

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

DATE: February 4, 2010

REGULATION NUMBER AND TITLE: 7.005 Residency

SUMMARY: Regulation 7.005 **Residency for Tuition Purposes** has been substantially revised due to changes made to 1009.21 Florida Statutes during the 2009 legislative session. The regulation has been reorganized so that the requirements for initial residency determination are clearly delineated from residency reclassification. Requirements for reclassification were tightened to now require at least three documents to be presented as evidence for students who were initially classified as nonresidents for tuition purposes.

In addition, a distinction was made that if a student presents as his or her sole evidence for a residency determination documentation of full-time employment or the purchase of a home, the student must not be enrolled for at least 12 months. The regulation also requires that each state university must establish a residency appeal committee and post the procedures for making an appeal on the university Web site. Clarity was also provided by adding definitions of initial enrollment and parent in the regulation. Lastly, the visa categories for determining residency for non-immigrants were updated based on the requirements of the U.S. Citizenship and Immigration Services.

FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.

AUTHORITY TO AMEND 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 AMENDMENT TO THE REGULATION: Dr. Jon Rogers, Director, Academic and Student Affairs

COMMENTS REGARDING THE PROPOSED AMENDMENT 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) Definitions.

(a) Initial enrollment refers to the first day of classes at a university as identified in the university calendar and in accordance with Board of Governors Regulation 8.001.

(b) Dependent student is any person who is eligible to be claimed by his or her parent as a dependent under the federal income tax code, regardless of whether the person is living with his or her parent and for whom fifty (50) percent or more of his or her support has been provided by another as defined by the Internal Revenue Service.

(c) Parent means the natural parent, adoptive parent, or legal guardian of a dependent student.

(d) Independent student refers to any student who has been classified as "independent" according to the federal financial aid guidelines. A student who does not meet federal financial aid criteria for independence may be classified as an independent student if he or she is not claimed by his or her parent as a dependent student under the federal income tax code and submits documentation that he or she provides fifty (50) percent or more of the cost of attendance for independent, in-state students as defined by the financial aid office at the institution (exclusive of federal, state, and institutional aid or scholarships).

(2) Initial Residency Determination. To qualify as a resident for purposes of paying the in-state tuition rate:

(a) A person or, if that person is a dependent, his or her parent or parents must have established legal residence in Florida and must have maintained legal residence in Florida for at least twelve (12) consecutive months prior to his or her initial enrollment in a university.

(b) Every applicant seeking to establish residency shall be required to make a statement as to his or her length of residence in Florida and further establish that his or her presence or, if the applicant is a dependent, the presence of his or her parent or parents in Florida, currently is and at all times during the requisite twelve (12) month qualifying period was for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a temporary residence incident to enrollment.

(c) A residency determination for an initial classification must be documented by the submission of written or electronic verification that the applicant or applicant's parent(s), if a dependent, has been issued two or more of the documents identified below. No single piece of documentation shall be conclusive. Such documentation must demonstrate that the applicant has maintained legal residence in Florida for at least twelve (12) consecutive months prior to his or her initial enrollment in a university.

(i) The documentation must include at least one (1) of the following:

1. A Florida voter's registration card;
2. A Florida driver's license;
3. A State of Florida identification card;
4. A Florida vehicle registration;
5. Proof of a permanent home in Florida which is occupied as primary residence by the applicant or by the applicant's parent if the applicant is a dependent;
6. Proof of a homestead exemption in Florida;
7. Proof of permanent full-time employment in Florida. For the purposes of this regulation, full-time employment is at least thirty (30) hours per week for a twelve (12) month period; or
8. For dependent students, a transcript provided by a Florida high school evidencing at least two (2) years of consecutive enrollment, provided a high school diploma or GED certificate was earned within the last twelve (12) months and the applicant submits at least one piece of documentation evidencing his or her parent's legal residency in Florida.

