



# In-State Tuition for Undocumented Immigrants: States' Rights and Educational Opportunity

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***Passage of proposed federal legislation would clarify the states' authority over tuition policy and the right to offer in-state tuition to undocumented students. It would not provide a "one-size-fits-all" directive to states, but it would remove obstacles to state efforts to promote higher-education access and affordability for all students.***

## Context

According to the Pew Hispanic Center, the United States has about 12 million undocumented immigrants, a number that is growing faster than the number of legal immigrants. Undocumented immigrants represent about 28 percent of the immigrant population, according to the Urban Institute's most recent estimate. Although just six states—California, Texas, New York, Florida, Illinois, and New Jersey—account for two-thirds of all immigrants, the immigrant population has been dispersing rapidly to other areas of the country. Thus states throughout the nation now are grappling with growing populations of newcomers and non-English-speakers, and a fierce national debate has ensued about the rights and needs of immigrants versus the costs of immigration.

Although there is wide agreement that the nation's immigration system is badly in need of reform, Congress has repeatedly failed to enact legislation overhauling it. With frustration growing in the states,

legislatures across the nation are introducing record numbers of immigration bills. The National Conference of State Legislatures notes that numerous immigration bills have been introduced in all 50 states this year; provisions typically deal with employment, law enforcement, health care, welfare, and education. Forty-one states have passed a total of 170 immigration laws.

Concerns about higher-education access and affordability have emerged as significant issues in the immigration debates. The Urban Institute estimates that about 65,000 undocumented students graduate from U.S. high schools each year. At the college level, the primary issue is whether undocumented students may be granted residency status in a state in order to qualify for in-state tuition rates. Without this option, most undocumented students cannot afford college. A secondary issue is whether undocumented students should have access to state financial aid; they currently are not eligible for any federal student-financial aid. As is true for immigration issues in

general, public opinion is divided on how states should respond, and emotions run high.

## Observations

**Despite the fact that federal lawmakers and the courts have clarified the status of undocumented students in K-12 education over the past 25 years, they have failed to provide clear directives with respect to higher education.** In *Plyler v. Doe* (1982), the Supreme Court ruled that all children, regardless of immigration status, are guaranteed access to public education from kindergarten through 12th grade. The Court held that denying such an education would punish children for the acts of their parents and would perpetuate the formation of an underclass of citizens.

In 1996, Congress sought to clarify the status of undocumented immigrants in higher education. Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) prohibited states from “providing a postsecondary education benefit to an alien not lawfully present unless any citizen or national is eligible for such benefit.” This law, however, did not bar states from providing in-state tuition to undocumented students. Without formal regulations for its enforcement, this law has been interpreted by the states in various ways, fueling confusion and debate.

In two high-profile cases, groups have challenged state laws. In 2005, a group of out-of-state students filed suit in Kansas, arguing that they were being denied benefits that were being offered to undocumented immigrants, thereby violating IIRIRA. The courts upheld state law in favor of undocumented students, holding that equal protection of the laws was not violated because the plaintiffs could receive in-state tuition benefits in their home states. In a similar case in California, the same determination was made, and the California law was likewise upheld. The Washington (DC) Legal Foundation also has used IIRIRA as the basis for challenging laws in New York and Texas. Two lawsuits were filed in 2005, but have not been acted upon.

**Bills have been introduced in Congress that would make it easier for states to charge in-state tuition rates to undocumented students, but they would not require states to do so. If enacted, such legislation would clarify the legal ambiguities but would not end debate in statehouses.** First introduced in the Senate in 2001 and later made part of the Senate’s Comprehensive Immigration Reform Acts of 2006 and 2007, the Development, Relief, and Education for

