

# **Residency for Tuition Purposes**

Office of the Vice President  
for Student Affairs

## **Background**

The U.S. Supreme Court has ruled that states have a legitimate vested interest in maintaining differential tuition rates based on residency, especially since residents already support their state institutions through payment of state taxes.

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## **Background**

In 1969, Hawai'i Revised Statutes (HRS) 304-4 allowed the BOR to charge resident and nonresident tuition.

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## **Background**

- BOR instituted rules that govern residency for tuition purposes.
- These rules are incorporated into the Hawai'i Administrative Rules (HAR), Chapter 20-4.
- To change the BOR rules, HAR must also be formally amended.

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## **The Residency Determination Process**

1. Every applicant for admission to any UH campus declares residency on the admission application form.
2. A residency officer, most commonly the registrar, determines the residency status of each applicant.
3. A nonresident may challenge his/her status by filing an appeal.
4. A systemwide committee hears the appeal and adjudicates the case, either affirming or reversing the initial determination.

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## **What Is Residency?**

Residency for tuition purposes is not the same as residency for voting or paying taxes.

The latter two simply require a person's declaration that Hawai'i is his/her residence.

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## What is Residency?

Residency for *tuition purposes* means

### ***Domicile***

- The place where a person has his/her permanent home & to where he/she has the intention of returning after an absence.
- A person can have only **one** legal domicile at any given time.

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## Establishing Domicile

A person is a resident once he/she *intends* to make a place his/her domicile.

**Intention** is measured by 2 factors:

- 1) Objective fact = physical presence
- 2) Subjective inference from behavior = demonstrated intent

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**Physical Presence Requirement  
to Establish Residency  
for Tuition Purposes**

**12 Months**

**Physical Presence      Other**

48 states require      Arkansas--6 months  
Tennessee--none

No state requires more than 12 months

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**Evidences of Domicile  
Most Commonly Required by  
Public Universities**

1. Filing state resident personal income tax
2. Registering to vote in the state
3. Proof of housing, either owned or leased
4. Proof of employment

*No single evidence is decisive*

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## **Board of Regents Exemptions**

Besides Residents and Nonresidents, there are BOR exemptions--Nonresidents who are exempted from the nonresident tuition differential:

- EWC grantees
- Military personnel stationed in Hawai'i on active duty
- Ethnic Hawaiians residing outside of Hawai'i
- Students from any Pacific island or Asian country that does not provide public institution(s) of higher learning
- UH employees, their spouses and dependents

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## **Proposal to Amend Chapter 20-4 Residency Rules & Regulations**

### **Justification for Amendments**

- To update rules to reflect statutory changes affecting residency. The rules have not been updated since 1984. HRS 304-4 has been amended several times since 1984.
- To incorporate more precise and clearer language in the rules.

These changes, upon approval, would take effect beginning Fall 2006

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## **Overview of Proposed Major Changes**

- Set an age limit on dependents
- Add the legal definition of residence
- Clarify the definition of residency for tuition purposes
- Clarify the status of aliens
- Add the status of a child of divorced parents
- Change the composition of the committee that adjudicates appeals (for continuity and consistency of decisions)
- Delete section on appeals of students denied admission based on nonresident status
- Restrict conversion from nonresident to resident
- Change tuition payment to file an appeal of residency status

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## **Setting Age Limit of Dependents**

**Current:** Allows dependent status as declared on IRS tax form

**Proposed:** Dependents can be no more than 23 years of age, in addition to being a dependent by IRS rules

**Reason for change:**

- IRS definition of 50% financial support allows for no age limit for dependents.
- Proposed definition is consistent with age limit of military and federal financial aid.

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## **Adding Legal Definition of Residence**

**Current:** No definition  
**Proposed:** Add legal definition

**Reason for change:**

- Incorporates the legal definition of *domicile* for clarification of residency

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## **Clarifying Residency for Tuition Purposes**

**Current:** No definition  
**Proposed:** Clarifies definition, as distinct from other usage

**Reason for change:**

- Distinguishes between residency for tuition purposes vs. other purposes, e.g., students believe that because they can vote in Hawai'i, they should pay resident tuition.

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## **Clarifying Status of Aliens**

**Current:** Only aliens on permanent resident status or in the U.S. due to violent overthrow of their country may be considered for resident status

**Proposed:** Allows all aliens who are legally in the U.S. to establish Hawai'i residency

**Reason for change:**

- Incorporates existing nationwide practice of allowing all aliens who are legally in the U.S. to establish state residency. Current rules are unconstitutionally restrictive.

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## **Adding Status of a Child of Divorced parents**

**Current:** Is not included

**Proposed:** To be included

**Reason for change:**

- Allows a child to take the residency of divorced custodial Hawai'i resident parent.
- In compliance with current HRS 304-4, which included this condition in 1989.