(ii) Additional documentation may include, but is not limited to, the following:

1. A declaration of domicile in Florida;
2. A Florida Professional or Occupational license;
3. Documents evidencing a Florida incorporation;
4. Documents evidencing family ties in Florida;
5. Proof of membership in Florida-based charitable or professional organizations;
6. And any other documentation that supports the applicant's request for resident status, including, but not limited to, utility bills and proof of twelve (12) consecutive months of payments; a lease agreement and proof of twelve (12) consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.

(d) The legal residence of a dependent's parent or parents is prima facie evidence of the dependent's legal residence. Such prima facie evidence may be reinforced or rebutted, relative to the age and general circumstances of the dependent, by the other evidence of legal residence required of or presented by the dependent. In the event the dependent's parent or parents are domiciled outside of Florida, the legal residence of the dependent's parent or parents is not prima facie evidence of the dependent's legal residence if the dependent has lived in Florida for five (5) consecutive years prior to enrolling or reregistering at a university. In addition, the legal residence of a dependent whose parents are divorced, separated, or otherwise living apart will be deemed to be Florida if either parent is a legal resident of this state regardless of which parent is entitled

to claim the applicant as a dependent pursuant to federal individual income tax provisions.

(e) A dependent living with an adult relative other than the dependent's parent may qualify as a resident for tuition purposes if the adult relative is a legal resident who has maintained legal residence in Florida for at least twelve (12) consecutive months immediately prior to the dependent's initial enrollment in a university, provided the dependent has resided continuously with such relative for the five (5) years immediately prior to the dependent's initial enrollment in a university, during which time the adult relative has exercised daily supervision, care and control of the dependent.

(f) The legal residency of a married person shall be determined the same as for unmarried persons based on all relevant documentation listed above, except that the fact of the marriage and the place of domicile of the person's spouse constitutes additional relevant evidence to be considered for purposes of qualifying for residency for tuition purposes. This does not preclude, however, a person from establishing or maintaining legal residency in Florida and subsequently qualifying or continuing to qualify as a resident for tuition purposes solely by reason of marriage to a person domiciled outside of Florida, even when that person's spouse continues to be domiciled outside of this state, provided such person maintains his or her legal residence in Florida.

(g) 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 1009.21, Florida Statutes, as of a date earlier than that established by the Declaration of Domicile.

(3) 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 under the following circumstances:

(a) Where the student, or if a dependent, the student's parent or parents provide clear and convincing documentation that supports permanent legal residency in Florida for at least twelve (12) consecutive months prior to the term for which the student is seeking reclassification which documentation reflects that such residency has not been established on a temporary basis for the purpose of pursuing an education. Such documentation shall include any of the following:

(i) At least three (3) documents identified in subparagraph (2)(c) above that convincingly demonstrate the establishment of permanent legal

residence in Florida other than for the sole purpose of pursuing a postsecondary education;

(ii) Documentation of permanent full-time employment in Florida for at least thirty (30) hours per week for a twelve (12) month period while not enrolled in a public postsecondary institution in Florida; or

(iii) The purchase of a home in Florida and residence therein for the twelve (12) month period while not enrolled in a public postsecondary institution in Florida.

(b) Where a dependent moved to Florida with his or her parent or parents while the dependent was in high school and the dependent graduated from a Florida high school, and the dependent's parent or parents provide convincing documentation that the parent or parents have established legal residency in Florida.

(c) Where a dependent and his or her parent or parents moved to Florida after the dependent graduated from high school and the parent or parents provide convincing documentation that the parent or parents have established legal residency in Florida and have maintained such residency for at least twelve (12) consecutive months.

(d) Where the student marries a legal resident of Florida or marries a person who becomes a legal resident of Florida, and upon becoming a legal resident of Florida, provides convincing documentation of his or her own legal residency, evidence of his or her marriage to a legal resident of Florida, and evidence of the spouse's legal residence in Florida for at least twelve (12) consecutive months immediately preceding the application.

(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. Each university may establish submission deadlines for all documentation that will be used to determine residency for tuition purposes.

