



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Ohio Residency and Higher Education

State law requires the Chancellor of Higher Education to adopt rules for determining whether an individual pursuing higher education opportunities in Ohio qualifies as an Ohio resident. Ohio residency status is used to determine whether an individual qualifies for in-state tuition at state institutions of higher education and whether a state institution receives state operating subsidies for that individual. Generally, the Chancellor’s rules must deny Ohio residency status to any individual who lives in Ohio primarily to attend a state institution, although state law provides several exceptions to that general prohibition.

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### Chancellor’s general rules

State statutory law requires the Chancellor of Higher Education to adopt rules defining Ohio residency status (also known as in-state residency status) for individuals enrolled at state institutions of higher education.<sup>1</sup> The residency rules are used to determine whether an individual qualifies for in-state tuition rates and whether a state institution qualifies for state operating subsidies for that individual.

With only a few exceptions, the Chancellor’s rules generally must deny residency status to any individual living in Ohio primarily to attend a state institution; for example, a student who

<sup>1</sup> State institutions of higher education are the 13 state universities, the Northeast Ohio Medical University, community colleges, state community colleges, technical colleges, and university branch campuses.

moves to Ohio and resides with extended family. To that end, the Chancellor is authorized to prescribe presumptive rules for determining whether an individual is an Ohio resident. The rules may be based on an individual's sources of support, residence prior to the first enrollment, intention to remain in Ohio after completing studies, or other factors the Chancellor determines relevant.<sup>2</sup>

Statutory law requires the Chancellor to adopt those rules in accordance with the Administrative Procedure Act, but it also specifies that an individual's residency status under those rules does not need to be adjudicated in accordance with that Act.<sup>3</sup>

## Exceptions to the general rules

The General Assembly has required a number of exceptions be made to the general rules regarding Ohio residency status. Under these exceptions, the Chancellor's rules must extend residency status to individuals who meet specific criteria.

### Veterans, spouses, and dependents

There are several ways for a veteran and the veteran's spouse and dependents to qualify for Ohio residency status when they might not do so otherwise. First, they may qualify if the veteran served at least one year on active military duty and was honorably discharged or received a medical discharge related to military service. Or, a spouse or dependent of a service member killed in action or declared a prisoner of war (POW) or missing in action (MIA) may qualify for residency status. Under these provisions, a veteran seeking residency status must have established domicile (a permanent home) in the state as of the first day of a term of enrollment. For a spouse or dependent seeking such status, both the veteran *and* the spouse or dependent must have established domicile, unless the veteran was killed in action, declared a POW or MIA, or otherwise died subsequent to being discharged.<sup>4</sup>

A veteran also qualifies for residency status if the veteran is the recipient of federal veterans' education benefits under the All-Volunteer Force Educational Assistance Program (also called the Montgomery G.I. Bill) or the Post 9/11 Veterans Educational Assistance Program (also called the Post 9/11 G.I. Bill). To qualify, the veteran also must (1) have served on active duty for at least 90 days and (2) live in the state as of the first day of a term of enrollment.<sup>5</sup>

Finally, an individual qualifies for residency status if the individual is the recipient of either (1) the federal Marine Gunnery Sergeant John David Fry Scholarship or (2) transferred education benefits under either of the G.I. bills. To qualify, the individual must live in the state as of the first

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<sup>2</sup> R.C. 3333.31(A).

<sup>3</sup> R.C. 3333.31(A). The Administrative Procedure Act (R.C. Chapter 119) prescribes an administrative rulemaking procedure for certain state agencies or boards that requires them to issue a public notice of the intention to adopt a rule and conduct a public hearing on that proposed rule. Similarly, it prescribes due process procedures, including a public hearing, for individuals who are subject to an adjudication order.

<sup>4</sup> R.C. 3333.31(B).

<sup>5</sup> R.C. 3333.31(C)(1). See also 38 United States Code (U.S.C.) 3001 *et seq.* and 38 U.S.C. 3301 *et seq.*

day of a term of enrollment and receive such benefits through either a member of the U.S. armed forces who is on activity duty or a veteran who served on active duty for at least 90 days.<sup>6</sup>

For the purposes of all of these exceptions, a “veteran” is anyone who has completed service in the “uniformed services,” including the U.S. armed forces, the National Guard and organized militia, the Merchant Marine, the Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.<sup>7</sup>

### **Active duty service members, spouses, and dependents**

Statutory law qualifies for residency status any active duty military service members, regardless of their actual residency or where they are stationed. It also qualifies their spouses and dependents. These individuals need not establish domicile in Ohio as of the first day of an institution’s term of enrollment to qualify, as otherwise generally required by other residency standards. But the student seeking residency status must actually live in Ohio by that date.<sup>8</sup>

A separate state law prohibits state institutions of higher education from charging out-of-state tuition and fees to a nonresident student who is either a member of the U.S. armed forces stationed in Ohio or a member of the Ohio National Guard. Similarly, state institutions are prohibited from charging out-of-state tuition and fees to their spouses or dependent children.<sup>9</sup>

### **Permanent employment and domicile**

State law grants residency status to the dependent child or spouse of an individual who has accepted full-time employment and established domicile in Ohio by the first day of an academic term at a state institution of higher education. Though, the law does state that the employment or establishment of domicile must not be strictly for the purpose of gaining the benefit of favorable tuition rates.

Documentation of full-time employment must include a sworn statement from the employer or the employer’s representative on the letterhead of the employer or representative.<sup>10</sup>

### **Ohio high school graduates – Forever Buckeye**

State law grants residency status to individuals who qualified for that status when they graduated from an Ohio high school or finished their final year of homeschooling in Ohio, but subsequently moved out of state. To qualify, those individuals must relocate to Ohio to enroll in a state institution and establish domicile. This exception is commonly known as the Forever Buckeye Program.<sup>11</sup>

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<sup>6</sup> R.C. 3333.31(C)(2). See also 38 U.S.C. 3311(b)(8) and (f).

<sup>7</sup> R.C. 3333.31(G)(5) and 3511.01.

<sup>8</sup> R.C. 3333.31(D).

<sup>9</sup> R.C. 3333.42.

<sup>10</sup> R.C. 3333.31(E).

<sup>11</sup> R.C. 3333.31(F)(1). See also <https://www.ohiohighered.org/forever-buckeyes>.

## **Prohibition against eligibility for undocumented aliens**

State law expressly prohibits granting residency status to an alien (an individual who is not a U.S. citizen or U.S. national), unless the U.S. Bureau of Citizenship and Immigration Services has granted that alien the right to either (1) reside permanently and work without restrictions in the U.S. or (2) reside temporarily in the U.S.<sup>12</sup> In effect, that prohibition denies residency status to undocumented aliens who entered the country without inspection or with fraudulent documents, or who entered the U.S. legally but then violated the terms of their status and remained in the U.S. without authorization.

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<sup>12</sup> R.C. 3333.31(F)(2) and (G)(2), (3), and (4).