

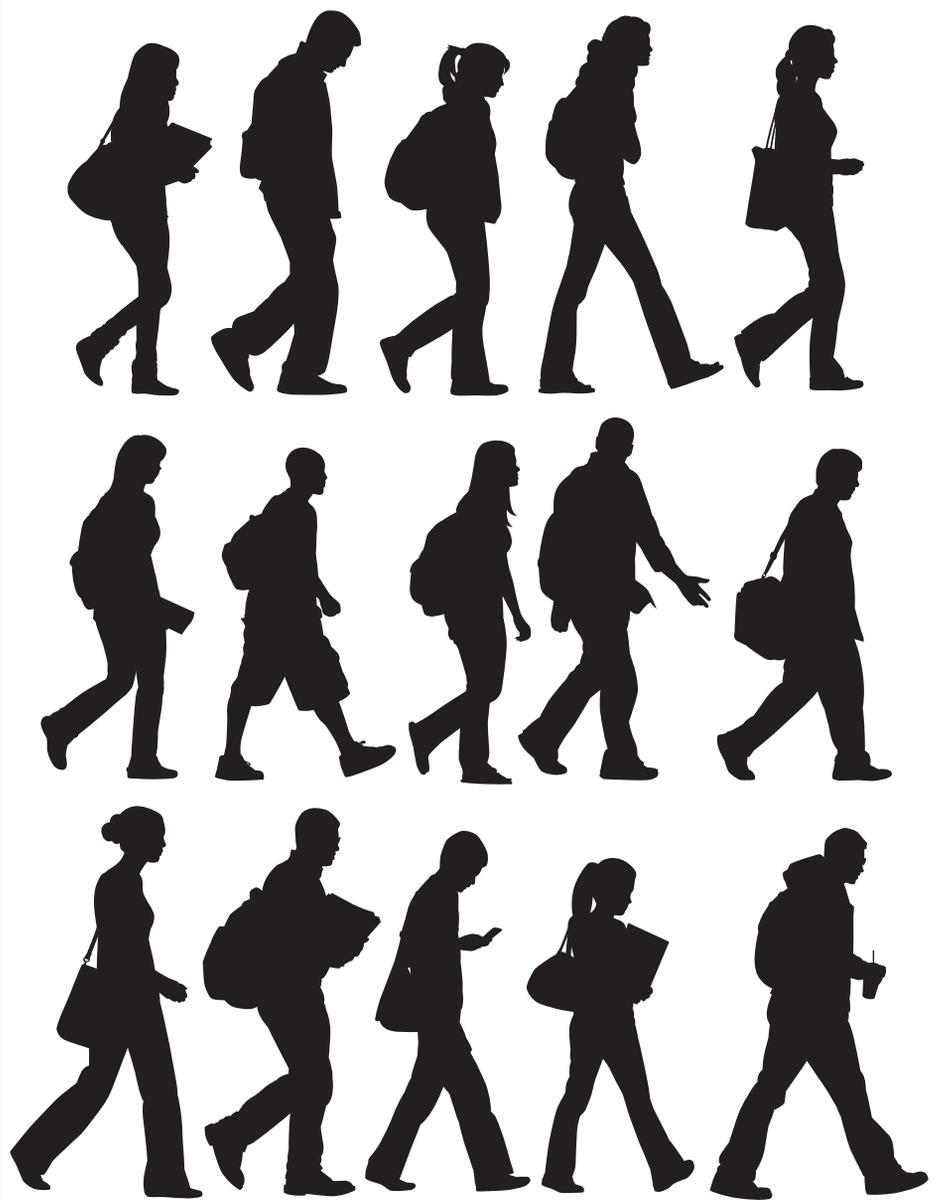
Unauthorized Immigrants' Access to Higher Education: Fifty States, Different Directions

Sejal Zota

Marcela Velasquez graduated with honors from Desert View High School.¹ She was ranked ninth in a class of 250; was involved in track, cross-country, and basketball; and wants to be a doctor. For years, she has dreamed of attending the University of Arizona. Yet, despite receiving an academic scholarship to the institution, she will not be enrolling. Marcela is the daughter of an unauthorized immigrant who brought her here when she was six years old.² As an unauthorized immigrant herself, Marcela may not use the scholarship to the University of Arizona or attend as an in-state student. She is ineligible for federal grants and loans, may not legally work to support herself while in college, and therefore cannot afford the nonresident tuition of nearly \$15,000 per year.

Marcela is like thousands of other unauthorized high school graduates who face tremendous barriers to higher education each year because of the high cost and the negative prospects for employment. In North Carolina, an estimated fifteen hundred unauthorized immigrants graduate from high school each year.³ These students have even fewer higher education options because, unlike their counterparts in many other states, they are currently barred from attending community college in the state.⁴

Higher education access and affordability have emerged as key issues in immigration debates across the nation. The Urban Institute estimates that each year about sixty-five thousand unauthor-



ized immigrants who have lived in the United States for five years or longer graduate from high school.⁵ Most of these students were brought to live in the United States as young children,

having no choice in the matter. The primary issues with respect to higher education are whether unauthorized immigrants should be allowed to enroll in public colleges and universities and

The author, an attorney, is a School staff member specializing in immigration law. Contact her at szota@soc.unc.edu.

whether they may qualify for in-state tuition. To date, most state-level action has focused on qualifications for in-state tuition, without which most unauthorized immigrants are unable to afford higher education. Public opinion is deeply divided on such action.

