

# **THE 50% LAW AND THE FACULTY OBLIGATION NUMBER: AN UPDATED PROPOSAL**

## ***Preamble***

The Workgroup on CCC Regulations originally presented “The 50% Law and the Faculty Obligation Number: A Proposal” at the March 17, 2016, Consultation Council. The original proposal focused on the Faculty Obligation Number (FON) and the 50% Law, delivering a collection of both specific and general recommendations. This latest version of the proposal has been revised to make its recommendations more concrete and to align the proposal in support of achieving the system’s 2017 *Vision for Success* as articulated in that document’s six system-wide goals and the seven core commitments. The focus of this updated proposal is on increasing the number of full-time faculty, a component essential to the fulfillment of the commitments outlined in the *Vision for Success*. In addition, this updated proposal fits well with any student success centered funding formula that might be adopted for the California Community Colleges.

## ***Proposal***

For many years, the 50% Law (Education Code Section 84362) and the Faculty Obligation Number (FON, Title 5 Sections 51025 and 53311) have been both guiding principles and sources of controversy in the California Community College System. Attempts have been initiated on numerous occasions and from various parties to reform or even abolish these statutory and regulatory requirements. However, as much as some groups have called for change, others have just as vigorously defended these requirements as necessary and beneficial to the system. As a result the 50% Law and the FON have remained essentially unchanged.

In the fall of 2014, a small contingent of faculty and administrators, motivated by their shared interest in exploration of ways to improve the 50% Law and the FON, embarked on an effort to set in motion a serious discussion of these requirements. Presentations at conferences and meetings of the Community College League of California, the Academic Senate for California Community Colleges, the Association of California Community College Administrators, and other groups revealed significant interest and willingness from many different parties to engage in this discussion. In response to this interest, Chancellor Brice Harris commissioned a small workgroup of faculty and administrators to explore the issues and, if possible, to develop a proposal for reform.

The workgroup considered a number of issues relevant to the 50% Law and the Faculty Obligation Number. Among these issues were the changing needs of students and the changing instructional environment since the 50% Law was enacted in 1961 and the FON was instituted in conjunction with AB 1725 (Vasconcellos) in 1988. The discussion included the ways in which instructional practice has changed, especially with regard to how learning has become a shared

activity with a greater appreciation for instructional support services inside and outside the classroom. While the community college system has always been dedicated to student success, the more recent focus on services that support student success through initiatives such as the Student Success and Support Program, along with an increased emphasis on accountability and a greater dependence on instructional technology, call for a redefinition of the expenses considered to be instructional in nature. The workgroup also considered the ways in which the various requirements of the 50% Law and the FON might be aligned into a more compatible and cohesive form. With regard to the FON, the group explored ways in which the system might make steady progress toward the goal stated in Education Code Section 87482.6 of 75% of instructional hours being provided by full-time faculty, something the present FON requirement was never designed to accomplish.

As it deliberated on possibilities for revising the 50% Law and the FON, the workgroup agreed on the following overall guiding principles and conclusions:

- A. The focus of the 50% Law should continue to be on instructional costs.
- B. Any new definition of instructional costs would necessitate a re-determination of the percentage of general fund dollars appropriate to those costs.
- C. General fund match requirements should be eliminated for all restricted funds.
- D. The FON should be modified to reflect an ongoing focus on making progress toward the 75% Goal in a systematic way.

Within this context, the workgroup developed proposals for revising the 50% Law and the FON. The workgroup members unanimously agreed upon and supported these proposals and believe them to be realistic changes that can address the various interests of the system's constituent groups. However, these discussions constituted only the first step in a process. The workgroup agreed that a further set of meetings to review statistical data and establish the recommended changes was required in order for these proposals to move forward.

Late in 2017, Chancellor Eloy Ortiz Oakley requested the workgroup to reconvene and consider revisions to its original proposal in order to align it with the California Community Colleges' *Vision for Success* document accepted by the Board of Governors in July 2017.

In this regard, the need to increase the number of full-time faculty at all districts in order to strengthen the colleges' ability to achieve the *Vision for Success* goals became the primary focus of this revision. This updated proposal is intended to provide both the framework for a system wide discussion and the core components for a serious consideration of possible revisions of the 50% Law and 75% Goal. Given ongoing discussions about a "new" funding model, this updated proposal for revising the 50% Law and 75% Goal is designed to be supportive of college efforts to meet student success needs.

