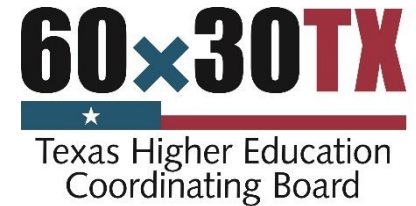


# OVERVIEW: ELIGIBILITY FOR IN-STATE TUITION AND STATE FINANCIAL PROGRAMS



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## BACKGROUND

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Texas law authorizes persons classified as Texas residents to pay in-state tuition, a rate of tuition that is generally three times lower than for those classified as nonresidents. In addition, Texas residents may receive state financial aid if they meet eligibility requirements of the program. Texas Education Code (TEC) Section 54.052 outlines specific ways of determining whether a student enrolling at a public institution of higher education is classified as a Texas resident. TEC Section 54.053 lists the information required to establish Texas resident status.

## FREQUENTLY ASKED QUESTIONS

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### **Can a non-U.S. Citizen/permanent resident who is not in the U.S. on a visa qualify for classification as a Texas resident?**

Yes. Under certain conditions, a person who is not a U.S. Citizen, or permanent resident of the U.S., may be classified as a Texas resident for tuition purposes under TEC Section 54.052(a)(3).

Texas law specifies three paths to residency. Two paths require the student (or parent), including a non-U.S. Citizen/permanent resident with a visa that allows the student to establish a lawful presence in the United States, to establish domicile in Texas (see page 2 for more details). The third path (TEC Section 54.052(a)(3)) does not have citizenship requirements. Instead, eligibility through this path is based on several factors, including the period a student resides in the state prior to graduating from a Texas high school or acquiring a GED in Texas, and whether the student resided in Texas the year prior to enrolling in college. If a person who is not a U.S. Citizen or permanent resident meets these eligibility requirements, he/she must also complete an affidavit stating an intent to apply for permanent resident status in the United States as soon as he/she meets federal eligibility requirements for such status (herein referred to as "affidavit students").

A person who is not a U.S. Citizen or permanent resident of the U.S. may be classified as a Texas resident for higher education purposes. Such students represented 1.5 percent of all students enrolled in Texas public institutions of higher education in Fiscal Year 2017. Such students represented less than one percent of all students who received state financial aid.

### **Can a non-U.S. Citizen qualify for state financial aid?**

Yes, depending on financial need and other program-specific requirements. All currently-funded state financial aid programs require recipients to be Texas residents and defer to residency provisions established in TEC Section 54.052.

## How has Texas law regarding establishing residency for in-state tuition changed over time?

Prior to 2001, residency was established only through the establishment and maintenance of domicile in Texas:

- 1) An independent person could claim residency if he or she established a domicile in Texas and maintained it for one year prior to enrollment at a Texas institution of higher education; or
- 2) A dependent person could claim residency if his or her parent established a domicile in Texas and maintained it for one year prior to enrollment.

The only non-U.S. Citizens who could establish a claim to residency were those who held visa classifications or other federal immigration status that allowed them to remain in the state long enough to establish domicile and maintain it for the year prior to enrollment.

In 2001, the 77th Texas Legislature passed House Bill (H.B.) 1403, which made several changes to the TEC, including creating a path for non-U.S. Citizens who are not lawfully present in the United States to pay in-state tuition rates at Texas public institutions of higher education. H.B. 1403 added a provision to TEC Section 54.052 allowing a student to be classified as a Texas resident if the student graduated from a Texas high school or received a diploma equivalent in this state and resided continuously in Texas for the 36-months leading up to high school graduation or receipt of a GED. The statute required such a student to sign an affidavit indicating intent to apply for permanent resident status as soon as the student could do so.

In 2005, the 79th Texas Legislature further amended the residency requirements through the passage of Senate Bill (S.B.) 1528. The additional amendments maintained the 36-month pathway for non-U.S. Citizens, but extended it to all U.S. citizens. Prior to these amendments, many U.S. Citizens were inadvertently prevented from attaining Texas residency status because of unanticipated circumstances. For example, students born and raised in Texas but whose parents moved out of state before they had enrolled in college were previously classified as nonresidents unless they had enrolled in college prior to their parents' departure. Additionally, students raised by grandparents or other family members who had never gone to court to acquire legal custody were considered residents of the state in which their parents lived. Current statutes allow students in both cases, and other similar circumstances, to qualify for Texas resident status.