(5) Non-U.S. citizens who are currently classified as permanent residents, parolees, asylees, refugees, or other permanent status persons (e.g., conditional permanent residents and temporary residents) must present valid and eligible documentation from the U.S. Citizenship and Immigration Services (USCIS) as identified in paragraphs (6) and (7) of this regulation. Non-U.S. citizens who have applied to the USCIS with no date certain for departure shall be considered eligible to establish Florida residency for tuition purposes. The student and the student's parent, if the student is a dependent, must have valid and eligible USCIS documentation. All non-U.S. citizen document categories must be valid

and unexpired for the entire term in which a non-U.S. citizen is classified as a Florida resident.

(6) Nonimmigrants holding one of the following visas shall be considered eligible to establish Florida residency for tuition purposes. Individuals with non-immigrant visas must provide evidence that: (1) he or she is in an eligible visa category (and parent, if a dependent); and (2) he or she has lived in Florida for the required twelve (12) month qualifying period (or parent, if a dependent). Visa categories must be valid and unexpired for the entire term in which a nonimmigrant is classified as a Florida resident. Persons in visa categories not listed herein shall be considered ineligible to establish Florida residency for tuition purposes.

(a) Visa category A - Foreign Government Official, including members of their immediate family.

(b) Visa category E - Treaty Traders and Investors, including their spouse and children.

(c) Visa category G - Foreign Government Officials to international organizations, including members of their immediate family.

(d) Visa category H-1B - Temporary Workers (Specialty Occupations, Department of Defense Workers, Fashion Models and Nurses in (HPSA's), including their spouse and children.

(e) Visa category I - Foreign Media Representatives, including their spouse and children.

(f) Visa category K - Fiancé(e)s of United States citizen(s), including their children.

(g) Visa category L - Intracompany Transferees, including their spouse and children.

(h) Visa category N - Parent or child of alien accorded special immigrant status.

(i) Visa category O-1 - Workers with Extraordinary Abilities, including their spouse and children.

(j) Visa category R - Religious workers, including their spouse and children.

(k) Visa category NATO 1-7 - North Atlantic Treaty Organization Representatives and their immediate family.

(l) Visa category S - Alien witnesses and informants, including their spouse and children.

(m) Visa category T - Victims of trafficking, who cooperate with federal authorities in prosecutions of traffickers, including their spouse and children.

(n) Visa category U - Victims of Certain Crimes, including their spouse and children.

(o) Visa category V - Spouses and children of lawful permanent residents.

(7) Non-U.S. citizens who fall within the following categories shall also be considered eligible to establish Florida residency for tuition purposes:

- (a) Citizens of Micronesia.
- (b) Citizens of the Marshall Islands.
- (c) Beneficiaries of the Family Unity Program.
- (d) Individuals granted Temporary Protected Status (TPS).
- (e) Individuals granted Withholding of Removal status.
- (f) Individuals granted Suspension of Deportation status or Cancellation of Removal.
- (g) Individuals granted a Stay of Deportation status or Stay of Removal.
- (h) Individuals granted Deferred Action status.
- (i) Individuals granted Deferred Enforced Departure status.
- (j) Applicants for Adjustment of Status.
- (k) Asylum applicants with USCIS receipt or Immigration Court stamp.

(8) In addition to the foregoing, universities shall classify persons as residents for tuition purposes as set forth in sections 1009.21(7) through (10), Florida Statutes.

(9) Each university shall establish a residency appeal committee that is responsible for making final residency determinations for students who initiate appeals according to the university's official appeal process. The official appeal process shall be written and displayed prominently on the university's Web 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 as 7.005 4-21-05. Amended XX-XX-XX.

