

BOARD OF REGENTS BRIEFING PAPER

Regulations for Determining Residency and Tuition Charges

September 5 – 6, 2024

BACKGROUND & POLICY CONTEXT OF ISSUE:

Board policy (Title 4, Chapter 15) provides regulations for determining student eligibility of resident and nonresident tuition. Furthermore, Section 3 of Title 4, Chapter 15, provides for nonresident tuition exemption for certain eligible individuals.

Recently, Congress enacted Public Law 118-42 and Public Law 117-81 providing in-state tuition to certain narrowly defined groups of individuals:

1. Section 209(b)(1)(E) of Title II of Division G of *The Consolidated Appropriations Act of 2024* ([Public Law 118-42](#)) requires, as a condition of eligibility for a public institution of higher education to participate in or receive funds under Title IV of the Higher Education Act of 1965, the institution may not charge more than its in-state tuition rate to a citizen of a Freely Associated State. Freely Associated States, as defined by [48 U.S.C. § 1982](#), are the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau. This requirement applies to tuition charged to students after July 1, 2024.
2. Section 6206 of the *National Defense Authorization Act for Fiscal Year 2022* ([Public Law 117-81](#)) amends [20 U.S.C. § 1015d](#), a long-standing federal law requiring states to extend in-state tuition rates to certain members of the U.S. armed forces, to now include eligible members of the Foreign Service. Effective July 1, 2024, an institution that receives assistance under the Higher Education Act of 1965, shall not charge an eligible member of qualifying Federal service, or the spouse or dependent of such member, tuition for attendance at a rate that is greater than the rate charged for residents of the State. Public Law 117-81 defines a member of a qualifying Federal service as: 1) a member of the armed forces (as defined in 10 U.S.C. § 101) who is on active duty for a period of more than 30 days; or 2) a member of the Foreign Services (as defined in section 22 U.S.C. § 3903) who is on active duty for a period of more than 30 days. Current Board policy aligns with 20 USC § 1015d in that the policy provides in-state tuition to eligible members of the U.S. armed forces. The amendment adopted in Public Law 117-81 requires an update to Board policy to remain in compliance.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend Board policy under Title 4, Chapter 15, Nonresident Tuition, to comply with Public Law 118-42, and 20 U.S.C. § 1015d as amended by Public Law 117-81. Additionally, revise Section 2 to appropriately alphabetize existing definitions.

IMPETUS (WHY NOW?):

Congress recently enacted Public Law 118-42, and 20 U.S.C. § 1015d as amended by Public Law 117-81.

CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase access to higher education)
- Success (Improve student success)
- Close Institutional Performance Gaps
- Workforce (Meet workforce needs in Nevada)
- Research (Increase solutions-focused research)
- Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)
- Not Applicable to NSHE Strategic Plan Goals

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

N/A

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Adoption of the policy revisions will ensure NSHE institutions do not lose access to federal assistance.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

Due to the need to comply with federal law, none have been presented.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Due to the need to comply with federal law, none have been presented.

RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:

The Chancellor’s office recommends approval.

COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title #____ Chapter #____ Section #____
 Amends Current Board Policy: Title #4 Chapter #15 Sections #2 and #4
 Amends Current Procedures & Guidelines Manual: Chapter #____ Section #____
 Other: _____
X Fiscal Impact: Yes X No _____
Explain: Compliance with federal law will result in more students qualifying for in-state tuition; however, NSHE cannot predict the number of additional students in these narrowly defined groups that will enroll and qualify.

POLICY PROPOSAL - HANDBOOK
TITLE 4, CHAPTER 15, SECTIONS 2 and 4
Regulations for Determining Residency and Tuition Charges

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 2. Definitions

....

10. [~~11.~~] "Legal guardian" means a court-appointed guardian of a dependent person, who was appointed guardian at least twelve (12) months immediately prior to the dependent person's date of matriculation and for purposes other than establishing the dependent person's residence.

11. [~~10.~~] "Most recent tax year" means the income tax return submitted for the prior income year.

....

Section 4. ***Federal Exemptions to Nonresident Tuition*** [~~Veterans Not Charged Tuition~~]

[~~Covered~~] ***I*** [~~ii~~] individuals, as defined by this Section, [~~who are living in Nevada,~~] shall not be charged tuition.

1. *Covered Individuals Not Charged Tuition.* This Subsection complies with Section 702 of the Veterans Access, Choice, and Accountability Act of 2014 (Approval of Courses of Education provided by Public Institutions of Higher Learning for Purposes of All-Volunteer Force Educational Assistance Program and Post-9/11 Educational Assistance Conditional on In-State Tuition Rate for Veterans) and Section 1005 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Requirements for In-State Tuition), as codified under 38 U.S.C. §3679(c), including but not limited to amendments under Public Law 114-315, Public Law 115-251, and Public Law 116-315. The provisions contained herein must be interpreted to comply with the applicable federal provisions and definitions.

a. [~~2.~~] To affirm a covered individual is living in Nevada, institutions shall only require the covered individual to:

i. [~~a.~~] Provide a physical address in Nevada; and

ii. [~~b.~~] Sign a statement affirming the covered individual is living in Nevada and intends to become a bona fide Nevada resident.

b. [~~3.~~] An institution shall not require a covered individual to complete a residency form or application.

c. [~~4.~~] Except as otherwise provided in this paragraph, a covered individual must provide:

i. [~~a.~~] Either a DD-214 (Discharge Orders) or a DD-1300 (Report of Casualty) or similar documentation verifying the date of discharge or casualty; and

ii. [~~b.~~] A Certificate of Eligibility issued by the United States Department of Veterans Affairs or similar documentation verifying eligibility.