Any actual recommended change to either statute or regulation will require agreement through the system's established consultation process.

### ***The 50% Law***

In no case did the workgroup entertain the idea of abolishing the 50% Law. The workgroup members recognized that the law serves specific purposes for which it should be preserved. Rather, the focus of the workgroup was to consider ways to revise the law in a manner that retains its focus on learning and instruction while allowing more budgetary flexibility and making it more compatible with the 75% Goal.

After entertaining a variety of approaches to this issue, the workgroup agreed that the essential structure of the 50% Law should remain unchanged but that the definition of instructional expenses should be reconsidered. With the expenses that should be included on the instructional side of the law's equation having been identified, the workgroup also agreed that an appropriate percentage of instructional costs as a proportion of the general fund total costs will need to be determined and that ultimate consensus by the workgroup is dependent upon agreement regarding this percentage.

In determining which expenses to include as aspects of instruction, the workgroup agreed in principle that only costs that directly impact instruction and learning should be included. The direct instructional costs that are outlined in the current 50% Law were retained as essential in the calculation of instructional expenses. The following criteria were used in determining additional costs that could be included as instructional:

- A. All faculty work outside the classroom that plays a direct role in the education of students.
- B. Individuals who provide educational services directly to students.
- C. Services that assist in the direct education of students.
- D. Governance activities that pertain directly to the education of students.
- E. Professional activities that pertain to the curriculum.

Using these criteria, the workgroup considered a wide array of possibilities. Some proposed expenses were rejected on the basis that they were primarily administrative functions, were too distant from the classroom, or for other reasons that prevented them from meeting the criteria. The final determination of the workgroup was that the following expenses should be included as instructional in the new calculation:

- All expenses considered to be instructional in the current calculation.
- Salaries and benefits of counselors and librarians.  
*Counselors and librarians are faculty members who serve necessary functions for the instruction of students, whether inside or outside the classroom.*
- All tutors performing in an instructional capacity in a supervised setting.

*Tutoring and support services, including supplemental instruction programs, are an essential aspect of promoting student success. These expenses should be limited to college-developed programs that involve tutoring services monitored by and performed under faculty supervision. Tutoring services should be seen as a supplement to faculty and should not be used to replace direct faculty instruction.*

- Faculty reassigned time for instructional program and curriculum development and modification.

*Faculty participation in curriculum development, design, and modification is necessary for the creation and maintenance of effective instructional programs.*

- Reassigned time for college and district academic senate governance activities.

*Academic Senate participation and representation in governance activities is essential for effective collegial decision-making that has a direct impact on the instructional program.*

If all of these expenses were included as instructional, a new percentage amount of the general fund budget appropriate to these expenses would need to be determined.

In addition, the workgroup agreed that new purchases for instructional software and technology should be excluded from the 50% Law calculation and should not be counted on either side of the equation.

### ***The System's 75% Goal***

When AB 1725 was passed by the California Legislature in 1988, Assembly Member John Vasconcellos and the other writers emphasized the importance of full-time faculty as a central, significant, and vital cohort of a community college. The bill explained this importance as follows:

If the community colleges are to respond creatively to the challenges of the coming decades, they must have a strong and stable core of full-time faculty with long-term commitments to their colleges. There is proper concern about the effect of an over-reliance upon part-time faculty, particularly in the core transfer curricula. Under current conditions, part-time faculty, no matter how talented as teachers, rarely participate in college programs, design departmental curricula, or advise and counsel students. Even if they were invited to do so by their colleagues, it may be impossible if they are simultaneously teaching at other colleges in order to make a decent living. (AB 1725 Vasconcellos 1988 Section 4.b)

A specific goal was set to address the need for an adequate number of full-time faculty in every community college district, a goal which was linked to both policy and funding. AB 1725 added the following section, Section 87482.6, to the Education Code:

(a) Until the provisions of Section 84750 regarding program-based funding are implemented by a standard adopted by the board of governors that establishes the appropriate percentage of hours of credit instruction that should be taught by full-time instructors, the Legislature wishes to recognize and make efforts to address longstanding policy of the board of governors that at least 75 percent of the hours of credit instruction in the California Community Colleges, as a system, should be taught by full-time instructors. To this end, community college districts which have less than 75 percent of their hours of credit instruction taught by full-time instructors shall apply a portion of the program improvement allocation received pursuant to Section 84755 as follows:

(1) Districts which, in the prior fiscal year, had between 67 percent and 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 33 percent of the district's program improvement allocation.

