



Recent Arizona Immigration Law Facts and Questions

In 2009 and 2010, the Arizona State Legislature passed laws relating to immigration that affect MCCCDC. Below are some questions and answers concerning those laws to help provide guidance to MCCCDC employees.

Summary of HB 2008

See generally Arizona Revised Statutes §§1-501 and 1-502

Under this law passed in 2009, MCCCDC, in administering any “federal public benefit” or “state or local public benefit,” must require each natural person who applies for the benefit to submit one of 12 specific types of documents to demonstrate lawful presence in the United States. That person must also sign a sworn affidavit stating that the documents are true. Failure of an MCCCDC employee who administers that MCCCDC benefit to report “discovered violations of federal immigration law” is a class 2 misdemeanor. The employee’s supervisor is also guilty of a class 2 misdemeanor if he or she knew of the failure to report, and failed to direct the employee to do so.

NOTE: For purposes of these FAQ’s, the term “MCCCDC funding” includes all types of funding from MCCCDC accounts, whether called loans, scholarship, grants, tuition waivers, or something else, but excludes funding that resides in a Maricopa Community Colleges Foundation account.

Frequently Asked Questions About HB 2008

What is the definition of “federal public benefit” or “state or local public benefit?”

Response

We know that mere admission and enrollment are not “benefits.” However, beyond that we don’t know precisely what it means at this point. But you should think of the law’s provisions in terms of two categories of MCCCDC programs – (i) persons enrolling into an MCCCDC college and (ii) persons wishing to participate in some other MCCCDC program. Within those categories, the law’s scope narrows further to cover applications for funding for the person to participate in those programs – either MCCCDC or federal funding. Going one step further, the “benefits” that the law probably applies to are:

- For students enrolling into college, applications for MCCCDC funding or federal funding (whether the student is enrolling through the standard process or through special programs), **regardless** of whether MCCCDC will pay the funds directly to the student or provide funding indirectly by, for instance, applying the funding within the MCCCDC system to offset the cost of tuition and fees; and
- For persons not enrolling into college and applying for funding for other MCCCDC programs, applications for that funding where **MCCCDC will pay the person directly.**

A person who applies for that funding and who fails to provide **the required documentation listed on Exhibit A** is not entitled to receive that funding. ●

Frequently Asked Questions About HB 2008 (cont'd)

Response (cont'd)

What triggers the obligation to report under the law?

The obligation to report is generally triggered when the following occurs **during the process of applying for the benefit** (the application process is considered to be from the point of submission to the point of award):

- An undocumented person specifically admits verbally that he or she is in the United States unlawfully; **and**
- The person makes that admission to an MCCCDC employee whose job is to review and make a decision about that person's benefit application. ●

What are some examples of statements that are not "admissions?"

It is not an admission if the undocumented person:

- simply says that he or she cannot provide the requested documentation, does not qualify for in-state residency, or does not qualify for federal or MCCCDC funding;
- asks, before any application process, whether he or she qualifies for federal or MCCCDC funding, stating that he or she is undocumented. ●

What if the employee learns from some other source that the person is undocumented?

The law does not apply to information gained in that manner. The admission needs to be specific, made directly to the employee whose job is to review and make a decision about that person's application, and made during the application process. The law does not apply, for example, to instances where a faculty member tells a financial aid administrator that a person is undocumented. ●

Does the law apply and is there a duty to report if, after the application process is done, the student advises the employee whose job is to review and make a decision about that person's application for benefits that he or she is not lawfully in the US?

No. The admission must be made during the application process. If, however, as a result of the information you discover that federal or MCCCDC funding was given to an ineligible person, you need to discuss this matter promptly with the chief officer for student affairs at your college. ●

What if the employee whose job is to review and make a decision about a person's application wears several "hats" in his or her job, and a potential student makes a statement while the employee is wearing a different "hat," such as recruiting?

The law and the duty to report do not apply unless you are in the process of administering a benefit. They specifically apply to the process of application for a benefit, and not to other situations. ●

What is considered the "application" for federal, state, or MCCCDC funding?

For federal financial aid for college enrollment, the application is the FAFSA form. For MCCCDC funding or other types of federal funding, it is any document submitted by a student with the intention of applying for some MCCCDC or state or federal financial benefit. ●

Frequently Asked Questions About HB 2008 (cont'd)

Response (cont'd)

Does the law apply to applications for funding from the Maricopa Community Colleges Foundation, even if reviewed by an MCCCDC employee responsible for reviewing them?

