

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: FINANCIAL AFFAIRS

Policy 940.1 – Residency Policy

Revised: May 29, 2009; Issued: June 2, 2009:

I. Board policy

A. All applicants for admission and students at the campuses of the Montana university system (MUS) shall be classified as in-state or out-of-state for fee purposes, admission to the campuses, and admission to programs of limited enrollment. A student who is not classified as in-state is considered to be out-of-state. The following criteria and procedure shall be applied at all campuses.

B. Except as provided in subsection H, a person may be classified as in-state following a 12-month continuous period of domicile in Montana with a documented and dated intent to become a resident of Montana as provided in subsections C through F.

C. 1. The 12-month period referred to in subsection B does not begin to run until an act indicative of intent to become a Montana resident is taken. The following will serve as such indicators:

- (a) An automobile belonging to the person seeking in-state status is registered in Montana,
- (b) A Montana driver's license is acquired,
- (c) A Montana voter registration is acquired,
- (d) A principal residence is purchased,
- (e) A resident Montana individual income tax return is filed.

2. Only in the event that none of the above indicators are appropriate, the person seeking in-state status may file an affidavit of intent to establish residency. A form may be obtained from and must be filed with the unit. Other actions may be considered as indicators provided that the action is clearly indicative of an intent to establish residency and is not an action that students routinely take.

D. 1. During the 12-month period and thereafter for as long as in-state status is desired, the person seeking or granted such status must act in a manner consistent with Montana residency, including all legal obligations and responsibilities based upon such residency. Enjoyment of a status, receipt of benefits, or exercise of a right or privilege inconsistent with or in contradiction of Montana residency may be a basis for classification as out-of-state.

2. The 12-month period does not run for any period during which the person enjoys a status, receives a benefit, or exercises a right or privilege based upon residency outside of Montana, or which negates the intent to become a Montana resident.

E. 1. (a) It is presumed that the domicile of a minor or unemancipated person is that of the person's parents or legal guardian.

(b) If the parents are divorced, separated or deceased, the minor or unemancipated person will be presumed a resident if either:

(i) The parent or legal guardian with whom the student normally resides is a resident of Montana, or

(ii) The parent or legal guardian who takes the student as an exemption for federal income tax purposes or supplies a majority of the support for the student is a resident of Montana.

2. It is presumed that a person absent from Montana in excess of 30 days during the 12-month period upon which in-state status is claimed lacks the necessary intent to acquire Montana residency as required by subsection B.

3 (a) It is presumed, in the case of an individual who would have formerly been eligible for in-state status based on meeting the residency requirements but who has been absent from Montana for a period of 12 months or more, that such individual has abandoned in-state status. This

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presumption does not apply to individuals who can demonstrate satisfaction of the 12-month residency requirement subsequent to the absence. This presumption does not apply to absences from the state for purposes of post-secondary education or service in the armed forces of the United States provided the individual has not taken any actions in contradiction of the claim of Montana residency.

- (b) Notwithstanding the terms of this section, former Montana residents may be re-classified as in-state without serving a 12-month period of physical domicile in Montana if the student is unable to be present in Montana for the required 12-months due to his or her service in an active duty military assignment. The student must demonstrate re-establishment of Montana residency in all other ways required of the policy for a period 12 months prior to the application for residency. For purposes of this policy, membership in ROTC, in the reserves or in the National Guard, does not, in itself, qualify as active duty. Active duty military status cannot be achieved by attending school.
4. (a) It is presumed that any person, not eligible for in-state status under this policy, who is registered for in excess of one-half of a normal full-time credit load is present in the state primarily for educational purposes, and such periods may not generally be applied to the 12-month period referred to in subsection B.
- (b) For purposes of this subsection "in excess of one-half of a normal full time credit load" means:
- (i) Any period of time for which an undergraduate student is registered for 7 or more semester credits, or
 - (ii) Any period of time for which a graduate student is registered for in excess of half of the minimum full time credit load for graduate students as defined for financial aid purposes by the institution at which the student is enrolled.
5. In order to overcome any of the above presumptions, the person desiring in-state status must do so by clear and convincing evidence.

F. If a person, who did not qualify for in-state status or who had not taken acts indicative of an intent to establish Montana residency prior to imprisonment, is incarcerated in a Montana state or local penal institution, the time spent in the institution may not apply towards satisfaction of the 12-month residency requirement.

G. Students applying for certification as Montana residents for purposes of application to professional student exchange programs, such as WICHE or WWAMI must meet residency standards as set forth in paragraphs B-F. Students meeting residency status under subsection H are not eligible for these professional student exchange programs.

