

Resident Tuition in State and Federal Law

This information brief describes federal and state laws and proposed legislation that impact resident tuition rates at public postsecondary institutions. A federal law limits higher education benefits that states can offer based on residency. In response, several states have enacted laws to provide lower, resident tuition rates to students based on multiple criteria. Minnesota has also considered this type of legislation.

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Tuition Is Regulated by States or Governing Boards

Most public postsecondary institutions have both resident and nonresident tuition rates. State governments or governing boards of public postsecondary systems regulate tuition rates and establish criteria for qualifying for the resident and nonresident tuition rates. Minnesota state law does not establish either resident tuition rates or eligibility for resident tuition. Minnesota has a statutory definition of residency that, in the past, was a factor in allocating state appropriations for public higher education, independent of tuition rates.¹

Under Minnesota law, the governing boards of Minnesota's two public higher education systems set tuition policies for their institutions. Both the University of Minnesota Board of Regents and the Minnesota State Colleges and Universities (MnSCU) Board of Trustees are authorized to establish variable tuition rates for students and have adopted policies for granting in-state tuition. The MnSCU policy references the residency criteria in state statute previously used to disburse funding. The Board of Regents policy on tuition provides that the board may establish a residency policy "...consistent with state law." In Minnesota, as in most states, nonresident tuition rates at public institutions are much higher than resident tuition rates—in some cases, double the resident rate. The table below shows the range of resident and nonresident tuition rates charged by Minnesota public colleges and universities for the 2006-2007 academic year.

Resident and Nonresident Tuition and Fees, 2006-2007

	Undergraduate		Graduate	
	<i>Resident</i>	<i>Nonresident</i>	<i>Resident</i>	<i>Nonresident</i>
2-year Colleges	\$3,804 - \$4,590	\$5,054 - \$8,668	---	---
State Universities	\$5,082 - \$7,099	\$9,912 - \$11,668	\$6,108 - \$7,605	\$7,286 - \$12,876
University of Minnesota	\$8,568 - \$10,312	\$20,556 - \$21,040	\$11,147	\$18,245

States vary in the treatment of tuition in their higher education laws. Some states specify in law the criteria to qualify for resident tuition or for the waiver of nonresident tuition. For example, Wisconsin statutes authorize the governing board of the University of Wisconsin system to establish tuition subject to specific statutory criteria and to exempt certain categories of students from the payment of nonresident tuition. Utah defines resident student in statute for higher education purposes.

Federal Law Regulates Some Higher Education Benefits

Federal law does not regulate tuition at public postsecondary institutions. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibits an undocumented alien from receiving a higher education benefit based on residency within a state unless the benefit is

¹ Minn. Stat. § 135A.031, subd. 2.

available to any U.S. citizen or national.² In-state or resident tuition is a benefit that a state or institution may offer to students on the basis of state residency. A state or institution that offers lower in-state tuition rate to undocumented state residents because they reside in the state violates the federal law, unless the lower rate is also available to the residents of any state. An institution with a single tuition rate for state residents and nonresidents is not providing an illegal benefit to undocumented students.³

Federal DREAM Act Seeks Repeal of the Benefit Limits

The Development, Relief, and Education for Alien Minors (DREAM) Act is a federal bill that has been introduced in and considered by the U.S. Congress since 2001. As originally introduced by Senator Orin Hatch and other bipartisan co-sponsors, the DREAM Act repeals the federal law on higher education benefits for illegal aliens and establishes a process for eligible aliens to obtain legal permanent residency status. To be granted conditional permanent resident status the eligible alien must:

- have lived continuously in the United States for five or more years and must have been less than 16 years old when entering the United States for the first time;
- have a high school diploma or equivalent, or be admitted to a postsecondary institution;
- be of good moral character; and
- not be deportable for criminal conviction, alien smuggling, or document fraud.

After receiving conditional status, the undocumented student can become a permanent lawful resident by receiving a degree from a two-year postsecondary institution, completing two years of an undergraduate or graduate program, or joining and being honorably discharged from the U.S. military.

One version of the DREAM Act would also have made undocumented alien students eligible for financial aid during the application period. A version of the DREAM Act passed the U.S. Senate Judiciary Committee in 2003.

States Consider and Enact DREAM Act Proposals

State legislatures have also considered proposals to address in-state tuition for undocumented students since 2001. While these state proposals are informally referred to as the DREAM Act, proposed changes to state law are intended to increase opportunities for undocumented students

² 8 U.S.C. § 1623.

