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Addressing postsecondary access for undocumented students

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In 2012, there were an estimated 11.2 million undocumented individuals living in the United States.¹ The peak of unauthorized immigrant population occurred in 2007 with 12.2 million, a stark rise from original estimates of 3.5 million in 1990.

Although down from its peak, a sizeable and stable population of unauthorized individuals resides in the United States. Given this population, both federal and state authorities have taken action to provide policy and regulations for this group.

Since 2001, 18 states have taken policy action to redefine eligibility requirements for in-state tuition that make undocumented students eligible.

KEY TAKEAWAYS

Federal policy, including executive actions, provides a backdrop for states to consider in-state tuition and state financial aid policies.

In five states undocumented students are eligible to receive state financial aid.

Several states, highlighted in this report, have enacted policies worth reviewing.



Among policy actions, states have sought to expand postsecondary education participation and access for a specific subset of undocumented individuals. Since 2001, 18 states have passed legislation to expand the eligibility for in-state tuition for undocumented and other individuals who do not have state residency; five of the 18 states also provide access to state financial aid programs for this population.

These state actions, in addition to federal actions such as the Deferred Action for Childhood Arrivals² and the recent Immigration Accountability Executive Action³ from President Obama, are creating a dialogue around undocumented student populations and how they are both regulated and allowed access to certain opportunities in the United States.

Issue overview

On June 15, 2012, President Obama created the Deferred Action for Childhood Arrivals (DACA) policy. DACA allows undocumented young people who came to the United States before 2007 and meet a prescribed set of criteria to remain in the U.S.⁴ Individuals granted deferred action can apply for work authorization; however they are not guaranteed a path to citizenship or continuous deferment.

On Nov. 20, 2014, Obama introduced new executive actions on immigration that would, in part, expand the eligibility pool for DACA recipients. Under the new executive action, the Department of Homeland Security expands DACA to individuals who were brought to the U.S. as children before Jan. 1, 2010, regardless of their current age and expands DACA relief to be granted for three years.⁵

Eligibility requirements state that an individual must:

- ◆ Have moved to the United State before the age of 16 regardless of current age.
- ◆ Have continuous residency in the U.S. since June 15, 2007.
- ◆ Have entered the U.S. without inspection or fell out of lawful visa status⁶ before Jan. 1, 2010.
- ◆ Have been physically present in the U.S. and made the request for deferred action by Nov. 20, 2014.
- ◆ Have no lawful status as of Nov. 20, 2014.
- ◆ Not be an enforcement priority as reflected in the Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum.
- ◆ Not present other factors that make the grant of deferred action inappropriate.⁷

The executive actions mentioned above build on the history of federal engagement with issues undocumented individuals face. Since 2001, Congress has considered multiple iterations of the DREAM Act, which could remove the legal ambiguity confronting undocumented individuals trying to utilize public education benefits offered to citizens.

Consideration of DREAM Act legislation continues to inform and be informed by state-level action expanding access to in-state tuition and state financial aid opportunities for qualifying undocumented individuals.

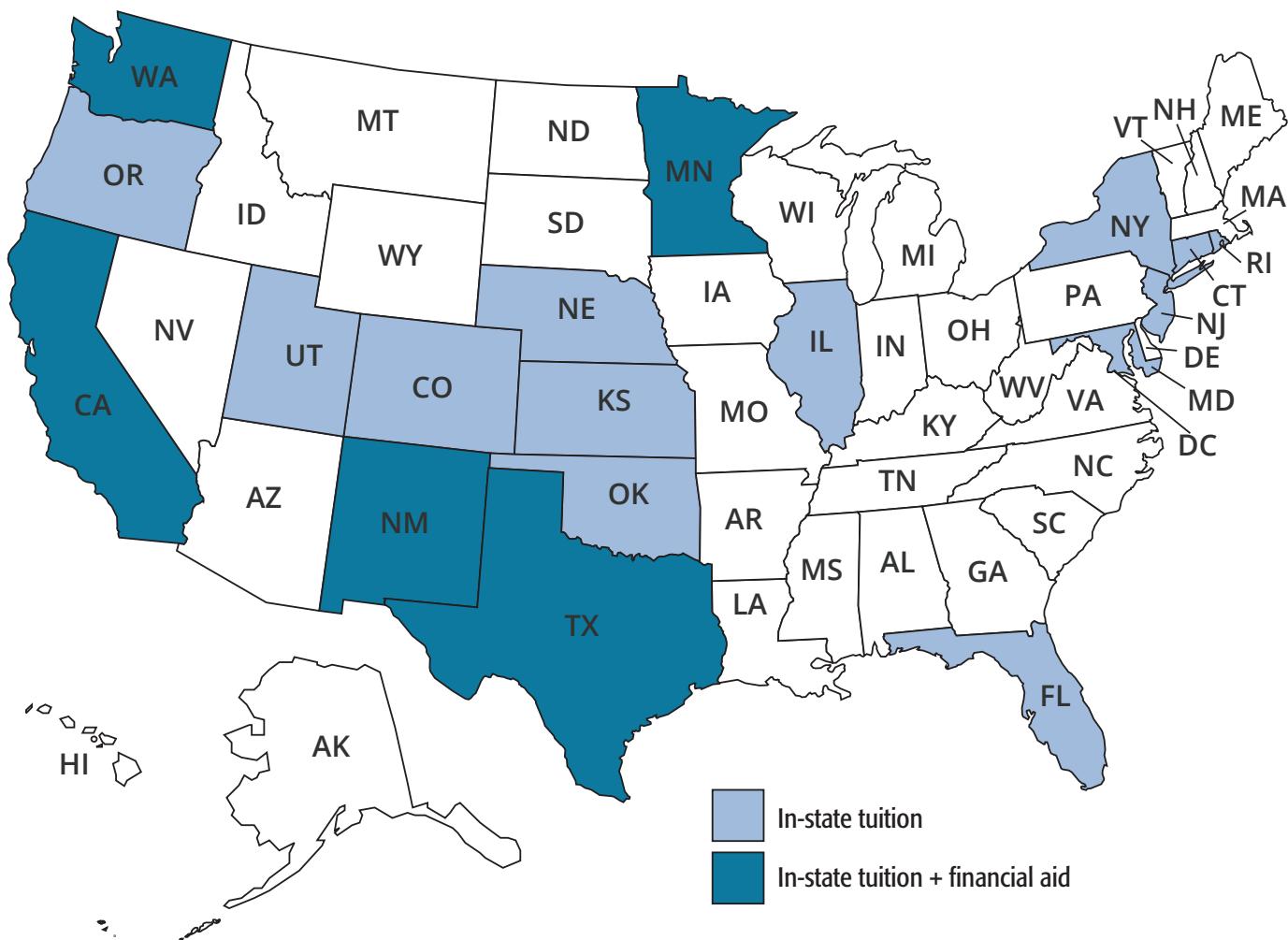
As discussions and considerations around unauthorized individuals continue, state and federal actions will inform and influence each other.

