

# Reconciling Federal, State, and Institutional Policies Determining Educational Access for Undocumented Students: Implications for Professional Practice

A Report Prepared by



Funded by  
TG Public Benefit Grant Program

February 2012



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This report was prepared by The National Forum on Higher Education for the Public Good and funded by TG Public Benefit Grant Program.



The National Forum on Higher Education for the Public Good was established through a grant by the W.K. Kellogg Foundation in 2000. Its mission is to significantly increase awareness, understanding, commitment, and action in support of the public service role of higher education in a changing democratic society. The National Forum is affiliated with the Center for the Study of Higher and Postsecondary Education at the University of Michigan. It draws upon the extraordinary research capacities of CSHPE faculty and students and the rich interdisciplinary strengths of the University.



## Acknowledgments

This report would not have been possible without the generous contributions of the **TG Public Benefit Grant Program**. The Texas Guaranteed Student Loan Corporation has served higher education institutions, students, and families by helping them to meet college costs since its establishment in 1979. This research study was selected through a competitive process as part of a TG initiative to learn more about factors affecting student access and degree completion across higher education.

The authors would also like to acknowledge the executive leaders of the **National Association of Student Financial Aid Administrators** and the **American Association of Collegiate Registrars and Admissions Officers** who provided us with feedback throughout the process. We also must thank the members of these two organizations who provided us with information and insights about their decisions, constraints, and opportunities related to serving immigrant and undocumented students.

In addition, we would like to thank **Dr. Stephen L. DesJardins**, Director of the Center for the Study of Higher and Postsecondary Education at the University of Michigan, for his review of the methodology of our study and his general guidance and support.

Lastly, we would like to acknowledge **Dr. Susan Sturm**, funding Director of the Center for Institutional and Social Change at Columbia Law School, for her advice and insights during the conceptualization of the project and for her continuous support as a partner of the National Forum.

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# Executive Summary

## Overview of the Study

This study examines how higher education officials weigh conflicting values concerning the educational aspirations of immigrant and undocumented students. This issue has legal, philosophical, practical, and political dimensions. Federal, state, and local laws vary and frequently change, and public opinion has many strains. This environment places great importance on institutional policies and professional decisions. This study examines those decisions and factors that may influence them.

Previous scholarship has identified ambiguities in laws and regulations that are open for interpretation and not always known or fully understood by those who implement them (Suchman & Edelman, 1996). Individuals must rely on experts to help interpret these laws, which impact institutional policies. Federal laws on postsecondary education regulate hiring practices, affirmative action, and academic freedom. These laws have influenced (and been influenced by) the values, beliefs, and normative behaviors that inform higher education policy. Examining how postsecondary institutions respond to laws and how they define compliance with them will help us better understand how institutions mediate this issue in society. This has significant implications for student access, the enactment of institutional missions, public support for colleges and universities, and the role of higher education in a changing democratic society.

Higher education has occasionally faced challenges to its right to determine who will be admitted, but seldom has the issue been as virulent as it is with access for immigrants, especially those described as “undocumented.” Legal precedence and legislation enacted in the 1980s and 1990s have set the stage for the current policy context. *Plyler v. Doe (1982)* established a precedent for the treatment of immigrants in the U.S. public educational system through high school, but this ruling does not extend to postsecondary opportunities for undocumented students (Flores, 2010).

**States do not admit and register students.**

**Colleges and universities do.**

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA §505), which constrained the ability of states to provide educational benefits to undocumented students (Bruno, 2010). IIRIRA gives states the authority to provide in-state tuition to undocumented students seeking admission to public institutions. The ambiguous language of IIRIRA has resulted in various interpretations of the law, particularly how the term “residence” is defined and what constitutes a “postsecondary educational benefit” (Russell, 2011). A number of states have enacted laws extending tuition benefits to undocumented students, and these have passed judicial review (Flores, 2010).

Since IIRIRA was passed, Congress has failed to legislate a comprehensive immigration framework responsive to changes in demographic, economic, and political circumstances. With the passage of several different versions of a federal Development, Relief, and Education for Alien Minors (DREAM) Act, and the ambiguity in the language of IIRIRA, the debate has shifted from the federal level to the states and to postsecondary institutions. State policymakers and institutions of higher education have no choice but to reconcile their practices amidst growing public concerns and polarized sentiments about unauthorized immigrants.