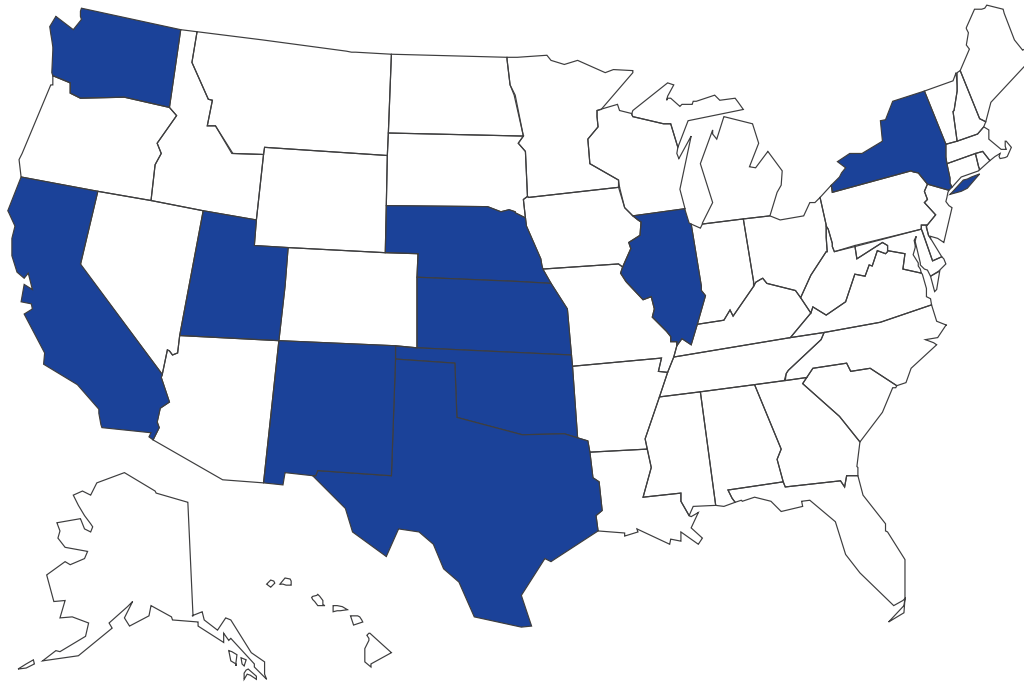
Alien Minors (DREAM) Act would provide a path for immigrant children to obtain legal status and allow states to offer them in-state tuition and financial aid. Under this plan, many undocumented students would immediately be eligible for a probationary Z visa, and after three years—less time than for other applicants—a green card. Affected students would be eligible for federal loans and work study, but not Pell Grants. The bill would repeal section 505 of IIRIRA, effectively assuring states’ option to determine residency for higher-education purposes.

Those and other bills introduced in the House and Senate over the past few years have repeatedly been stalled. Most recently, the failure of the Senate’s comprehensive immigration-reform bill means that Congress is not likely to take up broader immigration reform until after the 2008 elections. However, the DREAM Act legislation does remain a stand-alone bill in both the House and Senate, and it also could be incorporated as part of another bill. Chances for its passage as a stand-alone bill in the current Congress are not strong; however, if it is attached to a larger, “must-pass” piece of legislation, its chances of passing are much greater.

**With federal direction unclear, state legislatures have engaged in heated discussion about in-state tuition for undocumented immigrants, and numerous attempts have been made to enact legislation favoring one side or the other.** At least 30 states have considered legislation to allow undocumented immigrants to receive in-state tuition, and 10 states have passed such legislation. [See map.] These include states with both Democratic and Republican majorities. In 2001, Texas was the first to pass such a measure, followed by California the same year. In three states (New Mexico, Oklahoma, and Texas), undocumented students are also eligible for state financial aid. In a few states, legislatures have passed such measures only to have governors veto them, believing they conflict with federal law.

All of the measures that have been enacted contain similar criteria for eligibility. For undocumented students to be eligible for in-state tuition, they must reside in or attend school in the state for a specified number of years (two to four), graduate from a high school in the state or complete a GED, and submit an affidavit stating intent to file for legal residency. Of the 10 states that have enacted this legislation, six redefine residency for purposes of tuition by focusing on high-school attendance rather than residence in the state. The other four states exempt certain categories of students from paying out-of-

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state tuition, including undocumented students who meet the above requirements. In either approach, states view the provisions as effective strategies for complying with IIRIRA.

On the other side of the debate, legislation has been introduced in several states that would bar undocumented students from receiving in-state tuition. This includes a few states that previously have adopted legislation favoring undocumented students and where opponents now want to repeal those laws.

Public discussion in the states remains heated, with positions becoming increasingly polarized. Many opponents of in-state tuition for undocumented students are strongly opposed to any policy reform that implies “amnesty.” They argue that such policies reward illegal behavior, offer enticement for more illegal immigration, and are expensive.

Proponents argue the opposite. They note that undocumented children had no choice in coming to this country and did nothing illegal. Since the in-state tuition measures require students to seek lawful permanent residency, proponents argue that they promote responsible behavior and also provide an incentive for high-school graduation. Regarding expense, proponents believe that allowing students to obtain postsecondary education contributes to state and national economic development and saves

money in the long run. Without the prospect of in-state tuition, higher education would be out of reach for most of these students, supporters say. Yet with more-affordable tuition, college-going is increased, and student academic success leads to increased earnings, contributing to enhanced state revenues and reduced reliance on state expenditures such as health care, social services, and corrections.

**Passage of the DREAM Act would not provide a “one-size-fits-all” directive to states, but it would create a more supportive context for debate.**

**Absence of such clarifying federal legislation has stymied states’ progress toward increasing access for all students.** In Connecticut, after heated debate in the House of Representatives and the Senate this year, the General Assembly narrowly approved a bill that would have allowed undocumented immigrants to be eligible to pay in-state tuition at public institutions. In June, the governor vetoed the bill, commenting that “since the underlying issues are a matter of national concern and need to be addressed by the Congress, the most prudent course for the State of Connecticut is to wait for resolution at the federal level.”