The aim of this article is to put North Carolina higher education policies and possible changes in context. The article provides detailed information on federal laws and other states' laws and actions relating to immigrants' access to higher education. Specifically, it describes the federal law and pending legislation on provision of higher education benefits to unauthorized immigrants. It also surveys various state government actions in this area, focusing on whether unauthorized immigrants qualify for in-state tuition rates and for admission to public higher education institutions. The article then briefly examines the impact of existing laws allowing unauthorized immigrants to qualify for in-state tuition rates. Finally, it describes the recent history and the current status of unauthorized immigrants' access to the 16 universities in the University of North Carolina (UNC) system and the state's 58 community colleges.

Federal Law on Immigrants' Access to Higher Education

All children, regardless of their immigration status, are guaranteed access to K–12 public education under the 1982 U.S. Supreme Court decision, *Plyler v. Doe*.⁶ The Court was in part concerned that denying children an education would punish them for the acts of their parents and perpetuate the formation of an underclass of citizens.

Once unauthorized immigrants graduate from high school, however, they are on their own. Obtaining higher education is difficult for several reasons. Federal law does not prohibit or require their admission to postsecondary institutions in the United States.⁷ That decision is left to the individual states. Currently, public colleges and universities are inconsistent in their treatment of unauthorized immigrants, with a few schools nationwide denying admission to them.⁸

Even if they are able to gain admission, however, unauthorized immigrants

often find it difficult to pay for higher education. Under the Higher Education Act of 1965, as amended, they are ineligible for federally funded financial aid.⁹ In most instances, they also are ineligible for state financial aid. Further, as explained in the next section, in most states, they are ineligible for resident tuition rates. More broadly, as unauthorized immigrants, they are not legally allowed to work in the United States and are subject to deportation.

The Federal Restriction on State Provision of In-State Tuition Benefits to Unauthorized Immigrants

In 1996, Congress instituted a restriction on state provision of higher education benefits to unauthorized immigrants.¹⁰ The law, codified as Section 1623 of the U.S. Code, prohibits states from providing a higher education benefit based on residency to unauthorized immigrants unless the same benefit is provided to all U.S. citizens, regardless of residency.¹¹ There is disagreement about the meaning of this provision, and no authoritative guidance is available in either the congressional report or federal regulations.¹² The prohibition is commonly understood to apply to the offering of in-state tuition rates to unauthorized immigrants.¹³ The key issue in the current debate is whether states may offer in-state tuition rates to unauthorized immigrants, but not to all U.S. citizens, without violating Section 1623.

This law has been interpreted in various ways, and ten states have passed laws offering in-state tuition rates to eligible unauthorized immigrants (referred to as “tuition benefit laws” in this article). For instance, California passed a law offering tuition at in-state rates to anyone who has attended high school in California for at least three years and has graduated, including unauthorized immigrants.¹⁴ The states that have enacted such laws consider the provisions to be in compliance with Section 1623 because the criteria used to offer in-state rates—attendance and graduation from

a state high school—are not based on state residency and apply to U.S. citizens as well.¹⁵ In fact, in many of these states, *authorized* immigrants are beneficiaries of the laws. Opponents of the laws argue that such criteria essentially serve as a proxy for state residency and therefore violate Section 1623.

To date, two courts have considered the legality of tuition benefit laws. In a challenge to a Kansas law, the federal district court in Kansas dismissed a lawsuit brought by a group of out-of-state students, ruling that they lacked standing to sue.¹⁶ The decision was upheld by the U.S. Court of Appeals for the Tenth Circuit, and the U.S. Supreme Court declined to review the federal court's ruling.¹⁷

In California, students paying nonresident tuition at the state's public colleges and universities filed a lawsuit

arguing that the tuition benefit law violates federal law by providing in-state tuition to unauthorized immigrants while charging U.S. citizens out-of-state tuition rates. A state

court found that the law does not violate federal law because it confers a benefit based not on state residency, but on high school attendance and graduation.¹⁸ In September 2008, however, a California appeals court overruled that decision, finding California's eligibility requirements of high school attendance and graduation to be a *de facto* residency requirement and thus in violation of federal law.¹⁹ California's supreme court has agreed to review the case, and a decision is expected later this year.

The DREAM Act

Repeatedly since 2001, Congress has considered legislation that would improve the opportunity for unauthorized immigrants to attend a college or a university. The Development, Relief, and Education for Alien Minors (DREAM) Act would restore the state option to determine residency for purposes of higher education benefits by repealing Section 1623.²⁰ It also would provide eligible unauthorized immigrants with

Ten states have passed laws offering in-state tuition rates to unauthorized immigrants. A few have faced court challenges.

the opportunity to legalize their status in a two-stage process.

Specifically, the proposed legislation would provide *conditional* legal status for six years to students who were under the age of sixteen when they entered the country; had been physically present in the United States for at least five years; had earned a U.S. high school diploma or passed the General Educational Development (GED) test; and were of good moral character.²¹ These students could obtain *permanent* resident status if they completed at least two years of higher education or military service within the six years.