Since 2001 some states have passed policies to either extend or deny the provision of in-state tuition to undocumented students, but most have not addressed the issue. However, states do not admit and register students; colleges, and universities do. Professional educators make decisions based on policies, practices, professional norms, and, occasionally, personal attitudes.

In this study we compare policy environments with the actual practices that shape access, participation, and graduation, and we explore how colleges and universities reconcile laws that constrain undocumented students’ educational access with institutional values, governance arrangements, professional norms, and local circumstances.

Our study sheds new light on the following questions:

- To what extent do state policy, professional organizations, and forms of institutional control influence how postsecondary educational institutions make and use policies related to undocumented students?

**Our study reveals how educators try to act responsibly within a treacherous set of pressures.**

**Because public opinion is volatile, their decisions are sometimes deliberately made without publicity.**



- What mechanisms do institutional leaders perceive as influencing policies on undocumented students at their institutions?

We hope to prepare higher education leaders to anticipate how undocumented students' access will be affected by institutional policy and practice.

## Significance of the Issue

The influx of unauthorized immigrants into the United States constitutes a significant challenge to educators and policymakers. This population comprises a growing percentage of children in our nation's schools. There are approximately 1.1 million undocumented children living here (Passel & Cohn, 2011). The vast majority arrived at a very young age and were brought by parents in search of better lives for their families (Gonzalez, 2009). Each year about 65,000 undocumented children, many of whom have lived in and attended school in this country since the first grade, graduate from high school (Gonzalez, 2009). It is estimated that between 5 and 10 percent of these students enroll in a college or university (Russell, 2011). Many of these children cannot easily resolve their immigration status and experience ongoing uncertainty over postsecondary educational opportunities.

Policy designed to promote access to higher education has reflected contrasting economic and social agendas. The expansion in enrollment in higher education is linked to technological change and globalization (Clancy & Goastellec, 2007). In contrast, the social agenda for higher education historically has been concerned with social justice and ideals of democratization and diversity (Clancy & Goastellec, 2007). Widening access to higher education for previously marginalized groups and improving educational opportunity to achieve a more equal distribution of wealth have been important for American educators and institutions since the middle of the last century (Leslie & Brickman, 1988). Undocumented students could contribute to the economic, social, and democratic goals of this country if given access to postsecondary educational opportunities. However, their educational marginalization prevents the nation from reaping the benefits of additional human capital, meanwhile exposing these students and their families to a future of poverty and hardship. Even so, others argue that undocumented students have no educational rights and that their presence may even threaten the rule of law that holds society together. Such arguments place colleges and universities on shifting ground.

**Widening access to higher education for previously marginalized groups and improving educational opportunity to achieve a more equal distribution of wealth has been important for American educators and institutions since the middle of the last century.**

## Survey Design and Data Collection

While the National Forum has been actively involved in organizing discussions about this issue, we felt we needed to objectively consider how professionals charged with making decisions on behalf of institutions

thought and felt about their roles in doing so. We held a series of focus groups with financial aid representatives and enrollment managers to hear their thoughts about how to design this study.



Based on their feedback, the resulting survey instrument collected information on institutional characteristics, institutional- and state-level policies and practices on undocumented students, the nature of staff training opportunities, and best practices at each institution. The survey was distributed to members of the National Association of Student Financial Aid Administrators (NASFAA) and the American Association of College Registrars and

Admissions Officers (AACRAO). NASFAA and AACRAO draw their combined memberships from a broad cross-section of U.S. colleges and universities and represent thousands of professional educators who make decisions every day about college admissions and student support.

## Results

Consistent with our theoretical framework and a set of hypotheses further detailed below, we chose to study policies and practices as they took shape in differing legal and political environments. We grouped state policy structures into three categories:

1. **Inclusive Policies**—Refer to states with policies that explicitly extend the provision of in-state residency tuition
2. **Restrictive Policies**—Refer to states with policies that explicitly prohibit undocumented students from gaining admission to public or private institutions and those that do not allow in-state residency tuition for undocumented students; and
3. **Unstipulated Policies**—Refer to states with no current legislation that explicitly prohibit or endorse admissions or in-state tuition for undocumented students.