## Does Texas statute make provisions for U.S. Citizens who have lived outside of Texas to attain Texas resident status for in-state tuition?

U.S. Citizens may attain Texas resident status through any of the three pathways included in TEC Section 54.052. Although not conclusive or exhaustive, the following factors occurring throughout at least 12 consecutive months prior to the census date of the semester in which a person seeks to enroll may lend support

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Affidavit students are persons who are not U.S. Citizens or permanent residents but meet the Texas residency requirements in TEC 54.052(a)(3). Those provisions require affidavit students to have resided in Texas 36 months prior to graduation from a public or private high school or have received the equivalent of a high school diploma in Texas, and for the 12 months prior to the census date of the term in which the person enrolls in an institution of higher education. The term "affidavit student" derives itself from the fact that TEC 54.053(3)(a)(B) requires such students to sign an affidavit stating that they will apply to become a permanent resident of the United States as soon as he/she becomes eligible to do so. Such persons would include, but are not limited to, undocumented persons. A person here on a visa that has allowed him/her to meet these provisions would fall into that category. H-4 visa holders, for instance, whose parents are here on an H-1B (specialty occupations) visa are included.

to a claim regarding his/her intent to establish and maintain domicile in Texas:

- Sole or joint marital ownership of residential real property in Texas by the person seeking to enroll or the dependent's parent, having established and maintained domicile at that residence;
- Ownership and customary management of a business, by the person seeking to enroll or the dependent's parent, in Texas which is regularly operated without the intention of liquidation for the foreseeable future;
- Gainful employment in Texas by the person seeking to enroll or the dependent's parent;
- Marriage, by the person seeking to enroll or the dependent's parent, to a person who has established and maintained domicile in Texas.

**Who maintains and monitors affidavits completed by non-U.S. Citizens seeking Texas resident status for higher education tuition purposes?**

Each public institution of higher education is responsible for acquiring and maintaining, indefinitely or until the student becomes a permanent resident of the U.S., signed affidavits completed by non-U.S. citizens seeking Texas resident status for in-state tuition purposes. In addition, Coordinating Board rules require institutions to remind affidavit students each year of their obligation to apply for permanent resident status as soon as they are eligible to do so. The same rules require the institutions to refer students to the appropriate federal agency for instructions on how to achieve permanent resident status.

**How many students currently qualify for classification as Texas residents by meeting the TEC 54.052(a)(3) provisions and completing an affidavit?**

The number of students who meet statutory requirements for establishing Texas resident status for in-state tuition under TEC 54.052(a)(3) totaled 25,930 in FY 2017, or 1.5 percent of the total enrollment at Texas public institutions of higher education. Each of these students qualified for in-state tuition and met the residency requirements for competing for state financial aid. Below is a breakdown by sector of these students for both FY 2016 and FY 2017:

| Higher Education Sector                        | Total Affidavit Students<br>(TEC 54.052(a)(3)) |               |
|--|--|---------------|
|  | FY 2016  | FY 2017       |
| Public Universities                            | 7,863  | 8,568         |
| Public Community, Technical and State Colleges | 17,261   | 17,318        |
| Public Health Related Institutions             | 27   | 44            |
| <b>Total All Public Institutions</b>           | <b>25,151</b>                                  | <b>25,930</b> |

**How much state General Revenue (GR) is used to support affidavit students through institutional formula funding?**

General revenue appropriations used to support affidavit students through institutional formula funding as estimated by the Coordinating Board are disaggregated by higher education sector below:

| Higher Education Sector                        | Formula Funding (General Revenue) to Affidavit Students <sup>1</sup> |                 |
|--|--|-----------------|
|  | FY 2016  | FY 2017         |
| Public Universities                            | \$11.43M   | \$11.69M        |
| Public Community, Technical and State Colleges | \$13.41M   | \$13.37M        |
| Public Health Related Institutions             | \$497,290  | \$881,601       |
| <b>Total All Public Institutions</b>           | <b>\$25.34M</b>  | <b>\$25.94M</b> |

<sup>1</sup> Formula Funding (General Revenue (GR)) is calculated for public universities using the average funding per semester credit hour (SCH) at each institution. For health-related institutions, community, technical and state colleges, it is calculated using statewide averages. The Coordinating Board does not have course-level data on each affidavit student to calculate an actual formula funding rate. The funding rates are different for each level (undergraduate/graduate) and course area (liberal arts or engineering for instance).

## What types of financial aid may affidavit students receive?

There are three categories of financial aid.