Versions of the DREAM Act have been introduced in both the Senate and the House with bipartisan cosponsorship almost every year since 2001, but Congress has failed to pass the proposed legislation. It was made part of the Senate's Comprehensive Immigration Reform Acts of 2006 and 2007 but was

not enacted. In 2007, North Carolina Senators Richard Burr and Elizabeth Dole both voted against advancing its consideration. In March of this year, bipartisan delegations in both the Senate and the House again introduced versions of the DREAM Act.²² For the first time since it was introduced in 2001, the DREAM Act has the support of the House and Senate leadership, the relevant committee chairs, and President Barack Obama, who was an original sponsor of the legislation when he was in the Senate.²³

Although passage of the DREAM Act would clarify states' rights to offer in-state tuition rates to unauthorized immigrants by eliminating Section 1623, and would resolve any legal challenges against existing tuition benefit laws, the legislation would not *require* states to offer in-state tuition rates to unauthorized immigrants. That decision still would be left to the individual states.

State Action on Unauthorized Immigrants and Higher Education Benefits

Over the last several years, a large number of states have considered legislation relating to unauthorized immigrants and higher education benefits.

Tuition Benefit Laws

At least thirty states have considered legislation to offer tuition at in-state rates to certain unauthorized immigrants, and ten of them passed such legislation between 2001 and 2006 (see Table 1).²⁴ These include both states with Democratic majorities and states with Republican majorities. In 2001, Texas was the first state to pass such a measure. It was followed in 2001–2 by California, Utah, and New York (in that order); in 2003 by Washington, Oklahoma, and Illinois (in that order); in 2004 by Kansas; in 2005 by New Mexico; and in 2006 by Nebraska.²⁵

Table 1. State Laws Granting In-State or Flat-Rate Tuition to Unauthorized Immigrants

State	Year of Law	Access to In-State Tuition	Access to State Financial Aid	Law's High School Requirement*	Comments
California	2001	Yes	No	3 years	—
Illinois	2003	Yes	No	3 years	—
Kansas	2004	Yes	No	3 years	—
Minnesota	2007	No	No	None	Minnesota eliminated nonresident rates in a number of public colleges in 2007, allowing anyone to qualify for flat-rate tuition.
Nebraska	2006	Yes	No	3 years	—
New Mexico	2005	Yes	Yes	1 year	—
New York	2002	Yes	No	2 years	—
Oklahoma	2003	Yes	Yes	2 years	In 2007, Oklahoma ended its in-state tuition benefit and state financial assistance for unauthorized immigrants.
Texas	2001	Yes	Yes	3 years	—
Utah	2002	Yes	No	3 years	—
Washington	2003	Yes	No	3 years	—

Sources: CAL. EDUC. CODE § 68130.5 (West 2003); 110 ILL. COMP. STAT. ANN. 947/65.27 (West 2008); KAN. STAT. ANN. § 76-731a (Supp. 2008); HF 1063, 85th Leg. Sess., 2007–8 (Minn. 2007), www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H1063.2.html&session=ls85; NEB. REV. STAT. 85-502 (2008); Act of April 8, 2005, ch. 348, 2005 N.M. Laws 3807; N.Y. EDUC. LAW § 355(2)(h)(8) (McKinney Supp. 2009); OKLA. STAT. tit. 70 § 3242 (2008); TEX. EDUC. CODE ANN. §§ 54.051, 54.052, 54.055, 54.057, 54.060 (West 2006); UTAH CODE ANN. § 53b-8-106 (2006); WASH. REV. CODE ANN. § 28b.15.012 (2008); Rute Pinhel, *State Legislation Concerning In-State Tuition for Undocumented Immigrants* (Hartford, CT: Connecticut General Assembly Office of Legislative Research, 2008), www.cga.ct.gov/2008/rpt/2008-R-0178.htm; Alene Russell, *In-State Tuition for Undocumented Immigrants: States' Rights and Educational Opportunity*, A Policy Matters Higher Education Brief (Washington, DC: American Association of State Colleges and Universities, 2007), www.aascu.org/media/pm/pdf/in-state_tuition07.pdf.

*State laws offering in-state tuition rates to unauthorized immigrants generally require that students attend school in the state for one to three years and graduate from a high school in the state or pass a General Educational Development test. In all states except New Mexico, an unauthorized immigrant also must submit an affidavit promising to legalize his or her status as soon as he or she is eligible.

Laws offering resident tuition rates to unauthorized immigrants contain similar criteria for eligibility. The requirements are that students attend school in the state for one to three years, graduate from a high school in the state or pass a GED test, and apply to or enroll in a public college or university. An unauthorized student also must submit an affidavit promising to legalize his or her status as soon as he or she is eligible.

New Mexico, Oklahoma, and Texas also have enacted provisions making unauthorized immigrants eligible for state financial aid.²⁶ Legislatures in a few states, including Connecticut, Maryland, and Massachusetts, have passed laws offering tuition at in-state rates to unauthorized immigrants, only to have them vetoed by the governors. Many other states, including North Carolina, have considered similar legislation, but failed to pass it. Minnesota debated and

resolved this issue by passing a law in 2007 that eliminated nonresident rates altogether in a number of institutions in its state college system, allowing anyone, regardless of state of residence or immigration status, to qualify for the same tuition.²⁷

When state legislatures passed these tuition benefit laws, expectations were raised that Congress would pass the DREAM Act and thus provide a path to legalization for many unauthorized-immigrant graduates.²⁸ However, passage has not occurred. Instead, there has been increased public attention to and criticism of unauthorized immigration, in response to the government's failure to enact comprehensive immigration reform and a perceived lack of enforcement.