7.005 Residency for Tuition Purposes.

~~The purpose of this Regulation is to establish consistent policies for the classification of students as residents for tuition purposes. The determinations of classification or reclassification shall be consistent to assure that students are classified the same regardless of the institution determining the classification.~~

~~(1) The classification of a student as a Florida resident for tuition purposes by an institution or entity governed by Section 1009.40, Florida Statutes, shall be recognized by other public postsecondary institutions to which the student may later seek admission, provided that student has attended the institution or entity making the classification within the last twelve (12) months and the residency is noted on the student's transcript. Once a student has been classified by an institution or entity as a resident for tuition purposes, institutions to which the student may transfer are not required to re-evaluate the classification unless inconsistent information suggests that an erroneous classification was made or the student's situation has changed.~~

~~(2) Non-U.S. citizens such as permanent residents, parolees, asylees, refugees, or other permanent status persons (e.g., conditional permanent residents and temporary residents), who have applied to and have been approved by the U.S. Bureau of Citizenship and Immigration Services with no date certain for departure shall be considered eligible to establish Florida residency for tuition purposes.~~

~~(3) Nonimmigrants holding one of the following visas shall be considered eligible to establish Florida residency for tuition purposes. Persons in visa categories not listed herein shall be considered ineligible to establish Florida residency for tuition purposes.~~

- ~~(a) Visa category A Government official.~~
- ~~(b) Visa category E Treaty trader or investor.~~
- ~~(c) Visa category G Representative of international organization.~~
- ~~(d) Visa category H 1 Temporary worker performing professional nursing services or in a specialty occupation.~~
- ~~(e) Visa category H 4 Only if spouse or child of alien classified H 1.~~
- ~~(f) Visa category I Foreign information media representative.~~
- ~~(g) Visa category K Fiancé, fiancée, or a child of United States citizen(s).~~
- ~~(h) Visa category L Intracompany transferee (including spouse or child).~~
- ~~(i) Visa category N Parent or child of alien accorded special immigrant status.~~
- ~~(j) Visa category O 1 Workers of "extraordinary" ability in the sciences, arts, education, business, or athletics.~~
- ~~(k) Visa category O 3 Only if spouse or child of O 1 alien.~~
- ~~(l) Visa category R Religious workers.~~
- ~~(m) Visa category NATO 1 7 Representatives and employees of NATO and their families.~~
- ~~(n) Visa category T Victims of trafficking, who cooperate with federal authorities in prosecutions of traffickers, and their spouses and children.~~
- ~~(o) Visa category V Spouses and children of lawful permanent residents.~~

~~(4) Non-U.S. citizens who fall within the following categories shall also be considered eligible to establish Florida residency for tuition purposes:~~

- ~~(a) Citizens of Micronesia.~~
- ~~(b) Citizens of the Marshall Islands.~~

- ~~(c) Beneficiaries of the Family Unity Program.~~
- ~~(d) Individuals granted temporary protected status.~~
- ~~(e) Individuals granted withholding of deportation status.~~
- ~~(f) Individuals granted suspension of deportation status or cancellation of
removal.~~
- ~~(g) Individuals granted a stay of deportation status.~~
- ~~(h) Individuals granted deferred action status.~~
- ~~(i) Individuals granted deferred enforced departure status.~~
- ~~(j) Applicants for adjustment of status.~~
- ~~(k) Asylum applicants with INS receipt or Immigration Court stamp.~~

~~(5) 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 them. 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(1)(c), Florida Statutes, as of a date earlier than that established by the Declaration of Domicile.~~

~~(6) An applicant shall be classified at the time of initial classification as an "All Florida" resident for tuition purposes, and the institution to which the applicant is applying shall grant the applicant residency for tuition purposes, if all of the following criteria are met. If the applicant does not meet all of the criteria, he or she must be evaluated to determine residency status.~~

- ~~(a) Students requesting All Florida resident status as an independent person must meet all of the following criteria:
 - ~~1. The student's nation of citizenship is the United States;~~
 - ~~2. The student is twenty four (24) years of age or over;~~
 - ~~3. The student's permanent address is a Florida address;~~
 - ~~4. The high school from which the student graduated is a Florida high school;~~
 - ~~5. Every institution the student attended is located in the State of Florida; and~~
 - ~~6. The student provides written or electronic verification that he or she has been issued two (2) of the following three (3) Florida documents that are dated more than twelve (12) months old: a voter's registration, a driver's license or a vehicle registration.~~~~