State response to federal action

Eighteen states currently provide in-state tuition rates for undocumented students.⁸ States provide these policies through legislation and board regulations. General requirements for these policies can include, but are not limited to, a student having:

1. Attended a high school in the state for a certain number of years.
2. Graduated from a high school in the state (public or private) or received a GED.
3. Provided a signed affidavit stating the student has applied to legalize their status or will as soon as they are eligible.⁹

State policies for undocumented individuals



Source: Education Commission of the States, 2015.

State Examples

Texas

Texas was the first state to allow in-state tuition in 2001 with the enactment of V.T.C.A., Education Code §54.052 and 54.053. The bill states that an "alien" living in the United States under a visa, or has applied to or has a petition pending for citizenship, can qualify for in-state tuition and fees if he or she meets residency qualifications. These qualifications include having:

- ◆ Lived with a parent or guardian while attending public or private high school.
- ◆ Graduated from a public or private high school or received GED.
- ◆ Resided in the state for at least three years before graduation or receipt of GED.
- ◆ Registered as an entering college student no earlier than fall 2001.
- ◆ Provided the institution with an affidavit that he or she will file an application to become a permanent resident as soon as possible and eligible.

In 2011, over 16,000 students attended Texas institutions of higher education under this bill.¹⁰

Illinois

In 2003 Illinois updated its residency requirements in each individual institution act,¹¹ which provided in-state tuition benefits to undocumented students residing in the state. The qualifications for residency are the same as in Texas. Students were able to qualify for residency if they meet all of the requirements starting after fall 2003. Illinois acknowledges that this change could cost money and provides that any lost revenue in implementing this policy will be absorbed by the University Income Fund. The University Income Fund for each public institution is housed in its own treasury for purposes of tuition and fees not pledged to revenue bonds, library fees and all interest and excess income from auxiliary enterprises and activities. Illinois does not report out how many undocumented students utilize the in-state tuition benefit.¹²

Washington

Washington passed RCWA §28B.15.012 in 2003, creating in-state tuition requirements for undocumented students. This policy added language to current residency policy to include students who are not currently permanent residents of the United States. These students must meet requirements that include having:

- ◆ Completed the full senior year of high school and earned a high school diploma in Washington or received a GED.
- ◆ Lived in Washington for at least three years immediately prior to graduating.
- ◆ Continuously lived in Washington after graduating through being admitted to an institution of higher education.
- ◆ Provided the institution with an affidavit regarding filing an application to become a permanent resident as soon as possible or eligible and willingness to engage in activities necessary to acquire citizenship.

In 2014 Washington enacted RCWA §28B.92.010, which allowed for undocumented students to utilize state financial aid programs. The requirements are similar, but undocumented students must have been granted deferred action for childhood arrival status. Washington reported enrollment of 1,101 presumed undocumented students in the 2013-14 school year.¹³

Kansas

In 2004 Kansas passed K.S.A. §76-731a(d), which allows undocumented students to qualify for in-state tuition and fee rates. Kansas provided similar eligibility requirements to the states above but took it a step further regarding students who do not follow through with the obligations in their affidavits. Undocumented students can lose their resident status and have to repay tuition from the previous year with interest if they:

- ◆ File an affidavit with false information.
- ◆ Fail to file an application for legal status within a year of becoming eligible.
- ◆ Fail to begin the process of becoming a citizen within one year of becoming eligible.
- ◆ Fail to maintain an active application for citizenship.