Oklahoma is one of the 10 states that has passed a measure in favor of undocumented students and one of only three that offers them any state aid. The Oklahoma Tuition Assistance Grant program has been hotly debated and criticized, although in fact, only 37

undocumented students have received any aid from the program—considerably less than 1 percent of the more than 26,000 students served statewide. In May, the state legislature passed a bill that would prevent most undocumented immigrants from receiving any public benefits, including in-state tuition rates. The governor has not said whether or not he will sign the measure.

In Maryland, the governor pledged to sign a bill granting undocumented immigrants in-state tuition. The House of Delegates passed the measure in March, but the bill did not make it to the Senate floor, and the matter will be put off until next year.

Arizona's voters passed Proposition 300 in November 2006, requiring undocumented students to pay non-resident tuition, prohibiting such students from receiving any state financial aid, and requiring institutions to report to the legislature the number of undocumented students they enroll. This measure was part of a broader immigration package that emphasized how expensive immigration is to the state. Since Proposition 300 took effect, 1,500 students from Arizona State University and the University of Arizona and nearly 1,800 community college students have been denied financial aid or in-state tuition status.

In Georgia, college presidents have the flexibility to offer waivers for in-state tuition for up to 2 percent of their freshman enrollment, but the state's Board of Regents has advised them not to grant such waivers to undocumented students. The legal issues still are being studied.

## Conclusion

Clearly, absence of supportive or definitive legislation at the federal level is making it difficult for states to pass laws and implement programs to assist undocumented students. Even those who believe in the merits of such policies are hesitant to take action under legally ambiguous conditions. AASCU will continue to strongly support passage of federal legislation to clarify existing immigration law by allowing states to regulate the tuition rate eligibility status of undocumented students. This is a clear matter of states' authority over tuition policy that must be preserved and respected. Moreover, AASCU encourages states to offer in-state tuition to qualified undocumented immigrants. The nation as a whole gains when the college pipeline is strengthened for all.

## Resources

**American Association of State Colleges and Universities** (AASCU). AASCU has previously addressed this topic in the reports *Should Undocumented Immigrants Have Access to In-State Tuition?* (Policy Matters, June 2005) and *Access for All? Debating In-State Tuition for Undocumented Alien Students*.  
[aascu.org/policy\\_matters/pdf/v2n6.pdf](http://aascu.org/policy_matters/pdf/v2n6.pdf)

**Center for Policy Alternatives** (CFPA). CFPA promotes resident tuition for undocumented students and provides model legislation for state policymakers.  
[stateaction.org/issues/issue.cfm/issue/Immigrants-Tuition.xml](http://stateaction.org/issues/issue.cfm/issue/Immigrants-Tuition.xml)

**Education Commission of the States** (ECS). The report *In-State Tuition for Undocumented Immigrants* (2006) summarizes states' actions on this issue.  
[ecs.org/clearinghouse/61/00/6100.pdf](http://ecs.org/clearinghouse/61/00/6100.pdf)

**Institute for Higher Education Law and Governance, University of Houston**. This center provides legal information and links to recent developments concerning undocumented college students.  
[law.uh.edu/ihelg/undocumented/homepage.html](http://law.uh.edu/ihelg/undocumented/homepage.html)

**Jobs for the Future** (JFF). JFF's most recent policy brief on this subject, *Update: State Policies Regarding In-State Tuition for Undocumented Immigrants* (March 2007), updates an earlier, more in-depth report on the same subject, *Access to Community College for Undocumented Immigrants: A Guide for State Policymakers* (January 2005).  
[jff.org/Documents/UndocImmigUpdate0307.pdf](http://jff.org/Documents/UndocImmigUpdate0307.pdf)  
[jff.org/Documents/AccessToCCUndoc.pdf](http://jff.org/Documents/AccessToCCUndoc.pdf)

**National Conference of State Legislatures** (NCSL). NCSL's Immigrant Policy Website provides information and reports pertaining to a variety of immigrant issues, including in-state tuition for undocumented immigrant students. [nctl.org/programs/immig/](http://nctl.org/programs/immig/)

**National Immigration Law Center** (NILC). The mission of NILC is to protect and promote the rights and opportunities of low-income immigrants and their family members. NILC offers issue briefs and other resources concerning the DREAM Act. [nilc.org/](http://nilc.org/)

**New Mexico Fiscal Policy Project**. The report *Undocumented Immigrants in New Mexico: State Tax Contributions and Fiscal Concerns* (2006) presents findings from a study of estimated tax payments made by unauthorized immigrants. It concludes that contrary to popular belief, undocumented immigrants pay their own way for K-12 education and often pay for Social Security and Medicare through payroll deductions even though they are unable to benefit from these programs.  
[nmvoices.org/attachments/immigrant\\_tax\\_report.pdf](http://nmvoices.org/attachments/immigrant_tax_report.pdf)