### Types of Financial Aid

|  |  |
|--|--|
| <b>State-Supported Grant Aid</b>         | Financial aid in the form of grants supported with general revenue via state appropriations.   |
| <b>State-Authorized Loan Aid</b>         | Financial aid in the form of loans (which require repayment) authorized by the state. Funding for this aid is generated from the sale of bonds and loan repayments, <u>not</u> general revenue via state appropriations. |
| <b>Institutional/Other Financial Aid</b> | Financial aid which may be in the form of grants or loans provided from institutional or other resources, <u>not</u> general revenue via state appropriations.   |

Each financial aid program has specific eligibility requirements for recipients. For example, recipients of state-authorized loans must meet credit worthiness requirements to receive a loan or secure a co-signer who meets these requirements and assumes ultimate financial responsibility for repayment.

## How many financial aid awards are provided to qualifying affidavit students?

In Fiscal Year 2017, 11,285 financial aid awards were provided to 5,589 students who met statutory requirements for Texas resident status and in-state tuition under TEC 54.052(a)(3). This represents less than one percent of students who received financial aid. Of state-supported financial aid programs, 2,828 grant awards were provided to 2,720 students. The chart below details these awards by financial aid source for FY 2016 and FY 2017:

| Financial Aid Source                                 | Total Financial Aid Awards to Affidavit Students |               |
|--|--|---------------|
|  | FY 2016  | FY 2017       |
| <b>State-Supported Grant Aid</b>                     | 2,819  | 2,828         |
| <b>State-Authorized Loan Aid</b>                     | 117  | 140           |
| <b>Institutional/Other Financial Aid (Non-state)</b> | 7,780  | 8,317         |
| <b>Total All State/Local Awards</b>                  | <b>10,716</b>                                    | <b>11,285</b> |

## How much General Revenue (GR) is used to support qualifying affidavit students through state-supported grant aid programs?

State-supported grant aid programs are funded by state GR appropriations. These programs are designed to assist qualifying Texas students by providing grants to help cover college costs. Recipients are not required to repay these funds to the state. GR appropriations for state-supported grant aid programs used by qualifying affidavit students, as estimated by the Coordinating Board, are listed in the table on the right.

| Estimated State-Supported Grant Aid to Affidavit Students |                 |                 |
|---|-----------------|-----------------|
|   | FY 2016         | FY 2017         |
| <b>Total</b>  | <b>\$11.99M</b> | <b>\$12.32M</b> |

**What additional state-sponsored programs do affidavit students qualify for?**

The Texas Higher Education Coordinating Board administers the College Access Loan (CAL) Program which offers low-interest loans to assist students with college costs. Students are required to repay all funds received, in addition to applicable interest. The CAL program is not supported by state GR. The program operates with student loan repayments. Affidavit students may qualify for the CAL program. However, they must meet the same credit and other requirements mandated for all borrowers and are subject to the same repayment responsibilities. CAL loan disbursements for qualifying affidavit students, as estimated by the Coordinating Board, are listed on the table on the right.

| Estimated College Access Loan Disbursements to Affidavit Students |                |                |
|---|----------------|----------------|
|   | FY 2016        | FY 2017        |
| <b>Total</b>  | <b>\$1.23M</b> | <b>\$1.43M</b> |

**What institutional or other financial aid do affidavit students qualify for?**

In addition to state-supported or state-sponsored financial aid, institutions often provide access to various financial aid programs for students. These programs and available resources will vary by campus. Such financial aid resources may include merit-based grants, work study, or short-term loans. These resources are not supported by state GR. Total institutional or other financial aid provided to qualifying affidavit students as estimated by the Coordinating Board are included below:

| Estimated Institutional/Other Financial Aid to Affidavit Students |                |                |
|---|----------------|----------------|
|   | FY 2016        | FY 2017        |
| <b>Total Institutional or Other Financial Aid</b>                 | <b>\$21.7M</b> | <b>\$24.8M</b> |

**What is the total tuition and fees paid by students who completed an affidavit as required by statute?**

Institutions of higher education report students who completed an affidavit paid more than \$63 million in tuition and fees in Fiscal Year 2016 and more than \$72 million in tuition and fees in Fiscal Year 2017.

| Tuition & Fees Paid by Affidavit Students |                |                |
|---|----------------|----------------|
|   | FY 2016        | FY 2017        |
| <b>Total</b>                              | <b>\$63.6M</b> | <b>\$72.8M</b> |

For more information:  
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