In order to test how institutions mediate these state laws, we used a series of theoretically grounded blocked logistic regression models.

Logistic regression is the appropriate method for these analyses because our dependent variables are dichotomous and because it allowed us to examine the independent contribution of the variables we included in the models (Long & Freese, 2006).

While in a study of this magnitude and complexity there are many possible findings and implications, we focus on those outcomes that have the strongest statistical evidence and the most important implications for policy and practice. We have grouped these findings into four clusters.

Key Impact Areas Informed by This Study
1. The Impact of State Policy Environments on Institutional Access Policies for Undocumented Students
2. The Impact of Institutional Characteristics on Access Policies for Undocumented Students
3. The Impact of Demographic Shifts on Access Policies for Undocumented Students
4. The Role of Professional Organizations on Access Policies for Undocumented Students

### *1. Impact of State Policy Environments on Institutional Access for Undocumented Students*

- Institutions in states with inclusive policies are more likely to have policies that admit undocumented students.
- They are more likely to have policies that extend in-state tuition to undocumented students.
- They are more likely to offer financial aid to undocumented students.

### *2. Impact of Institutional Characteristics on Institutional Access Policies for Undocumented Students*

- Public institutions are more likely than private institutions to have policies that admit undocumented students.
- Private and for-profit institutions are more likely than public institutions to offer financial aid to undocumented students.

- Four-year colleges and universities more often provide financial assistance to undocumented students than community colleges, trade schools, and graduate-level-only institutions.

### *3. The Impact of Demographic Shifts on Access Policies for Undocumented Students*

The higher its percentage of undocumented immigrants, the more likely a state is to offer in-state tuition status to them.

### *4. The Role of Professional Organizations on Access Policies for Undocumented Students*

The more aware institutional professionals are of NASFAA's access-oriented position on undocumented students, the more likely those colleges and universities are to admit them and offer them financial aid.



## **Recommendations**

Based on the findings presented in this report, the National Forum on Higher Education for the Public Good has compiled the following recommendations to guide future policy efforts, institutional practice, and scholarly research.

### *State and Federal Policy*

- Encourage regional, state, and national higher education professional associations to discuss the importance of this issue. These associations can draw awareness to the challenges and opportunities institutions face when serving the needs of undocumented students and provide their members with resources and support.
- Empower educators to take a more active role in informing policies within their own states. The results of this study indicate that an inclusive policy environment influences institutional practice; thus, changes at the state policy level are necessary to promote broader change at the institutional level.

- Better align admissions and financial aid policies in order to more effectively create access for undocumented students. Providing access is necessary but may not be enough without adequate financial aid.

### *Professional Practice*

- Practitioners dealing with undocumented students should become aware of the positions of their professional organizations. More importantly, they should inform their institutional colleagues about these positions when making decisions about policies regarding undocumented students.
- Better disseminate “best practices” on postsecondary educational benefits for undocumented students. Educate professional staff and prospective students about the financial aid and admissions processes for undocumented students at their institutions.

### *Research*

- Encourage more studies that examine the influence of professional organizations on institutional behavior and decision making.
- Continue and expand studies that examine the conditions that influence financial aid for undocumented students.
- Examine the changes in institutional policy and practice over time. More research should explore the differences between public and private institutional behavior. Look at the historical and legal validity of the “states’ rights” argument for restricting educational access.
- Apply the conceptual framework presented in this study to other policy issues that bear on access for all capable students.

## **Conclusions**

Higher education access for undocumented youth is an increasingly important civil rights issue. Higher education is the primary pathway to social mobility, and including capable individuals on this path has many benefits. To our knowledge this study represents the first systematic nationwide examination of institutional policies targeting undocumented

students. Our theoretical framework posits that colleges and universities are constantly negotiating their legal context with state and federal policies while reconciling them with institutional values, professional norms, and local circumstances. The controversies over immigration only increase the difficulty institutions face when balancing institutional priorities and the needs of undocumented students.



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