(2) Districts which, in the prior fiscal year, had less than 67 percent of their hours, of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 40 percent of the district's program improvement allocation.

(a) Districts which maintain 75 percent or more of their hours of credit instruction taught by full-time instructors shall otherwise be free to use their program improvement allocation for any of the purposes specified in Section 84755.

(b) The board of governors shall adopt regulations for the effective administration of this section. Unless and until amended by the board of governors, the regulations shall provide as follows:

The text of the bill then details how this application of state funding shall occur through the calculation of a required number of full-time faculty for each community college, a process that has become known as the FON or Full-Time Faculty Obligation Number.

At the time of this legislation, it was envisioned that a combination of state funding in support of the program-based funding model and institutional compliance would enable the community colleges to make steady progress toward reaching the goal of having 75% of its instruction performed by full-time, tenured faculty.

As noted in AB 1725, this "75% Goal" has been a long-held aspiration of the community college system, but circumstances since the bill's passage have intervened to prevent the colleges from making progress, among them:

1. The lack of support for the program-based funding model and the failure to sustain other funding mechanisms such as Partnership for Excellence that included funding for full-time faculty positions.
2. Inadequate funding of colleges, especially during fiscal recessions, both major and minor, that affected the flexibility of and posed competing priorities for districts in using General Fund dollars for full-time faculty positions.
3. Retirement incentives, staffing freezes and attrition, and other cost saving methods that reduced faculty and other employee group numbers as a means to contain college and district expenses under state funding limitations.
4. The Workload Reduction imposed in 2009 that significantly lowered community college enrollments by reducing the number of class sections offered on college campuses and in turn reduced the number of teaching faculty as part-time faculty lost assignments and full-time faculty positions were lost through attrition.
5. The expectation that colleges will respond rapidly to increases in student/community demand by quickly adding classes taught by part-time faculty without considering how these classes will be converted into full-time faculty positions.
6. State budgets that sporadically include special funding for full-time faculty positions that remain inadequate to overcome to negative effects of decades of budget reduction and uncertainty.

Nevertheless, the Board of Governors, the California Community Chancellor's Office, as well as local colleges and districts, have continued to support the 75% Goal and to track "progress" using the Faculty Obligation Number or FON as prescribed in AB 1725.

For a full report, see the "Workgroup Report on 75/25 Issues" available on the State Chancellors Office website:

[http://californiacommunitycolleges.cccco.edu/Portals/0/Reports/workgroup\\_75\\_25\\_proposal.pdf](http://californiacommunitycolleges.cccco.edu/Portals/0/Reports/workgroup_75_25_proposal.pdf)

The FON, as established in 1989, provides a means of ensuring that colleges, at a minimum, increase their number of full-time faculty in proportion to their growth in credit FTES. Annually, the CCC Board of Governors determines whether or not the state budget has provided colleges with resources adequate to implement the FON regulations. However, increases in the FON in times of growth are reversed in times of revenue decline, and at best, the FON maintains the status quo full-time faculty percentage.

Since the creation of this system of tracking and enforcement, there has been little or no progress in the percentage of instruction provided by full-time faculty in the California Community Colleges. In fact, the percentage has actually decreased rather than increased, with the system slipping to about 55% following the recent Great Recession. The FON mechanism, rather than encouraging the system to make progress toward 75%, has itself become the focus for most colleges, disconnected from the 75% Goal.

If progress is desired, it is imperative to refocus the system's attention on the original 75% instructional goal and, if the FON or another metric is used to track numerical progress, it should be clear that this is a tracking method regarding progress toward the goal, not an end or a goal in itself.

The workgroup recommends statutory and regulatory changes to effect the full-time faculty 75% Goal:

1. The California Community Colleges should set additional full-time faculty positions as a priority, advocate forcefully for additional funding for these positions, and insist that the annual state budget include a standing line-item allocation for the purpose of hiring additional full-time faculty.
2. The CCC Chancellor's Office should track and annually publish districts' progress toward its 75% Goal, using the same methodology as the full-time faculty obligation compliance reports.
3. The CCC Board of Governors should review district progress toward their local 75% goals annually. It should provide regulatory guidance to districts in much the same way as AB 1725 did with districts more distant from 75% expected to move forward more aggressively than those closer to reaching the goal. This new proposal sets a minimum annual requirement of 10% improvement for each district. This will require districts with the largest 75% gap to make the greatest improvement while districts closer to 75% would have a smaller required improvement. Example: a district currently at 55% would have a 20% gap to resolve and would need to increase its percentage by 2% per year (10% of its 20% gap). The increase shall be rounded up to the nearest whole number FTEF.

