

**HIGHER EDUCATION**

**SECRETARY OF HIGHER EDUCATION**

**Residency Requirements for Tuition Purposes at Public Colleges and Universities**

**Proposed New Rules: N.J.A.C. 9A:5-3**

Authorized By: Rochelle Hendricks, Secretary of Higher Education, Office of the Secretary of Higher Education.

Authority: N.J.S.A. 18A:62-4 and P.L. 2013, c. 170.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-107.

Submit comments by September 5, 2014, to:

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The agency proposal follows:

**Summary**

In accordance with the provisions of the Executive Reorganization Plan No. 005-2011, the Commission on Higher Education was eliminated and its powers, functions, and duties were

transferred to the Secretary of Higher Education, who is responsible for rules governing residency requirements for tuition purposes. The existing rules elaborate and clarify the basic statutory provisions of N.J.S.A. 18A:62-4, including the requirement of domicile and the right to challenge a presumption of nondomicile, and specify means of demonstrating and verifying residency.

The Legislature and Governor enacted P.L. 2013, c. 170, effective December 20, 2013, to govern in-State tuition rates for undocumented immigrants attending New Jersey's public colleges and universities. Proposed new N.J.A.C. 9A:5-3.1 is added, which, at subsection (a), will describe an undocumented immigrant student and set forth the eligibility criteria for these students to receive an in-State tuition rate. Proposed new N.J.A.C. 9A:5-3.1(b) indicates where students can obtain the affidavit they are required to complete and proposed new subsection (c) states that the information provided in the implementation of this section shall remain confidential.

A 60-day comment period has been provided on this notice of proposal, therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The Office of the Secretary of Higher Education's proposed new rule implements and clarifies State law regarding in-State tuition rates for undocumented students attending New Jersey public colleges and universities. The rule clarifies that an undocumented student, is a student other than a nonimmigrant alien within the meaning of section 101 (a)(15) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)). The proposed new rule will make it possible for undocumented students who register as entering students, or who are currently enrolled for the 2013-2014 academic year and attended high school in New Jersey for three or

more years, or graduated from a high school in New Jersey, or received the equivalent of a high school diploma to pay the in-State tuition rate. Additionally, students without lawful immigration status who meet the other criteria and file an affidavit with the institution of higher education stating that they have filed an application to legalize their immigration status will also be able to pay in-State tuition rates.

### **Economic Impact**

The proposed new rule will provide tuition equality for undocumented students at New Jersey's public colleges and universities. These students who have attended and graduated from New Jersey high schools will no longer be subject to paying the higher out-of-State tuition rates because of their undocumented immigration status. The proposed new rule will make the dream of earning a college degree significantly more affordable for this population of students. The proposed new rule will continue the State of New Jersey's investment in these students educational attainment of a college degree and encourages their desire to become future contributing member of the State's workforce and tax base.

### **Federal Standards Statement**

The proposed new rule is not subject to a Federal standards analysis under Executive Order No. 27 (1994). While the rule references section 101(a)(15) of the Federal Immigration and Nationality Act, (8 U.S.C. §1101(a)(15)), the Office of the Secretary of Higher Education's regulation of eligibility requirements for undocumented students to receive in-State tuition rates at the State's public colleges and universities is not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed new rule will not result in the generation or loss of any jobs.

### **Agriculture Industry Impact**

The proposed new rule will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed new rule does not impose requirements on small businesses as defined under N.J.S.A. 52:14B-16 et seq. The proposed new rule pertains strictly to individuals and public colleges and universities in New Jersey, none of which qualifies as a small business.

### **Housing Affordability Impact Analysis**

The proposed new rule will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the proposed new rule would evoke a change in the average costs associated with housing because the proposed new rule governs eligibility requirements for undocumented students to receive in-State tuition rates at the State's public colleges and universities.

### **Smart Growth Development Impact Analysis**

It is extremely unlikely that the proposed new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan and the proposed new rule will have an insignificant impact on smart growth, because the rules govern eligibility requirements for undocumented students to receive in-State tuition rates at the State's public colleges and universities.

**Full text** of the proposed new rules follows:

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS FOR UNDOCUMENTED  
IMMIGRANTS TO RECEIVE IN-STATE TUITION

9A:5-3.1 Eligibility requirements for undocumented immigrants to receive in-State tuition

(a) Notwithstanding the provisions of any law or rule to the contrary, a student, other than a nonimmigrant alien within the meaning of section 101 (a)(15) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)), shall be eligible to pay in-State tuition at a public institution of higher education if the student attended high school in this State for three or more years or graduated from a high school in this State or received the equivalent of a high school diploma in this State. The student must also register as an entering student or be currently enrolled in a public institution of higher education, not earlier than the fall semester of the 2013-2014 academic year. In the case of a person without lawful immigration status, who files an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status or will file an application as soon as he or she is eligible to do so.

(b) Students who are required to file an affidavit as described in (a) above shall be able to obtain the affidavit from the institution of higher education's website, catalogue, and/or student handbook.

(c) Information obtained in the implementation of this section shall remain confidential.