Name)	_
	(Student I.D. #)	_
	(Student Date of Birth)	_
SUBCRIBED TO AND SWOF certify which witness my hand	RN TO BEFORE ME, on the day of and official seal.	,, to
Notary Public in and for the St	ate of Texas	

[Figure: 19 TAC §21.25(b)

Revised Chart II Documentation to Support Establishing and Maintaining Domicile in Texas

The following documentation may be requested by the institution regarding a person's responses to the Core Residency Questions. Documents that may be used as proof that:

- (1)- The person or the dependent's parent established domicile in Texas, and
- (2) The person or the dependent's parent has maintained domicile in Texas continuously for at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls, include but are not limited to the following:

Part A

Documents that may Support the Establishment of Domicile in Texas and Maintenance of Domicile in Texas

(1) SIGNIFICANT GAINFUL EMPLOYMENT

- a. An employer's statement of dates of employment in Texas (beginning and current or ending dates) that encompass at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls. However, employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment.
- b.—Other documents that show the person or the dependent's parent, for at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls:
 - 1)—has been engaged in employment intended to provide an income to the person or allow the person to avoid the expense of paying another to perform tasks (as in child care) that is sufficient to provide at least one half of the individual's tuition and living expenses or represents an average of at least 20 hours per week; or
 - 2)—is self-employed in Texas or is living off his/her earnings; or
 - 3)—is primarily supported by public assistance in Texas.
- c. For a person living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the person for the 12 consecutive months immediately preceding the census date of the term in which the person enrolls.

(2) SOLE OR JOINT MARITAL OWNERSHIP OF RESIDENTIAL REAL PROPERTY

Title to residential real property in Texas with documentation to verify 12 consecutive months of ownership immediately preceding the census date of the term in which the person enrolls, such as a Warranty Deed, with the person or the dependent's parent having established and maintained domicile at that residence.

(3) MARRIAGE TO A PERSON WHO HAS ESTABLISHED AND MAINTAINED DOMICILE IN TEXAS

Marriage Certificate or Declaration of Registration of Informal Marriage with documentation to support that spouse has established and maintained domicile in Texas for the 12 consecutive months preceding the census date of the term in which the person enrolls.

(4) OWNERSHIP OF A BUSINESS ENTITY

Documents that evidence the organization of the business in Texas that reflect the ownership interest of the person or dependent's parent, and the customary management of the business by the person or dependent's parent without the intention of liquidation for the foreseeable future.

Part B

Documents that May Provide Support to a Claim of Residence in Texas for the 12 Consecutive Months Immediately Preceding the Census Date of the Term in which the Person Enrolls

- 1.—Utility bills for the 12 consecutive months preceding the census date;
- 2.—A Texas high school transcript for full senior year immediately preceding the census date;
- 3.—A transcript from a Texas institution showing presence in the state for the 12 consecutive months preceding the census date;
- 4.—A Texas driver's license or Texas ID card that has not expired and, if it reflects an origination date, shows an origination date at least 12 months prior to the census date;
- 5. Cancelled checks that reflect a Texas residence for the 12 consecutive months preceding the census date;
- 6.—A current credit report that documents the length and place of residence of the person or the dependent's parent to be in Texas and the length of residence to be at least 12 consecutive months preceding the census date.
- 7.—Texas voter registration card that was issued at least 12 months prior to the census date.
- 8.—Pay stubs for the 12 consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas;
- 9.—Bank statements reflecting a Texas address for the 12 consecutive months immediately preceding the census date;

10. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 consecutive months immediately preceding the census date.

11. Lease or rental of residential real property in the name of the person or the dependent's parent for the 12 consecutive months immediately preceding the census date.

Part C

Other Documents that May be Used to Lend Support To or Clarify an Individual's Claim of Domicile or Residence, as Appropriate, in Texas

Among other documents that may be used to lend support to or clarify an individual's claim of having established and maintained domicile or residence, as appropriate, in Texas are the following:

- 1.—Tax return of the student or parent(s).
- 2.—Visa, passport or other pertinent immigration documents.
- 3. Leave and Earnings Statements (LES).
- 4.—Documents or statements to clarify answers to Core Residency Questions.
- 5.—A Texas high school transcript to verify thirty-six months' presence in the state and graduation from a Texas high school.
- 6.—State of Texas or local (Texas) licenses to conduct a business or practice a profession in this state.