Some state legislators have responded to this criticism with attempts to restrict the access of unauthorized immigrants to higher education benefits. For example,

several states, including North Carolina, have introduced legislation that would bar unauthorized immigrants from being offered in-state tuition rates. Even in states that have adopted tuition benefit laws, opponents are working to repeal them.²⁹

In 2006, Arizona voters passed Proposition 300, which prohibits unauthorized immigrants from receiving in-state tuition rates or any other type of financial assistance at any public college or university.³⁰ In 2007, Oklahoma passed the Oklahoma Taxpayer and Citizen Protection Act, which ended its in-state tuition benefit, including financial aid, for students without lawful presence in the United States.³¹ Colorado and Georgia also passed laws (in 2006 and 2008, respectively) barring unauthorized immigrants from receiving in-state tuition rates.³² 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 unauthorized immigrants.

Admission to Public Colleges and Universities

The debate over immigrants' access to higher education has primarily focused on whether to charge them in-state tuition rates. Most states do not bar admission of unauthorized immigrants to postsecondary institutions, but individual college and university policies vary, according to the College Board.

In 2008, however, South Carolina became the first state explicitly to bar unauthorized immigrants from enrolling in its public colleges and universities.³³ In September 2008, the Alabama State Board of Education adopted a new policy denying unauthorized immigrants admission to Alabama's two-year community colleges.³⁴ North Carolina's State Board of Community Colleges is maintaining a ban on the enrollment of unauthorized immigrants while it conducts a comprehensive study of community college admission policies in other states and the associated costs. The UNC system of public universities, however, permits the admission of unauthorized immigrants as out-of-state students.

Arguments against and for Higher Education Benefits to Unauthorized Immigrants

Although bills providing higher education benefits to unauthorized immigrants continue to be supported by policy makers and constituents of state higher education systems in most states, public opinion remains deeply divided over such measures.³⁵ Opponents of tuition benefit laws and the DREAM Act argue that granting higher education benefits to unauthorized immigrants rewards lawbreakers and thereby undermines the U.S. immigration system.³⁶ In their view, making benefits available, especially legalizing them, will encourage more unauthorized immigration into the country. Opponents also object to using U.S. tax dollars to subsidize the education of people who are present in the United States in violation of law. They point out that tuition benefit laws could result in added cost to taxpayers or individual states.³⁷ Critics further argue that such laws channel educational resources away from native-born students by taking away enrollment slots in public colleges and universities from U.S. citizens.³⁸

Proponents of tuition benefit laws and the DREAM Act argue that enabling unauthorized immigrants who graduate from high school to continue their education is both fair and in the

U.S. national interest.³⁹ Proponents note that most unauthorized-immigrant students were brought to the United States at a very young age, had no choice in the matter, and should not be held responsible for their parents' decision to enter the country unlawfully.⁴⁰ Because almost all tuition benefit measures and the DREAM Act require students to seek legal status, supporters argue that the measures encourage responsible behavior and also provide a powerful incentive for completing high school.⁴¹

Regarding expense, proponents contend that giving students access to higher education has a positive long-term impact on states' and the nation's economic strength and competitiveness and saves money in the long run. They emphasize that without the prospect of in-state tuition rates and other financial aid, higher education would be out of reach for most unauthorized immigrants.⁴² With more affordable tuition, supporters argue, college-going will increase, and student academic success will result in increased earnings, higher contributions to tax revenues, and reduced reliance on state expenditures such as health care, social services, and corrections.⁴³

Impact of Tuition Benefit Laws

Measuring the impact of existing tuition benefit laws is difficult because most of them were enacted too recently to allow for meaningful collection of data about their effects. According to a December 2008 report by the Center for Policy Entrepreneurship (CPE), one of the few studies that have been released, many states have not yet analyzed the effects, and most statistics do not specifically track data for unauthorized immigrants.⁴⁴ The CPE report examines existing data and attempts to measure the impact of tuition benefit laws, while acknowledging the difficulty in doing so and the preliminary nature of the data. In sum, the report indicates that in the states with tuition benefit laws, statistics for unauthorized immigrants suggest that the laws have positively affected college enrollment and dropout rates, with minimal or no fiscal impact on the state.⁴⁵ However, because unauthorized



immigrants remain ineligible to legally work per federal law, tuition benefit laws appear to have had limited impact on their ability to obtain jobs after college graduation.

Effect on College Enrollment

A 2008 study published in the *Journal of Policy Analysis and Management*

indicates that tuition benefit laws have had positive, but limited, effects on college enrollment by Mexican noncitizen students.⁴⁶ The study looked at data for Mexican noncitizen

young adults who are eligible for in-state tuition in the ten states that offer such benefits to unauthorized immigrants, in order to approximate the results for the unauthorized immigrant population. Although this group has a high probability of being unauthorized, the data are imperfect because they do not include unauthorized immigrants of other national origins and may include authorized immigrants from Mexico.⁴⁷ Also, enrollment data specific to the unauthorized population are not available for all ten states because of how the data are tracked, but information is available for some states.

