

# Undocumented Postsecondary Students

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## **Under state law, undocumented students may receive resident tuition and state financial aid**

In 2013, the Prosperity Act (commonly referred to as the “Minnesota Dream Act”) became law. See [Laws 2013, ch. 99](#), art. 4. The act has three significant impacts on postsecondary students with undocumented immigration status. **First**, undocumented students may qualify for resident (i.e., “in-state”) tuition rates at public postsecondary institutions. **Second**, undocumented students may receive certain state-administered financial aid. **Third**, public postsecondary institutions may provide privately funded financial aid to their undocumented students.

## **To qualify for resident tuition, an undocumented student must meet several requirements**

An undocumented student qualifies for resident tuition rates if he or she meets all of the following requirements:

- 1) Attended a Minnesota high school for at least three years
- 2) Graduated from a Minnesota high school or earned a GED in Minnesota
- 3) Registered with the U.S. Selective Service (applies only to males 18 to 25 years old)
- 4) Provides documentation to show they have applied for lawful immigration status **if** a federal process exists for a student to do so. There is currently not a federal process in place, so this documentation is not currently required.

These provisions are in addition to any other statute, rule, or institutional policy under which a student, including one with undocumented immigration status, may already qualify for a resident tuition rate. Also, importantly, an undocumented student does not include a nonimmigrant alien, as that term is defined in [8 U.S.C. § 1101\(a\)\(15\)](#). Generally, these nonimmigrant aliens have been admitted under a variety of temporary visa types, such as an H1-B worker visa.

## **There currently is no federal process through which an undocumented student can apply for permanent legal status**

To qualify for resident tuition rates under the Prosperity Act, an undocumented student must provide documentation from federal immigration authorities showing that the student has applied for lawful immigration status. However, this requirement only applies if such a process exists under federal law and, currently, there is no such process. The federal Deferred Action for Childhood Arrivals (DACA) program does not qualify because it only protects individuals from deportation and does not provide permanent lawful status or a “path to citizenship.”

## **University of Minnesota policy conforms with the Prosperity Act**

Because of the University of Minnesota’s constitutional autonomy, the Prosperity Act’s provisions regarding resident tuition do not directly control the university’s policies. The Prosperity Act does, however, request the Board of Regents to adopt a policy conforming to these provisions. In July of 2013,

the Board of Regents passed a resolution enacting the Prosperity Act for the university. This resolution remains in force.

### **Undocumented students may receive state-administered financial aid**

Under the Prosperity Act, an undocumented student who qualifies for resident tuition rates is also eligible for state-administered student grants, aid, and scholarships. Under federal law, however, undocumented students are not eligible for federal grant or loan programs (e.g., the Pell Grant, the Direct Loan Program, etc.) that are available through the Free Application for Federal Student Aid (FAFSA). Because undocumented students will not complete a FAFSA, the Minnesota Office of Higher Education (OHE) has a separate “Minnesota Dream Act Application” to determine a student’s eligibility for state financial aid programs. An undocumented student is not eligible to participate in the state’s work-study program unless the student also has a work authorization under the federal DACA program.

The Prosperity Act did not affect the eligibility of undocumented students to receive a student loan through OHE’s SELF loan program. SELF loans have a separate application process from the Dream Act application and are available to students regardless of immigration status. A qualified borrower must, however, have a credit-worthy cosigner for the loan who is a U.S. citizen or permanent resident.

The Prosperity Act also specifically authorizes public postsecondary institutions to use money from private sources to provide institutional financial aid (e.g., scholarships or grants) to an undocumented student who also meets the qualifications for resident tuition.

### **National context and relationship to federal law**

At least 17 other states have passed legislation providing in-state tuition rates for undocumented students, and at least six other states currently allow undocumented students to receive state financial aid. On the other hand, five states currently have laws prohibiting in-state tuition rates for undocumented students, and two states prohibit undocumented students from enrolling at any public postsecondary institution.

Laws like Minnesota’s Prosperity Act have been subject to legal challenges on the grounds that they are preempted by the federal Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). IIRIRA bars states from providing postsecondary education benefits to unauthorized aliens “on the basis of residence” in the state unless such benefits are available to all U.S. citizens, regardless of their residence. See [8 U.S.C. § 1623](#). However, when California’s law was challenged on these grounds, it was upheld because—like Minnesota’s Prosperity Act—it does not provide the in-state tuition rate “on the basis of residence” in the state, but rather on other criteria such as having attended high school in the state. See *Martinez v. Regents of Univ. of California*, 241 P.3d 855 (2010), cert. denied [563 U.S. 1032](#) (2011). This decision only applies in California, but no similar state laws have been overturned under the federal preemption doctrine.



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