~~(b) Students requesting All Florida resident status as a dependent person must meet all of the following criteria:~~

- ~~1. The student is eligible to be claimed by his or her parent or legal guardian as a dependent under the federal income tax code;~~
- ~~2. The student's nation of citizenship is the United States~~
- ~~3. The student is under twenty four (24) years of age;~~
- ~~4. The student's mother, father or legal guardian is the person claiming Florida residence;~~
- ~~5. The student's mother, father or legal guardian claiming Florida residence has a Florida permanent legal address; and~~
- ~~6. The student's mother, father or legal guardian claiming Florida residence provides written or electronic verification that he or she has been issued two of the following three Florida documents that are dated more than twelve (12) months old: a voter's registration, a driver's license or a vehicle registration.~~

~~(7) An applicant, who at the time of initial classification is not classified as an All Florida resident for tuition purposes, shall be further assessed by the institution to which the applicant is applying. The student shall provide clear and convincing evidence that establishes that he or she, or if a dependent, the student's mother, father, or guardian, has been a Florida resident for the preceding twelve (12) months. No single piece of documentation shall be conclusive.~~

~~(a) The documentation may include, but is not limited to, the following: driver's license, voter registration card, vehicle registration, declaration of domicile, proof of purchase of a permanent home, transcripts from a Florida school for multiple years, proof of permanent full time employment, a Professional or Occupational License, Florida incorporation, documents evidencing family ties, proof of membership in organizations, and any other documentation that supports the student's request for resident status.~~

~~(b) Dependent or independent status will be based on a copy of a student's or his or her parents' most recent tax return or other documentation. A dependent person will be one for whom fifty (50) percent or more of his or her support has been provided by another as defined by the Internal Revenue Service. An independent person will be one who provides more than fifty (50) percent of his or her own support.~~

~~(c) An independent or dependent student who is enrolled full time in an institution and is seeking to be re-classified as a resident for tuition purposes, must provide such documentation which substantiates that he or she, or if a dependent, the student's mother, father, or guardian, is establishing Florida as his or her permanent domicile and not as a mere temporary residence incident to the enrollment in higher education.~~

~~(8) A student, or if a dependent his or her father, mother or guardian, must maintain legal residence in the state of Florida for at least twelve (12) months immediately prior to the first day of classes of the term for which residency status is sought at a Florida institution. Institutions~~

~~may establish submission deadlines for all documentation that will be used to determine residency for tuition purposes. The burden of providing the documentation, which justifies the classification of a student as a resident for tuition purposes, rests with the applicant.~~

~~(9) Notwithstanding the foregoing, institutions shall classify persons as residents for tuition purposes in accordance with the criteria set forth in Section 1009.21, Florida Statutes.~~

~~(10) For purposes of determining residency for tuition purposes, any reference to federal or state government shall be construed as meaning U.S. federal or Florida state government.~~

~~(11) In determining the domicile of a married person, the determination of a legally married person shall be consistent with Chapter 741, Florida Statutes.~~

~~(12) Definitions.~~

~~(a) The term "institution," as used in this Regulation when adopted by the Board of Governors shall mean state universities, and when adopted by the State Board of Education shall mean community colleges, with the understanding that both Boards shall coordinate and cooperate as a K-20 system.~~

~~(b) Community colleges shall mean those set forth in Section 1000.21(3), Florida Statutes.~~

~~(c) State universities shall mean those set forth in Section 1000.21(6), Florida Statutes.~~

~~(d) The term "full time" shall mean enrollment in twelve (12) or more credits per term for under-graduate students and nine (9) or more credits per term for graduate students. Institutions may provide exceptions for students such as, dissertation students, co-op students, or students with disabilities.~~

~~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.~~