No. Foundation accounts are private funds; they do not belong to the government or MCCCDC. ●

Colleges receive private donor scholarships that do not go to the foundation. Once they are deposited into our college account, are those scholarships considered a state benefit and thereby not available to students who are not here lawfully, or are they still considered private funds and available to those students?

HB 2008 precludes the giving by the state or a political subdivision of any state or local public benefit, defined for purposes of college credit courses as any "postsecondary payment or assistance." While private funds given to MCCCDC do reside in a separate account, unlike Prop 300's applicability to them (because they weren't "state" funds), the language of HB 2008 isn't limited to "state" funds. It says any payment or assistance. Thus, they constitute a "state or local public benefit" of a "political subdivision." The MCCCDC is a political subdivision.

Does the law require us to revise our application forms for federal financial aid or MCCCDC grants?

Probably, at least the forms for MCCCDC funding or federal non-financial aid funding. The law requires that we obtain evidence of lawful presence in the US by requesting that the applicant for benefits provide one of 12 different types of documentation. [See Exhibit A for that list.](#) It also requires some statement on the form that the applicant swears that the documents presented are true under penalty of perjury. While the law mandates the same list for federal financial aid, the FAFSA governs that process and we are not going to be able to change that. ●

Is the documentation that HB 2008 specifies the same as the documentation that we are using to implement Prop 300?

Not entirely. While there is much overlap, the documents specified in HB 2008 is a shorter list. That is, we permit some types of documentation for residency purposes that we will not be able to use for funding applications. ●

Apart from the processes for obtaining federal or MCCCDC funding, does the law apply any part of the process of applying to be admitted to college?

No. Admission and enrollment is not a benefit. ●

So, apart from statements made by an applicant for benefits during the application process to a person responsible for administering the benefits, the law does not apply to a potential or actual student's statement (either written or verbal) and there is no duty to report it?

That is correct. ●

Frequently Asked Questions About HB 2008 (cont'd)

For purposes of persons enrolling into college and seeking financial aid, does the submission of the SIF make any difference?

Response (cont'd)

Yes. By submitting a SIF, at MCCCDC the person becomes a student whose records are confidential under Federal law, and cannot be disclosed without the student's consent. Thus, the employee reviewing and deciding on the application may not report information gained from a benefit application form after submission of the SIF without that consent. ●

What law governs a student's verbal admission made during the written financial aid application process after submission of the SIF?

Federal student privacy law protects written records and not verbal information. However, given the consequences of violating Federal privacy law, it is advisable to avoid disputes with students as to whether the information reported was gained from a record not a conversation. In order to avoid such disputes we must make it clear to the student before he or she has the opportunity to submit an application for federal, state or MCCCDC funding that he or she should not do so unless he or she is lawfully present in the United States. Since our applications for federal or MCCCDC funding will need to indicate that we have to request the documentation specified on **Exhibit A**, and will include the notice specified in Paragraph 15, the person applying for the funding should know, under most circumstances, that he or she should not make any verbal statements. ●

What will we do to notify students?

We are placing the following notices on the appropriate application forms and on posters in the ACE and college financial aid offices:

Only those with a lawful presence in the US may qualify for MCCCDC scholarships or federal financial aid. Any information you provide about your legal status when you apply for financial aid or scholarships may be subject to mandatory reporting to federal immigration authorities under AZ law. This does not apply to applications for the private scholarship funds held in and distributed by the Maricopa Community Colleges Foundation.

<http://www.maricopa.edu/foundation/apply/index.php>●

Based on the prior questions and answers, is it true that HB 2008 does not apply to recruiters, faculty or other staff whose job responsibilities do not involve reviewing federal or MCCCDC funding applications?

That is correct. ●

What is the process for an employee to report discovered violations of immigration law?

The employee must complete MCCCDC's standard reporting form and provide it to the person at his or her college who is the chief student affairs officer, which in most cases is a Vice President. The Vice President or chief officer will forward the form on to the MCCCDC General Counsel, Lee Combs. ●

Frequently Asked Questions About HB 2008 (cont'd)

Response (cont'd)

What information needs to be provided on the form?