In the four states that enacted tuition benefit laws prior to 2003—California (2001), New York (2002), Texas (2001), and Utah (2002)—college enrollment among Mexican noncitizen youth increased by only 1.2 percent from 1999 to 2002.⁴⁸ From 2002 to 2005, enrollment increased by 3.5 percent.⁴⁹ Although the increase in college enrollment among Mexican noncitizen youth is significant for that population, it is not dramatic enough to narrow the attainment gap between noncitizens and natives, according to the study.⁵⁰ So, although the impact of the tuition benefit laws may be significant for portions of the population and for individuals, college enrollment as a whole remains largely unaffected.

A 2005 review of tuition benefit laws by the *Boston Globe* also found a modest increase in enrollment by unauthorized immigrants.⁵¹ The review reported that the University of California system en-

rolled 357 unauthorized immigrants in 2004–5.⁵² Further, Kansas public colleges enrolled 221 unauthorized immigrants in 2005–6; the University of New Mexico system, 41 unauthorized immigrants in 2005–6, the first year the law was in effect; and Washington public institutions, 27 unauthorized immigrants in 2003–4.⁵³ According to the CPE report, Washing-

ton's enrollment of unauthorized immigrants increased to 314 in 2007–8.⁵⁴

The Utah System for Higher Education reported that 182 unauthorized students were granted resident

tuition rates in 2005–6 (more than double the 87 unauthorized students enrolled before the law's enactment in 2003).⁵⁵

Of all ten states, Texas has seen the largest increase in enrollment since enacting its tuition benefit law in 2001. According to the Texas Higher Education Coordinating Board, students who benefited totaled 9,062 in 2007–8, out of 1.1 million students enrolled in Texas's public colleges and universities.⁵⁶ However, data indicate that many of the students who benefited from the Texas legislation were not unauthorized immigrants.⁵⁷ Because high school attendance and graduation are the main criteria in most states with tuition benefit laws, authorized immigrants, depending on their particular status, and U.S. citizens also may qualify for in-state tuition under some of these laws, whereas they otherwise would not. For example, in certain states, a U.S. citizen who once attended and graduated from a high school in the state, but has since moved out of the state, may qualify for in-state tuition under some tuition benefit laws, even though he or she no longer resides in the state.

Effect on Dropout Rates

Many education advocates have argued that because college costs are prohibitively high, many unauthorized immigrants lose hope for higher education and drop out before they complete high school. National dropout statistics indicate that Hispanic students were the most likely to drop

out of school in 2004, doing so at a rate of 8.9 percent.⁵⁸ Specifically, that figure describes the percentage of youth ages 15–24 in the United States who dropped out of grades 10–12 in either public or private schools.⁵⁹

The effect of tuition benefit laws on dropout rates is difficult to measure. States use various methods to calculate their dropout rates, and because the oldest tuition benefit laws were passed in 2001, little longitudinal data are available. Despite these challenges, however, initial assessments seem to indicate that tuition benefit laws may have slowed the dropout rates of unauthorized immigrants and closed the dropout-rate gap between Hispanic students and other students.⁶⁰

Fiscal Impact

The CPE report concludes that there is no evidence that tuition benefit laws have had any negative fiscal impact in states that have enacted such legislation. When they passed tuition benefit legislation, most states included fiscal notes (documents detailing the bills' anticipated fiscal effects). A few states concluded that the fiscal impact of the legislation was unknown. Half of the states expected some loss of revenue, but because of the difference between out-of-state and in-state tuition rates, the loss would be offset by the enrollment of new students who would not otherwise be able to afford college.⁶¹

Effect on Work Eligibility

Although tuition benefit laws appear to have some positive effects, the effects do not extend to the workplace. In Texas, whose law has been in effect since 2001, many beneficiaries have graduated, but found themselves unable to obtain employment.⁶² Trained as nurses and engineers, they are ready to join the workforce and make use of their postsecondary degrees, but by federal law they are ineligible to work. Without a change in the federal law that would allow these students to legalize their status and would authorize them to work, states and students cannot reap the full benefits of graduating unauthorized immigrants from public colleges and universities.

Tuition benefit laws have boosted college enrollment rates and may have reduced high school dropout rates.

Access to Community Colleges and Public Universities in North Carolina

In North Carolina, no state law makes unauthorized immigrants eligible for in-state tuition rates. In 2005, HR 1183 was proposed for this purpose, but it met with great opposition. The bill would have offered in-state tuition rates to unauthorized immigrants who had attended North Carolina schools for at least four consecutive years, had graduated, and had been accepted to a state college or university.⁶³

Although unauthorized immigrants are not eligible for in-state tuition rates, the UNC system permits admission of unauthorized immigrants who are graduates of high schools in the United States.⁶⁴ Unauthorized immigrants who apply must compete with out-of-state applicants, whose enrollment is capped annually at 18 percent for all UNC system schools.⁶⁵ Also, unauthorized immigrants are charged out-of-state tuition rates. In 2006–7, only 27 unauthorized immigrants were enrolled in the state’s public universities, out of 200,000 students.⁶⁶

Although the UNC system has a uniform policy, private schools do not.