In the 2013-14 academic year, 658 undocumented students attended public higher education institutions in Kansas.¹⁴

Rhode Island

Rhode Island implemented Board of Governors for Higher Education Policy S – 5.0 in 2011 to provide undocumented students residency qualifications. This policy allows undocumented students to pay in-state tuition if they or their parents have been granted authorization by the Department of Homeland Security to remain in the United States and have lived in Rhode Island for at least one year. These students must also meet requirements for in-state tuition, including three or more years of high school completed in Rhode Island, a high school diploma or equivalent and providing the higher education institution with documentation stating the student filed an application seeking lawful immigration or will file such documentation. In the 2012-13 school year, 74 undocumented students utilized the in-state tuition policy.¹⁵

Colorado

In 2013 Colorado enacted §23-7-110 C.R.S., creating in-state tuition benefits for undocumented students. This was highly influenced by Metropolitan State University of Denver's policy to offer in-state tuition to undocumented students. This policy is similar to others regarding requirements for eligibility. It does add that institutions will not count these students as residents for any purpose other than tuition classification. It also states that this population is eligible for the College Opportunity Fund program, which is a stipend program to buy down tuition to in-state levels for eligible students. The General Assembly concluded that any increase in stipends would be offset through regular supplemental appropriations procedures. The appropriation in the policy also outlines an estimation of how many students were forecasted to take advantage of the tuition classification with an initial estimate of up to 500 additional students eligible for the College Opportunity Fund stipends. However, in fiscal year 2014-15, 690 students actually applied.¹⁶ The policy does allow undocumented students to be eligible for institutional financial benefits.

The examples above highlight the similarities and differences between how states approached adding in-state tuition eligibility for undocumented students. Many states use similar criteria for establishing residency for purposes of postsecondary tuition. Some states decided to discuss funding and what the implications may be on college campuses. In the majority of state policies, the legislature amended extant language defining residency requirements. All of these policies show a movement toward increasing access to public institutions for an underrepresented population.

State considerations

State legislators might want to consider the following questions if implementing in-state tuition or state financial aid for undocumented students:

- ◆ What students are covered by my state's current in-state tuition eligibility criteria?
- ◆ Does my state have a large population of undocumented students who could take advantage of an in-state tuition policy?
- ◆ If an in-state policy were to be implemented in my state, would undocumented students be held to the same requirements as U.S. citizens?
- ◆ What benefits would my state see if it implemented an in-state tuition policy for undocumented students?

ENDNOTES

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- 2 U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals (DACA), 2012, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca> (accessed on Jan. 12, 2015).
- 3 The White House, *Immigration Accountability Executive Action*, 2014, <http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action> (accessed on Jan. 12, 2015).
- 4 Immigration Equality, Deferred Action for Childhood Arrivals, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/path-to-status-in-the-u-s/daca-deferred-action-for-childhood-arrivals/> (accessed on Jan. 12, 2015).
- 5 Ibid, Immigration Accountability Executive Action, 2014.
- 6 "Lawful status" refers to "a citizen or national of the United States; or an alien: lawfully admitted for permanent or temporary residence in the United States; with conditional permanent resident status in the United States; who has an approved application for asylum in the United States or has entered into the United States in refugee status; who has a valid nonimmigrant status in the United States; who has a pending or approved application for temporary protected status (TPS) in the United States; who has approved deferred action status; or who has a pending application for lawful permanent residence (LPR) or conditional permanent resident status.", 6 CFR 37.3, Department of Homeland Security.
- 7 The Department of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents*, 2014, 2-4, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.
- 8 National Conference of State Legislatures, *Undocumented Student Tuition: State Action*, 2014, <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx> (accessed on Jan. 12, 2015).
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- 11 110 Ill. Comp. Stat. Ann. §305/7e-5, 110 Ill. Comp. Stat. Ann. §520/8d-5, 110 Ill. Comp. Stat. Ann. §660/5-88, 110 Ill. Comp. Stat. Ann. §665/10-88, 110 Ill. Comp. Stat. Ann. 670/15-88, 110 Ill. Comp. Stat. Ann. §675/20-88, 110 Ill. Comp. Stat. Ann. §680/25-88, 110 Ill. Comp. Stat. Ann. §685/30-88, 110 Ill. Comp. Stat. Ann. §690/35-88 and 110 Ill. Comp. Stat. Ann. §805/6-4a.
- 12 Illinois Board of Higher Education, Illinois Higher Education Enrollments & Degrees System, <http://www.ibhe.org/EnrollmentsDegrees/Search.aspx> (accessed on Jan. 12, 2015).
- 13 Washington Student Achievement Council, *2013-14 Student Enrollment Update*, (Olympia, WA: Washington Student Achievement Council) 1-4, <http://www.wsac.wa.gov/sites/default/files/2015.1079Report.pdf>.
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- 16 Colorado Department of Higher Education, e-mail from Celina Duran, December 2014.

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