A covered individual using transferred benefits under the Post-9/11 Veterans Educational Assistance Act when the transferor is a member of the uniformed

services who is on active duty pursuant to paragraph e(ii)(b) of this section must provide documentation required by the institution to confirm that the covered individual is eligible to use the transferred benefits.

d. ~~[5.]~~For purposes of this Subsection, “covered individual” means:

i. ~~[a.]~~ A veteran who:

a. ~~[i.]~~ with a discharge or release from a period of not fewer than 90 days of service in the active military, naval, or air service, including the reserve components thereof and the National Guard; and

b. ~~[ii.]~~ Is pursuing a course of education with educational assistance under Chapter 30 (All-Volunteer Force Educational Assistance Program) or Chapter 33 (Post-9/11 Veterans Educational Assistance Act) of Title 38, United States Code¹;

ii. ~~[b.]~~ An individual using transferred benefits under the Post-9/11 Veterans Educational Assistance Act² and:

i. The transferor’s discharge or release was from a period of active-duty service of 90 days or more; or

ii. The transferor is a member of the uniformed services who is serving on active duty;

iii. ~~[c.]~~ An individual using benefits under the Marine Gunnery Sergeant John David Fry Scholarship (“Fry Scholarship”)³;

iv. ~~[d.]~~ An individual using benefits under the Survivors’ and Dependents’ Educational Assistance (DEA) program⁴ and the transferor’s discharge from or service member’s death in the line of duty following a period of active-duty service of 90 days or more; or

v. ~~[e.]~~ An individual entitled to rehabilitation under Section 3102(a) of Chapter 31 (Training and Rehabilitation for Veterans with Service-Connected Disabilities) of Title 38, United States Code.

2. Member of a Qualifying Federal Service and Spouse or Dependent Not Charged Tuition. This Subsection complies with Section 2602 of the National Defense Authorization Act for Fiscal Year 2022 (In-state Tuition Rates for Members of Qualifying Federal Service) as codified under 20 U.S.C. § 1015(d), including but not limited to amendments under Public Law 117-81. The provisions contained herein must be interpreted to comply with the applicable federal provisions and definitions.

a. For purposes of this Subsection, a member of a qualifying Federal service, or a person whose spouse, parent, or legal guardian is a member of a qualifying Federal service, shall not be charged tuition if:

i. The member of a qualifying Federal service is on active duty, stationed in Nevada as a result of a permanent change of duty station, or a person whose spouse, parent or legal guardian is a member of a qualifying Federal service is stationed in Nevada as a result of a permanent change of duty station, irrespective of how long they have been physically present in the state. If the member ceases to be stationed in Nevada, reside in Nevada, or be domiciled in Nevada, the spouse, child or legal guardian of the member shall not be charged tuition if the spouse, child or legal guardian of the member was admitted prior to the reassignment if such student enrolls and remains continuously enrolled at an NSHE institution.

ii. The member of a qualifying Federal service who has previously established a bona fide residence in the State of Nevada, but who has received orders for

assignment outside of Nevada while continuing to maintain a bona fide residence in Nevada.

b. For purposes of this Subsection, “Qualifying Federal Service” is defined as:

i. A member of the armed forces (as defined in section 10 U.S.C. § 101) who is on active duty for a period of more than 30 days; or

ii. A member of the Foreign Service (as defined in 22 U.S.C. § 3903) who is on active duty for a period of more than 30 days.

3. Citizen of a Freely Associated State Not Charged Tuition. This Subsection complies with Section 209(b)(1)(E) of Title II of Division G of The Consolidated Appropriations Act of 2024 (Authorization of Education Programs) including but not limited to amendments under Public Law 118-42. The provisions contained herein must be interpreted to comply with the applicable federal provisions and definitions.

a. For purposes of this Subsection a citizen of a Freely Associated State shall not be charged tuition pursuant to requirements for a public institution of higher education to participate in or receive funds under Title IV of the Higher Education Act of 1965.

b. For purposes of the Subsection “Citizen of a Freely Associated State” means a student who is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau (48 U.S.C. § 1982).

¹ Includes the Montgomery GI Bill – Active Duty (Chapter 30 of Title 38, United State Code) and the Post9/11 GI Bill (Chapter 33 of Title 38, United State Code).

² Chapter 33 of Title 38 of the United States Code. 38 U.S.C. § 3319 sets forth the authority to transfer unused education benefits to family members.

³ The Fry Scholarship is educational assistance for an individual who is the child or spouse of a person who, on or after September 11, 2001, dies in line of duty while serving on active duty as a member of the Armed Forces to educational assistance under the Post-9/11 Veterans Educational Assistance Act (See 38 U.S.C. § 3311(b)(9)).