The North Carolina Community College System (NCCCS) has changed its admissions policy on unauthorized immigrants several times since 2001. In 2001, the system barred unauthorized immigrants from enrolling in degree programs, but placed no restriction on unauthorized-immigrant high school students taking classes or on unauthorized-immigrant adults taking non-college-level courses, including GED, Adult High School, English-as-a-second-language, and continuing education classes.⁶⁷

In 2004 the system decided to allow each college to set its own admissions policy.⁶⁸ In 2007, as the result of a legal opinion, NCCCS changed its policy, requiring all colleges to admit students regardless of immigration status.⁶⁹

More recently, in May 2008, NCCCS again prohibited unauthorized immigrants from enrolling in degree programs after

the state Attorney General’s Office advised that admitting unauthorized immigrants might violate federal law.⁷⁰ The U.S. Department of Homeland Security has since advised the state that federal law does not bar colleges from admitting unauthorized immigrants, and in July 2008 the North Carolina Attorney General’s Office confirmed that there is no federal prohibition.⁷¹

In August 2008, NCCCS decided to maintain its admissions ban while it conducted a comprehensive study of the issue of enrolling unauthorized immigrants.⁷² The study was released on April 16, 2009. According to the committee chair, the NCCCS Policy Committee will require several months to review the lengthy report and make policy recommendations to the board.⁷³ North Carolina’s study of other states’ community college admission policies stemmed in part from concerns raised by community college staff about the cost and the labor-intensive nature of confirming student citizenship.⁷⁴ According to NCCCS, a survey of the fifty-eight community colleges for the 2006–7 academic year indicated that

112 unauthorized immigrants were enrolled in North Carolina’s community colleges, of a total of 297,000 students.⁷⁵

There are active legislative proposals before the North Carolina General Assembly as of this writing. Bills range from allowing the admission of unauthorized immigrants to the NCCCS, to prohibiting their admission.⁷⁶

Conclusion

Higher education benefits available to unauthorized immigrants vary by state, and the states’ policies in this area are evolving. North Carolina is one of three states that prohibit unauthorized immigrants from enrolling in its community colleges, aligning itself with Alabama and South Carolina on this issue. Most states do not bar unauthorized immigrants from enrolling in their public colleges and universities, allowing individual schools to make the decisions.

Like the majority of states, North Carolina does not provide in-state tui-

tion benefits to unauthorized immigrants. Nine states currently offer in-state tuition rates to students, including unauthorized immigrants, on the basis of high school attendance and graduation from a high school in that state. Whether such laws violate federal law is unclear. The resolution of an ongoing challenge to a tuition benefit law in California is widely anticipated and likely to have implications in other states, though it will not be binding on those states.

At the federal level, many expect some kind of action in this area from the Obama administration and, with Democratic majorities in both houses, the new Congress.⁷⁷ If passed, the DREAM Act would clarify states’ rights to offer in-state tuition benefits to unauthorized immigrants and give students an opportunity to legalize their status. Although the DREAM Act does not require states to offer resident tuition rates to unauthorized immigrants, the number of states doing so would likely increase, and such a law should resolve ongoing court challenges. It is unlikely that all states will move in a direction favorable to unauthorized students, for public opinion remains divided on these issues. In North Carolina’s case, it still will be up to the state and the college systems to decide how to approach the situation of these high school graduates.

If Congress fails to pass the DREAM Act, educational opportunity for unauthorized immigrants is highly unlikely to improve. Without federal action, beneficiaries of tuition benefit laws may not legally work, per federal law. This prohibition is a major impediment and one of the driving forces behind tuition benefit laws. Without access to legal employment, unauthorized-immigrant students will be unable to increase their earnings, improve their quality of life, and make economic and social contributions to the states’ and the nation’s economic health and development.

Notes

1. Lourdes Medrano, “A Dream Deferred,” *Arizona Daily Star*, May 28, 2006, www.azstarnet.com/sn/printDS/131157.

2. The term “unauthorized immigrant” is used in this article to describe a person

who is not lawfully present in the United States. See generally 8 U.S.C. § 1227(a)(1)(B) (2006); 8 C.F.R. § 103.12 (2008).

3. Janet Kier Lopez, *The DREAM Act* (Chapel Hill, NC: Learn NC, University of North Carolina at Chapel Hill, 2006), www.unc.edu/world/2007_Latin_Amer/Materials/The%20DREAM%20Act.pdf.

4. North Carolina Community College System, press release, "State Board of Community Colleges Approves Major Study of Immigration Issues, Maintains Current Enrollment Restrictions," August 15, 2008, www.ncccs.cc.nc.us/news_releases/undocumented_study_approved.htm.

5. Jeffrey S. Passel, *Further Demographic Information Relating to the DREAM Act* (Washington, DC: Urban Institute, 2003).

6. In *Plyler v. Doe*, 457 U.S. 202 (1982), the U.S. Supreme Court established that, under the Equal Protection Clause of the Fourteenth Amendment, public schools may not refuse to enroll or provide services to a person on the basis of his or her immigration status.