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## **Deleting Appeals of Students Denied Admission Based Solely on Nonresident Status**

Current: Included in rules

Proposed: Delete entire section

Reason for change:

- Requires deletion since students are **not** denied admission **solely** on the basis of their nonresident status.
- A student may be denied admission to a specific program due to nonresident status, but will be admitted to the campus.

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## **Changing Composition of Appeals Adjudicating Body**

Current: Committee of 2 students, 1 faculty

Proposed: Board of residency officers from all 10 campuses and one administrator

Reason for change:

- Allows for more timely and consistent decisions.
- Current committee of students and faculty changes annually, which often leads to inconsistent decisions from year to year.
- Current process is inefficient, due to difficulty in scheduling students and faculty for hearings, often resulting in decisions rendered at the end of the semester.

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## **Restricting Conversion from Nonresident to Resident Status**

**Current:** Nonresidents may convert to resident status after one year

**Proposed:** Nonresidents may not convert to resident status if they are in Hawai'i primarily to attend college, enrolled for 6 credits or more, and financially dependent on nonresident parents. They also may not apply their first year of enrollment to meet the 12 months physical presence requirement.

**Reason for change:**

- Consistent with recent policy changes of public universities in other states, which have begun to use similar restrictions to generate additional tuition revenue.
- This may result in substantial additional revenues for UH.

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## **Restricting Conversion from Nonresident to Resident Status**

Effective Fall 2005, newly admitted nonresident students may not convert to resident status, based on a more stringent interpretation of the Rules which state:

- *Presence in Hawai'i primarily to attend an institution of higher learning shall not create resident status.*
- *A nonresident student shall be presumed to be in Hawai'i primarily to attend an institution of higher learning.*

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## **Changing Tuition Payment to File an Appeal**

**Current:** Payment of resident tuition

**Proposed:** Payment of nonresident tuition

**Reason for change:**

- Student should pay nonresident tuition until found to be a resident.
- Current practice often results in late or non payment of the nonresident tuition differential when the student is determined to be a nonresident by the appeals committee.

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## **Proposed Changes — Consultation**

**Proposed changes were  
discussed with and accepted by:**

- Student Caucus
- All residency officers
- All deans of students
- Council of Chancellors
- UH Senior Management Team

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## Proposed Changes — Validation

The proposed changes are consistent with recently established practices of other public institutions in the western region (e.g., U of Washington, Cal State, U Arizona, U Colorado, U Nevada-Reno, Oregon State, Montana State).

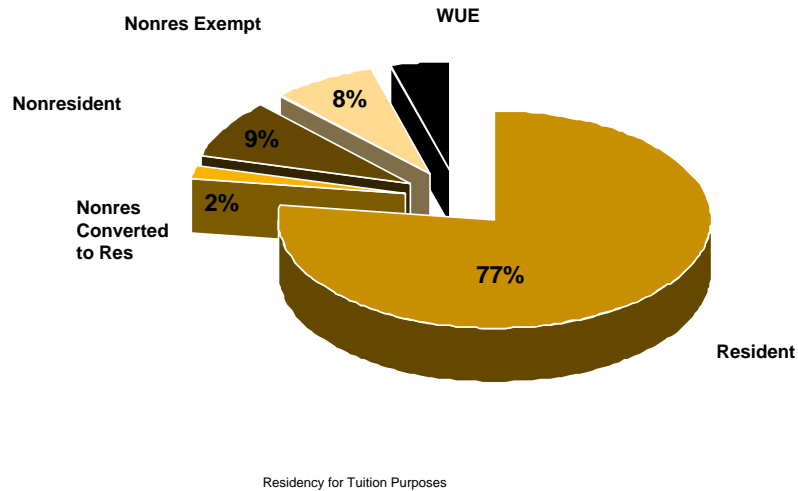
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## Fall 2004 Enrollment by Residency Status

Resident	39,119	77%
Non-Resident	4,388	9%
Non-Res BOR Exempt	3,956	8%
Non-Res Converted to Resident	908	2%
West. Undergrad Exchange (150% Resident Tuition)	2,198	4%
<b>TOTAL</b>	<b>50,569</b>	<b>100%</b>

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## UH System Fall 2004 Enrollment



## Next Steps

1. BOR approval of proposed revision.
2. Public Hearings required to amend Hawai'i Administrative Rules.
3. Submission to the Legislative Reference Bureau for verification of compliance with the "*Hawai'i Administrative Rules Format*."
4. Submission to the Governor for approval.
5. Submission to the Lieutenant Governor for filing.

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## **Proposed Schedule**

1. Hold public hearings in May 2005
2. Submit final amended Chapter 20-4 to Legislative Reference Bureau in June 2005
3. Submit LRB-approved Chapter 20-4 to Governor June 2005
4. Amended Chapter 20-4 to take effect Fall 2006

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