

**FLORIDA BOARD OF GOVERNORS
NOTICE OF PROPOSED REGULATION AMENDMENT**

DATE: June 22, 2015

REGULATION NUMBER AND TITLE: 7.005 Residency for Tuition Purposes

SUMMARY: The proposed amendments to Regulation 7.005 provide clarification of statewide residency for tuition purposes. New language in section (2) relating to the Residency Declaration has been added, clarifying that verification of whether a student is a dependent child can be satisfied if the parent declares on a Residency Declaration, electronically or in other form, that the student is eligible to be claimed as a dependent by the parent under the federal income tax code. In addition to minor technical changes elsewhere in the regulation, the amendment to section (5) conforms with applicable federal law relating to the eligibility or ineligibility of immigrants and non-immigrants to establish residency for tuition purposes. Also included is language consistent with current practice and the *Ruiz* decision that U.S. citizen students who are dependent upon their parent(s) cannot be denied classification as residents for tuition purposes solely on the parent's immigration status.

FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.

AUTHORITY TO PROPOSE REGULATION(S): Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

THE BOARD OF GOVERNORS' OFFICIAL INITIATING THE PROPOSED REGULATION: Mr. Richard P. Stevens, Assistant Vice Chancellor, Academic and Student Affairs

COMMENTS REGARDING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation on which you are commenting:

General Counsel, Board of Governors, State University System, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

7.005 Residency for Tuition Purposes.

(1) The purpose of this regulation is to establish consistent policies for the classification of students as residents for tuition purposes in accordance with the criteria set forth in Section 1009.21, F.S. Florida Statutes.

(2) For Initial Determination of Residency: Each student shall submit a Florida Residency Declaration, electronically or in other form, and the documentation required by the institution to establish Florida residency for tuition purposes. Verification of whether the student is a dependent child as defined in section 1009.21(1)(a), F.S., shall be satisfied if the parent declares on the Florida Residency Declaration that the student is eligible to be claimed as a dependent by the parent under the federal income tax code. The Florida Residency Declaration is incorporated by reference and made a part of this regulation. The Residency Declaration is available at www.flbog.edu and the effective date is August 28, 2014.

(a) A dependent student who attended a Florida high school for a minimum of two (2) academic years immediately preceding ~~the student's his or her~~ initial enrollment in an institution of higher education and graduated from a Florida high school or earned a Florida General Educational Development (GED) within the last twelve (12) months may use the high school transcript or GED certificate as evidence of Florida residency. At least one (1) additional document identified in Sections 1009.21(3)(c)1. or 1009.21(3)(c)2., F.S., must be presented evidencing the ~~his or her~~ parent's legal residency in Florida.

(b) If a declaration of domicile, pursuant to Section 222.17, Florida Statutes, is being used as one of the documents to establish residency for tuition purposes, the date that an applicant shall be deemed as establishing residency for tuition purposes shall be twelve (12) months hence from the date that the Clerk of Circuit Court notes the declaration was sworn and subscribed to the Clerk. Nothing in this subsection shall prevent the use of additional documentation as evidence that legal residency was established by other means pursuant to section 1009.21(3)(c), F.S. as of a date earlier than that established by the declaration of domicile.

(3) For Residency Reclassification Determination. A student who is classified as a nonresident for tuition purposes may become eligible for reclassification as a resident for tuition purposes by presenting a minimum of three (3) documents identified in Sections 1009.21(3)(c)1. or 1009.21(3)(c)2., F.S. that convincingly demonstrate the establishment of permanent legal residence in Florida other than for the sole purpose of pursuing a postsecondary education. Documentation must demonstrate that the student or, if the student is a dependent, ~~his or her~~

their parent has maintained legal residence in Florida for at least twelve (12) consecutive months immediately prior to the first day of classes for the term for which residency reclassification is sought except as otherwise provided in Section 1009.21(6), F.S.

(4) The burden of providing clear and convincing documentation that justifies the university's classification of a student as a resident for tuition purposes rests with the applicant. For documentation to be "clear and convincing," it must be credible, trustworthy, and sufficient to persuade the university that the applicant has established legal residency in Florida that is not solely for the purpose of pursuing an education and has relinquished legal residency in any other state for at least twelve (12) months prior to classification. Each university may establish submission deadlines for all documentation that will be used to determine residency for tuition purposes.

(5) A non-United States citizen may be eligible to establish residency for tuition purposes if evidence is presented verifying that ~~he or she is legally present~~ the student has legal status in the United States, has met the residency requirements of ~~Section 1009.21, F.S.,~~ and the person is one of the following:

(a) A foreign national in a nonimmigrant visa classification that grants the person the legal ability to establish and maintain a bona fide domicile in the United States ~~according to the United States Citizenship and Immigration Services (USCIS).~~

1. The following visa categories grant the person the legal ability to establish and maintain a bona fide domicile in the United States ~~according to the USCIS:~~ A, E, G, H-1B, H-1C (~~classification expires 12-20-2011~~), I, K, L, N, NATO 1-7, O-1, R, S, T, U, and V.

2. The following visa categories do not grant the person the legal ability to establish and maintain a bona fide domicile in the United States ~~according to USCIS:~~ B, C, D, F, H-2, H-3, M, P, Q, and TN. J visa holders are not eligible to establish residency for tuition purposes except as provided in ~~Section 1009.21(10), F.S.~~

~~3. The student, and parent if the student is a dependent, must present evidence of legal presence in the United States.~~

(b) A permanent resident alien, parolee, asylee, Cuban-Haitian entrant, or other legal alien granted an indefinite stay in the United States. ~~The student, and the parent if the student is a dependent, must present legal evidence of legal presence in the United States.~~

(c) Pursuant to section 1009.21(2)(d), a dependent student who is a U.S. citizen may not be denied classification as a resident for tuition purposes based solely upon the immigration status of the student's parent.

(6) Each university's residency appeal process established pursuant to Section 1009.21(12), F.S. shall be in writing and displayed prominently on the university's Wweb site.

Authority: Section 7(d), Art. IX, Fla. Const., History – Formerly 6C-2.51, 11-18-70, 8-20-71, 6-5-73, 3-4-74, 12,17,74, 1-13-76, 12-13-77, 8-11-81, 6-21-83, 12-14-83, 6-10-84, 10-7-85, 12-31-85, Formerly 6C-7.05, 11-9-92, 4-16-96, Amended and Renumbered 4-21-05. Amended 03-24-11, Amended _____.