Failure to meet these Board minimums could be enforced in much the same way as the FON is currently enforced through withholding funds proportional to the statewide average cost of the full-time faculty that should have been hired to meet the district's percentage goal. It is also recommended that the Board of Governors and the Chancellor's Office develop a means to ensure that community supported/basic aid districts comply with the same provisions, subject to the same penalties as apportionment based districts.

4. With the emerging importance of noncredit education, it is time to include noncredit instructors within the 75% Goal, so the entirety of this proposal should also apply to noncredit programs and their faculty.
5. In support of the Board of Governors annual review, all community college districts should be required to submit an annual report to the State Chancellor's Office on their five-year plans for full-time faculty hiring designed to make local progress toward the 75% Goal. These plans should be incorporated as a section of the colleges' and districts' annual integrated planning process. Completion and submission of the plan should require signatures of the district's Chancellor or Superintendent/President, the President of the Board of Trustees, the President of the Academic Senate, and the appropriate faculty bargaining agent. Elements of the plan should include:
  - The district's historical performance in terms of its progress toward meeting the 75% Goal.
  - Details of the district's historical full-time faculty hiring progress, specifically identifying new positions that are not replacement but represent actual additions to the total full-time faculty workforce complement.
  - The district's projected five-year goal for making progress toward the 75% Goal, including specific strategies.
  - The district's anticipated strategies for achieving its five-year goal, including maintenance wherever possible of its full-time faculty numbers in the event of an economic downturn, and progress toward the 75% Goal both in years in which the system receives growth funding or other additions to base funding and in years in which designated state-level funding for such hiring is not provided. (In the latter case, it is understood that progress will be limited, but districts will be encouraged whenever possible or feasible to reallocate some internal funding toward full-time faculty positions.)

Once this recommendation is accepted, the launch of this proposal must begin with a re-benching to the current status quo percentages in each district.

To assure an ongoing local commitment to achieving the 75% Goal, penalties for failure to make progress will be determined by the California Community Colleges Chancellor's Office and Board of Governors. Some aspects of this have been described above. Hardship exemptions may be granted by the Board of Governors under similar conditions as are currently allowed under the 50% Law.

Data regarding each district's performance and progress toward achieving the 75% Goal should be included in the system's published metrics for districts and colleges, such as the CCC Scorecard and the CCCC Institutional Effectiveness Partnership indicators.

### ***Workgroup Further Steps***

Definition of instructional expenses and a process for promoting full-time faculty hiring were the focus from the initial discussions of the workgroup and are outlined in this report. While the workgroup reached consensus on these matters, all members recognize that the consensus will not be complete until further details are defined and the process on both issues is completed.

1. The workgroup therefore intends to continue meeting in order to review data and develop the specific percentage of the general fund budget that will constitute the minimum for instructional expenses under the revised formula for Education Code Section 84362, previously referred to as the 50% Law.
2. The workgroup also recognizes that revision of the 50% Law and establishment of a process that demonstrates commitment to progress toward the 75% Goal for full-time faculty are dependent on one another. Both revisions must be pursued in conjunction with one another, with the requirement of a full commitment of system partners to both revisions before either takes place.

### ***Task Force Members***

Julie Bruno, President, ASCCC, Workgroup Co-Chair  
Constance Carroll, Chancellor, San Diego CCD  
Bonnie Ann Dowd, Executive Vice-Chancellor, Business and Technology Services,  
San Diego CCD, Workgroup Co-Chair  
William Duncan, Superintendent-President, Sierra CCD  
Richard Hansen, Former President, CCCI  
Jim Mahler, President, CFT Community College Council  
Lynette Nyaggah, President, CCA/CTA  
Christian Osmena, CCCCO Vice Chancellor, Finance and Facilities Planning  
John Stankas, Vice President, ASCCC  
Joe Wyse, Superintendent/President, Shasta-Tehama-Trinity Joint CCD