³ The governing boards have authorized some institutions and campuses to have a single tuition rate. Nine of the MnSCU two-year colleges and two of the state universities have a single tuition rate. The University of Minnesota Morris and Crookston campuses have a single tuition rate.

for postsecondary education, not to change the students' legal status. Nine states have enacted laws to give certain undocumented students in-state tuition. Laws enacted by the states typically require eligible students to have lived in the state for a specified number of years (usually three or more), to have attended a state high school for a stated number of years, to have graduated from a state high school, and to be accepted or enrolled at a public college or university. Some of the state laws require undocumented students to certify that they will apply to be a legal resident as soon as possible.

In 2001, California and Texas were the first states to pass legislation authorizing in-state tuition for eligible undocumented students. Currently, seven additional states have enacted similar legislation including: New York, Utah, Illinois, Oklahoma, Washington, Kansas, and New Mexico.

Minnesota Has Considered DREAM Act Proposals

In Minnesota, as in other states, the legislature has considered DREAM Act proposals to address in-state tuition. In both 2005 and 2006, bills were introduced in and considered by the Minnesota House of Representatives and the Senate that established nonresidency-based criteria for in-state tuition at public institutions. Under the bills a student qualified for resident tuition if the student:

- ▶ attended a Minnesota high school for three or more years;
- ▶ graduated from a Minnesota high school or received a high school equivalent diploma in the state; and
- ▶ is registered or enrolled in a Minnesota public higher education institution.

In 2005, the new residency criteria passed the Senate but were excluded from the higher education conference report. In 2006, the Senate again passed criteria for resident tuition in a bill that also required eligible undocumented students to certify that they would apply for citizenship as soon as possible. The 2006 House omnibus higher education bill included the same criteria for resident tuition as well as the application for citizenship requirement. The resident tuition provision was included in the bill that passed the higher education finance committee and the House ways and means committee. The 2006 omnibus higher education bill was not considered by the full House.

State Resident Tuition Laws Have Been Challenged

In 2004, the Kansas resident tuition law was challenged in U.S. District Court on behalf of 24 American citizens, many of them students or parents of students who pay nonresident tuition to attend Kansas's public higher education institutions. The challenged Kansas law, effective July 1, 2004, authorized immigrants to pay resident tuition rates at state colleges and universities if they attended a Kansas high school for three years, graduated or received an equivalent

certificate, and certified that they were pursuing legal immigration status or would pursue it as soon as possible.

The lawsuit argued that the U.S. citizens were denied the benefits offered to illegal immigrants by the Kansas law. Supporters argued that the Kansas law does not violate federal law because eligibility is based on high school attendance, not on residency. In July 2005, a federal judge dismissed the lawsuit. The judge ruled that the plaintiffs lacked standing to bring the suit because they had not demonstrated that the Kansas resident tuition law harmed them. Kansas' law, according to the judge, did not result in higher tuition for the plaintiffs. Nonresident tuition was the same with or without the change in policy.

A New York court in 2002 upheld a 2001 policy change at City University of New York to charge nonresident tuition to undocumented students to conform to the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The ruling upheld the university's right to change the definition of "resident" to comply with the federal law.

The New York legislature subsequently passed a law making undocumented immigrant students eligible for in-state tuition if they attended a New York high school for at least two years and received a high school or GED diploma, and applied to a New York college or university within five years of receiving the diploma. Under the New York law, eligible students must pledge to apply for legal immigration status as soon as possible.

In the fall of 2005, the Washington Legal Foundation, a legal advocacy group, filed complaints with the Department of Homeland Security claiming that the New York and Texas laws on resident tuition violate the federal law. It is not clear if the department will act on the foundation's request.

In December 2005, out-of-state students, who are U.S. citizens who attend or recently attended one of California's three public higher education systems, challenged the California resident tuition law. The lawsuit was brought in state court and is seeking the status of a class action suit. The California plaintiff's lawyer also represented plaintiffs in the Kansas case.

In the summer of 2006, an Oklahoma state representative requested the state attorney general to rule on whether enrolling undocumented students in Oklahoma public higher education institutions is a prohibited benefit under federal law and if the state's 2003 in-state tuition criteria are in conflict with federal law prohibiting higher education benefits for illegal immigrants. The attorney general has not yet issued an opinion.

For more information about postsecondary school tuition, visit the higher education area of our web site, www.house.mn/hrd/issinfo/ed_high.htm.