7. See, e.g., *Equal Access Education v. Merten*, 305 F. Supp. 2d 585, 605 n.18 ("It is clear, therefore, that [the federal welfare law] does not consider mere admission or attendance at a public post-secondary institution to be a public benefit [restricted by federal law]"); letter from Jim Pendergraph, Executive Director, Office of State and Local Coordination, U.S. Department of Homeland Security, to Thomas J. Ziko, Special Deputy Attorney General, North Carolina Attorney General's Office, July 9, 2008, www.newsobserver.com/content/media/2008/7/25/20080725_homelandsecurityletter.pdf ("[A]dmission to public post-secondary educational institutions is not a public benefit [restricted] under the [federal welfare law] Therefore, the individual states must decide for themselves whether or not to admit illegal aliens into their public post-secondary institutions"); letter from J. B. Kelly, General Counsel, North Carolina Attorney General's Office, to Shante Martin, General Counsel, North Carolina Community College System, July 24, 2008, www.newsobserver.com/content/media/2008/7/25/20080725_immigrationdoc.pdf. (In accordance with the interpretation of the U.S. Department of Homeland Security, the North Carolina Department of Justice issued a letter advising community colleges that federal law does not prohibit the admission of unauthorized immigrants.)

8. National Immigration Law Center, *Basic Facts about In-State Tuition for Undocumented Immigrant Students* (Los Angeles: National Immigration Law Center, 2009), www.nilc.org/immlawpolicy/DREAM/instate-tuition-basicfacts-2009-02-23.pdf.

9. The 1965 Higher Education Act established legal residency as a requirement

to receive financial aid, thereby making unauthorized immigrants ineligible for the largest source of aid available. Higher Education Act of 1965, Pub. L. No. 89-329, 20 U.S.C. §§ 1001 *et seq.* (2006).

10. 8 U.S.C. § 1623 (2006).

11. The entire provision reads, "Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident." 8 U.S.C. § 1623(a) (2006).

12. Andorra Bruno, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation* (Washington, DC: Congressional Research Service, 2007).

13. There is no concern about authorized immigrants (persons with a lawful immigration status) being treated equivalently to U.S. citizens for in-state tuition purposes.

14. CAL. EDUC. CODE § 68130.5 (West 2003).

15. For example, the Utah attorney general issued an opinion in January 2006 determining that the Utah statute granting resident-tuition status to the state's undocumented college students is constitutional. Utah System of Higher Education, press release, "Attorney General Concludes Tuition Statute Is Valid," February 1, 2006, www.utahsbr.edu/PressRelease/PR_2006/PR_Feb_01_2006.pdf. See also *Jobs for the Future, Update: State Policies Regarding In-State Tuition for Undocumented Immigrants* (Boston: Jobs for the Future, 2007).

16. See *Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005), *aff'd sub nom.* *Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007).

17. *Day v. Bond*, 500 F.3d at 1127, *cert. denied*, 128 S. Ct. 2987 (2008).

18. *Martinez v. Regents of the Univ. of Cal.*, No. CV 05-2064, 2006 WL 2974303, at *3 (Cal. Super. Ct. October 4, 2006).

19. *Martinez v. Regents of the Univ. of Cal.*, 83 Cal. Rptr. 3d 518 (Cal. Ct. App. 2008).

20. DREAM Act of 2009, S 729, American Dream Act, HR 1751, 11th Cong., 1st. sess. To retrieve a copy of either bill, go to <http://thomas.loc.gov> and enter the bill number in the Search box.

21. "Good moral character" is essentially defined for immigration purposes as the absence of involvement in most criminal activity and of providing false testimony for the purpose of obtaining immigration benefits. For the full list of activities that bar a finding of good moral character, see 8 U.S.C. § 1101(f) (2006).

22. DREAM Act of 2009.

23. National Immigration Law Center, "House and Senate Introduce DREAM Act,

a Measure to Address the Plight of Immigrant Students" (Los Angeles: National Immigration Law Center, March 26, 2008), www.nilc.org/immlawpolicy/DREAM/Dream011.htm.

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25. TEX. EDUC. CODE ANN. §§ 54.051, 54.052, 54.055, 54.057, 54.060 (West 2006); CAL. EDUC. CODE § 68130.5 (West 2003); UTAH CODE ANN. § 53b-8-106 (2006); N.Y. EDUC. LAW § 355(2)(h)(8) (McKinney Supp. 2009); WASH. REV. CODE ANN. § 28b.15.012 (2008); OKLA. STAT. tit. 70 § 3242 (2008); 110 ILL. COMP. STAT. 947/65.27 (West 2008); KAN. STAT. ANN. § 76-731a (Supp. 2008); Act of April 8, 2005, ch. 348, 2005 N.M. Laws 3807; NEB. REV. STAT. 85-502 (2008). However, in 2007, Oklahoma repealed its tuition benefit law.

26. 2005 N.M. Laws 3807; OKLA. STAT. tit. 70 § 3242 (2008); TEX. EDUC. CODE ANN. §§ 54.051, 54.052, 54.055, 54.057, 54.060 (West 2006). Oklahoma has since repealed its provision.

27. HF 1063, 85th Leg. Sess., 2007-8 (Minn. 2007), www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H1063.2.html&session=ls85.

28. See, e.g., Miriam Jordan, "Illegal Immigrants' New Lament: Have Degree, No Job," *Wall Street Journal*, April 26, 2005, http://online.wsj.com/public/article_print/SB11447898329816736-gip6k1HnYQd5iZhB6ekFZt9xOGI_20050525.html.