- H. 1. Notwithstanding the residency requirement, the following classes of persons are eligible for in-state status:
- (a) Members of the armed forces of the United States assigned to active duty in Montana, their spouses, and their dependent children during the member's tour of duty in Montana;
 - (b) An individual domiciled in Montana and employed full-time in a permanent job in Montana and the spouse and dependent children of such an individual provided the primary purpose of the person seeking in-state status for coming to Montana was not the education of the children, the spouse, or the employed individual;
 - (c) Any graduate of a Montana high school accredited by the board of public education who is a

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citizen of the United States or a resident alien who registers at a unit no later than the fourth fall term following the student's high school graduation shall be eligible under this section for in-state status for either (1) six years from the date of initial registration or until the achievement of a baccalaureate degree, whichever occurs first, or (2) as long as the individual remains continuously enrolled at a MUS system campus (excluding summers); provided either of the following conditions existed at the time the student graduated from high school:

- (i) The student attended the Montana high school for the student's entire senior year; or
 - (ii) The student had a parent who was employed and resided in Yellowstone National Park;
- (d) An individual domiciled in a state other than Montana who derives more than 50% of family income, as reported or required to be reported under the United States tax laws, from full-time employment in a permanent job in Montana and who pays all required Montana taxes on Montana derived income and the spouse and dependent children of such individual; provided the state of domicile provides reciprocal treatment for Montana residents.
- 2. If a person receives in-state status under the provisions of this subsection H, such status continues only so long as the person remains a member of one of the described classes. If the person no longer is eligible for membership in one of the classes, the person will be reclassified as out-of-state unless the person qualifies for in-state status under the residency provisions. It is the responsibility of an individual to notify the unit if the individual is no longer eligible for an exception.
 - 3. The exceptions set forth in this policy do not apply to students applying for certification as Montana residents for purposes of application to professional student exchange programs, such as WICHE or VVWAMI. These students must demonstrate in-state status in their own right.

II. Procedures:

A. An applicant for admission to a campus or to a particular program, to be classified as an in-state student, must meet the requirements for in-state status as of the date the application is received by the campus or program. If a closing date has been established for applications to a particular program, the status for purposes of admission to the program shall be determined as of the closing date.

- B. 1. Any applicant or student classified as out-of-state may petition to the campus for a change of classification upon forms to be prescribed by the commissioner's office and available at the campus. The burden of proof, including production, is upon the individual seeking the change in classification. In order to be reclassified an individual must meet the requirements found in subsections A through H. Unless the campus policy provides otherwise, to be eligible to receive in-state status for a particular term of enrollment, the individual must be eligible for in-state status on or before the 15th instructional day of the term and the reclassification petition must be submitted no later than seven working days prior to the first day of registration. An applicant or student initially classified as out-of-state may only receive an in-state classification pursuant to the procedures in this subsection.
- 2. The registrar of a campus or a designee of the president or chancellor if there is no registrar may initiate proceedings to reclassify an individual with in-state status to out-of-state status if it is determined that the individual enjoys a status; receives a benefit; exercises a right or privilege inconsistent with or in contradiction of Montana residency; or fails to meet a legal obligation of Montana residency. The registrar shall inform the individual of the proposed action and permit the individual to present written or oral material if the individual wishes. The registrar shall make a written decision as to reclassification and inform the individual.

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3. A change in classification under subsection II (B)(1) above is effective on the first official day of enrollment for the first term following the date the petition is received by the registrar's office unless the late filing of a Montana individual income tax form is required, in which case the effective date is the date of filing the tax form. A change in classification under subsection II (B)(2) above is effective upon the first day of enrollment for the first term following the date of the registrar's decision letter.

C. An individual may appeal the initial classification decision or a reclassification decision. If a particular campus provides for an on-campus appeal, such appeal must first be taken. The final campus decision may be appealed to the commissioner of higher education, and the commissioner's decision may be appealed to the board of regents. An appeal shall be accompanied by an appeal form prescribed by the commissioner's office and available at the campus. An appeal shall be submitted to the campus administration for transmittal to the commissioner and must be submitted to the campus within 14 calendar days of the final campus decision. For good cause the commissioner may accept an appeal beyond the deadline. The commissioner's decision may only be appealed within 21 calendar days of the date of the commissioner's written decision. An appeal may be accompanied by any written materials the student wishes to submit that are relevant to the classification decision. Neither the commissioner nor the board is required to hold hearings on an appeal. The commissioner's decision may impose conditions upon the individual for receiving and retaining in-state status.

D. An individual classified or reclassified as in-state based upon false, incomplete, or incorrect replies to residency questions or evidence submitted to the unit, the commissioner, or the board is subject to retroactive reclassification by the registrar or the commissioner as out-of-state. In such case the individual is liable for the additional fees that would have been collected had the individual been classified as out-of-state.

History:

Item 43-002-R0484, Residency Policy; Montana University System (Revised), April 13, 1984, May 3, 1985, June 16, 1988, October 23, 1993, July 7, 1994, November 17, 1994, March 23, 1995, November 18, 1999 (Item 104-103-R0999), and January 16, 2004 (Item 122-110-R0104). ITEM 138-106-R0308 (Supporting Material) approved March 6, 2008. Item 142-101-R0509 approved May 29, 2009, to require that candidates for MUS professional schools (WICHE and WWAMI) demonstrate Montana residency in their own right (rather than based on a spouse's or parent's status).