At most, you only need to provide the information that the form requests, which is the applicant's name and address, if you have them. **You do not need to—and should not—question the person to gain additional information.** Your sole obligation is to complete the form as best you can and provide it immediately to the chief student affairs officer. ●

Is there any liability for an employee who reports someone who later is found to be a citizen?

No. If the employee was acting with the best intentions and performing the duties of his or her employment, MCCCCD will defend him or her. ●

What do the recruiters do if they are at a high school or a college fair and a student tells them they are undocumented?

Recruiters are not responsible for administering financial aid or other funding applications, and thus the law does not apply to them. So, it does not matter if high school or other potential college students advise them that they are undocumented. The recruiters should continue their practice of making it clear to undocumented persons that they will not qualify for in-state tuition, financial aid or MCCCCD funding. They may also inform the potential student that he or she may contact the Maricopa Community Colleges Foundation at 480-731-8040 about applying for a scholarship.

<http://www.maricopa.edu/foundation/apply/index.php>●



Summary of SB 1070

This law, passed by the Arizona State Legislature in 2010, was effective on July 29, 2010. However, due to lawsuits, many of the provisions of the law have been put on hold for the time being, and thus are not enforceable until further notice. The only portions of the law currently in effect provide for the following:

- Prohibits public entities like MCCCDC from limiting enforcement of federal immigration laws;
- Permits any legal resident to sue a public entity like MCCCDC for adopting a policy restricting enforcement of federal immigration laws to less than the fullest extent permitted by federal law;
- Makes it a crime for a person who is violating some other criminal offense to transport or harbor an unlawfully present alien or encourage or induce an unlawfully present alien to come to or live in Arizona;
- Amends existing law permitting removal or impoundment of a vehicle to permit impoundment of vehicles used in transporting or harboring unlawfully present aliens;
- Makes it a crime to stop a motor vehicle to pick up day laborers and for day laborers to get into a vehicle if it impedes the normal movement of traffic;
- Amends existing law that requires every employer to verify the employment eligibility of a hired employee through e-verify to require that the employer keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.

Frequently Asked Questions About SB 1070

Would an MCCCDC employee be subject to criminal penalties for transporting an undocumented student as a passenger?

Response (cont'd)

No. Under the law, the driver transporting an undocumented person must first be committing a crime, such as criminally speeding (as opposed to civil speeding infractions) for the law to apply. Additionally, the law does not apply unless it is proven that the driver knew or cavalierly disregarded the fact that the passenger is an undocumented person. ●

Regarding the documentation that the law requires MCCCDC as an employer to keep to demonstrate that each employee hired has been checked through the federal e-verify system?

Arizona law requires that MCCCDC verify the eligibility of **every** employee through the federal e-verify system, a requirement that was effective on December 31, 2007. The best practice in terms of keeping a record is to print the e-verify page for the employee, and keep it in the employee's file. ●

EXHIBIT A

Required Documentation for Establishing a Lawful Presence in the U.S.

Students must provide evidence of lawful presence in the U.S. by providing one of the following types of documentation:

1. An Arizona driver license issued after 1996 or an Arizona non-operating identification license.
2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
3. A United States certificate of birth abroad.
4. A United States passport.
5. A foreign passport with a United States visa.
6. An I-94 form with a photograph.
7. A United States citizenship and immigration services employment authorization document or refugee travel document.
8. A United States certificate of naturalization.
9. A United States certificate of citizenship.
10. A tribal certificate of Indian blood.
11. A tribal or Bureau of Indian Affairs affidavit of birth.
12. Tribal members, the elderly and “persons with disabilities or incapacity of the mind or body,” may submit certain types of documentation under Section 1903 of the federal Social Security Act (42 United States Code §1396b, as amended by Section 6036 of the federal Deficit Reduction Act of 2005¹)

1 If you think that this may apply, please contact the Legal Services Department for assistance.

EXHIBIT B
Steps for Determining
Eligibility for Federal or
MCCCD Funding

1. Is there an application process?
 If no, **the law does not apply.**
 If yes, go to the next question.

2. Is the application for federal or MCCCD funding related to enrollment into college (whether it be through the regular enrollment process, or through a special program)?
 If yes, go to Question No. 4.
 If no, go to Question No. 3.

3. Is the application for federal or MCCCD funding to be paid directly to the individual submitting the application for MCCCD programs not involving college enrollment?
 If no, **the law does not apply.**
 If yes, go to Question No. 4.