29. Alene Russell, *In-State Tuition for Undocumented Immigrants: States' Rights and Educational Opportunity*, A Policy Matters Higher Education Brief (Washington, DC: American Association of State Colleges and Universities, 2007), www.aasco.org/media/pm/pdf/in-state_tuition07.pdf.

30. Arizona Proposition 300 (2006), www.azsos.gov/election/2006/Info/PubPamphlet/english/prop300.htm.

31. Oklahoma Taxpayer and Citizen Protection Act, HB 1804, § 11, 51st Leg., 1st sess. (2007).

32. HR 06S-1023, 65th Gen. Assem., 1st spec. sess. (Colo. 2006), www.cdhs.state.co.us/adad/PDFs/1023enr.pdf; GA. CODE ANN. § 20-3-66 (Supp. 2008), www.legis.state.ga.us/legis/2007_08/sum/sb492.htm.

33. S.C. CODE ANN. § 59-101-430 (2008).

34. Lisa Rossi, "Policing Immigration," *Community College Week*, November 16, 2008, www.ccweek.com/news/templates/template.aspx?articleid=746&zoneid=. The state board of education passed a new policy despite one board member's calls to delay action for more discussion and four of the nine members being absent. The policy, which takes effect in spring 2009, was passed on a 4-0 vote.

The new policy does not apply to public universities, however.

35. For example, the American Association of State Colleges and Universities, an association representing more than four hundred public colleges, universities, and systems of higher education throughout the United States, strongly supports passage of the DREAM Act so that states can regulate the tuition eligibility of unauthorized immigrants. Russell, *In-State Tuition*.

36. Bruno, *Unauthorized Alien Students*.

37. *Ibid.*

38. Neeraj Kaushal, "In-State Tuition for the Undocumented: Education Effects on Mexican Young Adults," *Journal of Policy Analysis and Management* 27: 771–92 (2008).

39. Bruno, *Unauthorized Alien Students*.

40. *Ibid.*

41. Russell, *In-State Tuition*.

42. *Ibid.*; Bruno, *Unauthorized Alien Students*.

43. Dawn Konet, *Unauthorized Youths and Higher Education: The Ongoing Debate* (Washington, DC: Migration Information Source, 2007), www.migrationinformation.org/Feature/display.cfm?ID=642; Antoniya Owens, "In-State Tuition Rates and Immigrants," *Communities and Banking*, Spring 2007, pp. 15–17, www.bos.frb.org/commdev/c&b/2007/sprints/article6.pdf; Russell, *In-State Tuition*.

For example, proponents point to a report by the Texas House Organization showing that not helping students attend college resulted in much greater costs to the state via prisons and the welfare system, and further contributed to an uneducated workforce. In 1986 an estimated eighty-six thousand students dropped out of Texas public schools, at a cost to the state of \$17.2 billion. By 1998 the dropout rate had increased to almost 1.2 million, at an estimated cost of \$319 billion due to "increased spending on social programs, higher rates of crimes and decreased opportunities for a higher quality of life." American Association of State Colleges and Universities, "Should Undocumented Immigrants Have Access to In-State Tuition?" *Policy Matters* 2, no. 6 (June 2005), www.aascu.org/policy_matters/pdf/v2n6.pdf.

44. Elise Keaton et al., *The Tuition Equity Effect: Measuring the Impact of Providing In-State Tuition Rates for Colorado's Undocumented High School Graduates* (Denver: Center for Policy Entrepreneurship, 2008), www.c-pe.org/documents/TuitionEquityReport2.pdf. The Center for Policy Entrepreneurship is a private, nonprofit, public policy research and advocacy organization that works to increase higher education opportunities for Colorado students, regardless of immigration or economic status, and

conducts extensive research to measure attitudes and opinions on this issue.

45. *Ibid.* The report indicates that isolating effects on the unauthorized immigrant population is difficult, so analysts often use data for the foreign-born, Hispanic, or Mexican-heritage population to get approximate results.

46. Kaushal, "In-State Tuition"; Keaton et al., *Tuition Equity Effect*.

47. According to the Pew Hispanic Center, more than 80 percent of immigrants from Mexico are unauthorized. Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics*, Background Briefing Prepared for Task Force on Immigration and America's Future (Washington, DC: Pew Hispanic Center, 2005), <http://pewhispanic.org/files/reports/46.pdf>.

48. Kaushal, "In-State Tuition"; Keaton et al., *Tuition Equity Effect*.

49. Kaushal, "In-State Tuition"; Keaton et al., *Tuition Equity Effect*.

50. Kaushal, "In-State Tuition"; Keaton et al., *Tuition Equity Effect*.

51. Raphael Lewis, "In-State Tuition Not a Draw for Many Immigrants," *Boston Globe*, November 9, 2005, www.boston.com/news/education/higher/articles/2005/11/09/in_state_tuition_not_a_draw_for_many_immigrants/.

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55. Jennifer Robinson, *In-State Tuition for Undocumented Students in Utah Policy Brief: February 13, 2007*, Policy Brief (Salt Lake City, UT: Center for Public Policy and Administration, University of Utah, 2007), www.cppa.utah.edu/publications/higher_ed/Policy_Brief_2_13_07_In-state_Tuition.pdf.

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