4. Has the applicant provided one of the 12 forms of proof of legal status specified in the law (as listed in **Exhibit A**)?
 If yes, go to Question 5.
 If no, **the person is not entitled to the federal or MCCCD funding.**

5. Has the person signed a sworn affidavit stating that the document provided under Question 4 is true under penalty of perjury?
 If yes, **the applicant has passed the criteria under HB 2008 for obtaining the funding.**
 If no, **the applicant has NOT passed the criteria under HB 2008 for obtaining the funding.**

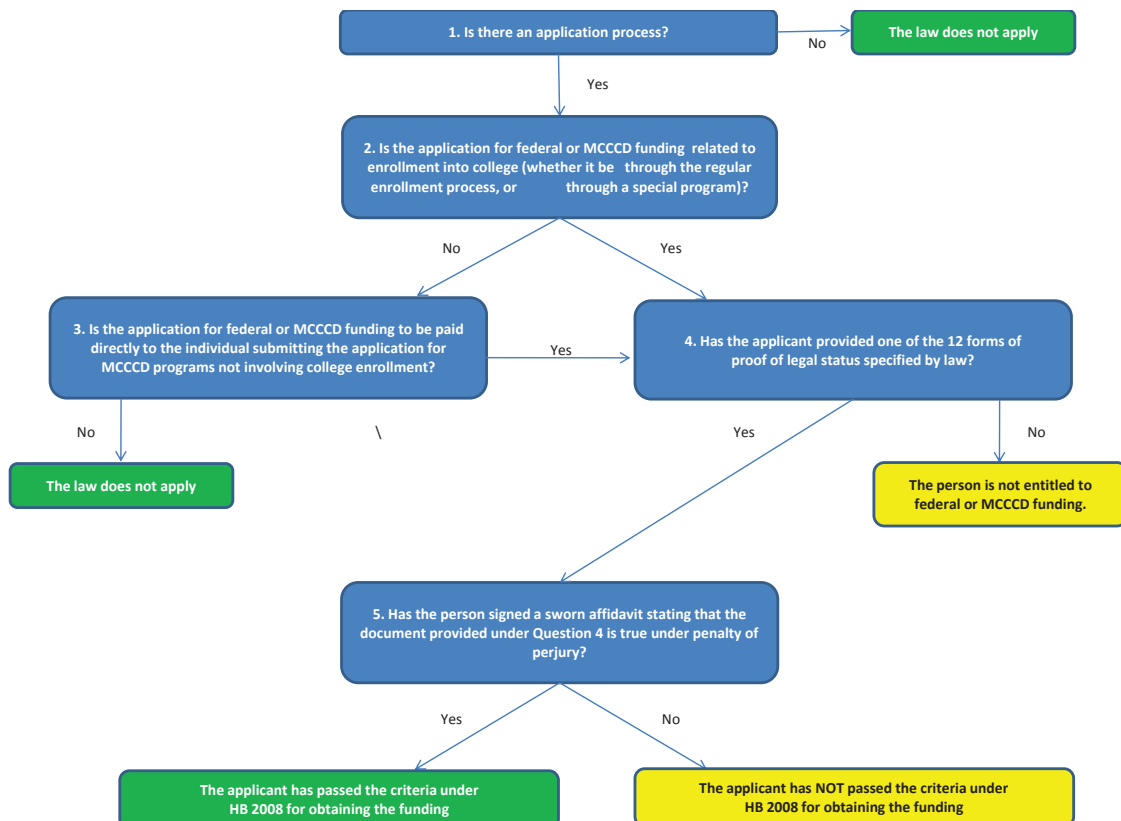


EXHIBIT B
Steps for Determining Whether
There Is A Duty To Report

1. Has an applicant under Paragraph 4 above specifically admitted as part of the application process that he or she is not in the US legally? [NOTE: The Arizona Attorney General has specified that the admission – whether verbal or written – must be an outright statement that the person is in the US illegally. Other types of statements are not “admissions” for purposes of the law.]
 If no, **the duty to report does not apply.**
 If yes, go to Question No. 2

2. Do the specific job responsibilities of the MCCCDC employee to whom the admission was made include the responsibility for reviewing and deciding on the funding application?
 If no, **the duty to report does not apply.**
 If yes, **the duty to report does apply.**

