

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: FINANCIAL AFFAIRS

Policy 940.1 – Residency Policy

Adopted: April 13, 1984; Revised: May 22, 2015; Updated: February 18, 2016; Revised: January 8, 2019; Revised: November 22, 2019; Revised: November 20, 2020; Revised: July 11, 2023

I. Board Policy

- A. All applicants for admission and students at the campuses of the Montana University System (MUS) will be classified as in-state or out-of-state for tuition and 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 test for residency for tuition and fee purposes is unique, and residency requirements for other purposes may differ. The following criteria and procedure shall be applied at all campuses.

- B. Except as provided in subsections G and H, a person may be classified as in-state after providing documentation showing that the person has been domiciled in Montana for at least 12 consecutive months. Domicile requires both physical presence and evidence of intent to stay. Evidence of intent to stay includes relinquishing all valid legal ties with a former state of residence and affirmatively creating legal ties and relationships with Montana. Individuals who are in Montana on a temporary basis (e.g., for the purpose of completing a degree) cannot establish domicile merely by taking an action evidencing Montana domicile. During the 12-month period and thereafter for as long as in-state status is desired, the person seeking or granted in-state status must act in a manner consistent with Montana residency.

- C.
 - 1. To establish Montana domicile, a person must establish legal ties to Montana as set forth below. These acts must be completed, issued, or dated at least 12 consecutive months before the term for which the person seeks in-state status. Failure to fulfill all three requirements is disqualifying:
 - (a) For individuals who own or operate a vehicle in Montana, registering a motor vehicle in Montana;
 - (b) For someone with a valid out-of-state driver's license, getting a Montana driver's license. If an individual does not drive or possess an out-of-state driver's license, the individual must obtain a Montana Identification Card; and
 - (c) Registering to vote in Montana, if previously registered to vote in a former state of residence.
 - 2. In addition to establishing legal ties to Montana as set forth in subsection C.1, a person seeking in-state status must sever all ties to past places of residence at least 12 months before the term for which the person seeks in-state status. Conduct that is disqualifying for purposes of in-state status includes but is not limited to attending an out-of-state school as a resident of the state in which the school is located, paying taxes in another state as a resident of that state, maintaining an out-of-state driver's license or identification card, or maintaining voter registration in another state.
 - 3. A person seeking in-state status who is the dependent of a parent or legal guardian must submit documentation of financial dependence, and the parent or legal guardian and the dependent must demonstrate domicile in Montana by meeting the test set out in subsections C.1 and 2. In addition, the parent or legal guardian must file any required resident Montana tax return for all taxable income earned during the period in which residency is claimed.
 - 4. A person seeking in-state who is not the dependent of a parent or legal guardian must:
 - (a) meet the test set out in subsections C.1 and 2;

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- (b) file any required resident Montana tax return for all taxable income earned during the period in which residency is claimed; and
 - (c) submit documentation to support that the person has been financially independent during the period in which residency is claimed. “Financially independent” means the person seeking residency receives less than 50% of all income and financial support from any other entity or person and pays for the majority of their expenses (including cost of attendance and room/board) with their own independent income and resources. It also means the person seeking residency was not and will not be claimed as a dependent on another person’s tax returns for the period during which residency is claimed.
5. A person seeking in-state status who cannot meet the requirements of subsections C.1 through C.4 may file an affidavit of intent to establish residency if exceptional circumstances exist. Exceptional circumstances include, for example, seeking refuge from domestic violence or remaining in Montana as a minor when a parent moves from Montana to establish residency elsewhere. Filing an affidavit of intent does not guarantee resident classification.

D.

- 1.
 - (a) It is presumed that the domicile of a minor is that of the person’s parents or legal guardian. If a minor is an emancipated minor for purposes of completing the Free Application for Federal Student Aid (FAFSA) form, this presumption does not apply.
 - (b) If the parents are divorced, separated or deceased, it is presumed that the minor or unemancipated person is 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 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. It is presumed that a person who obtained a loan, financial assistance, or any benefit requiring residence in another state, such as a WUE or other academic scholarship, is not eligible for in-state status.
- 4.
 - (a) It is presumed that 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 has abandoned in-state status. This presumption does not apply to individuals who can demonstrate satisfaction of the 12-month residency requirement after 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) Former Montana residents may be re-classified as in-state without serving a 12-month period of physical domicile in Montana if the person cannot be present in Montana for

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the required 12-months due to active duty service in the armed forces. The person must demonstrate re-establishment of Montana residency in all other ways required of the policy for a period 12 months before applying for residency. For purposes of this policy, membership in ROTC, in the reserves, or in the National Guard does not qualify as active duty. Active duty status cannot be achieved by attending school.

5. It is presumed that any person who is registered for more than half of a full-time credit load as defined by the program of study, including online credits from any institution of higher education, is present in the state primarily for educational purposes and cannot qualify for residency unless the person can demonstrate with clear and convincing evidence that they moved to Montana primarily for purposes other than education.
 6. A presumption can be overcome with clear and convincing evidence, which is evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.
- E. Time spent in a Montana state or local penal institution may not apply towards satisfaction of the 12-month residency requirement unless the incarcerated person took acts indicating an intent to establish Montana residency before imprisonment.
- F. Students applying for certification as Montana residents for purposes of application to professional student exchange programs, including but not limited to WICHE, WWAMI, Minnesota Dental, ICOM, or WIMU, must meet the residency standards as set forth in subsections C-E for a minimum 24-month continuous period of domicile before the program certification deadline to be considered for in-state status. Students who can demonstrate previous Montana residency under this policy but who later abandoned residency may regain residency under this subsection following completion of a 12-month continuous period of domicile as provided in subsections C-E. Students obtaining in-state status under subsection H below are not eligible for these professional student exchange programs.
- G. To be eligible for in-state status, a student admitted to a professional degree program must meet the standards set forth in subsections C-E. In addition, the student must have maintained a primary residence in Montana for at least 12 consecutive months immediately before the student's first admitted semester. The Montana residence must be for purposes other than postsecondary education. If the student took more than 7 credits (or more than 8 credits on a block schedule) at an institution of higher education during the 12-month period, the student must prove by clear and convincing evidence that the student has a Montana residence for reasons other than postsecondary education. This subsection does not apply to students who can demonstrate previous Montana residency under this policy and who have not abandoned residency. For purposes of this subsection, the term "professional degree program" means a program of law, pharmacy, or physical therapy.
- H.
1. Notwithstanding the residency requirement, the following classes of persons are eligible for in-state status:
 - (a) Montana National Guard members who are in good standing and their spouses and dependent children;
 - (b) Service members as described in 20 U.S.C. § 1015d who are stationed in Montana and their spouses and dependent children. If the member is transferred on military orders out

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of Montana, the student remains eligible for in-state status as long as the student was admitted before the member's transfer and remained continuously enrolled at the campus (excluding summers);

- (c) A person seeking in-state status who is a covered individual as described in 38 U.S.C. § 3679(c);
 - (i) The person seeking in-state status must provide documented evidence that:
 - 1. The person intends to live in Montana during the term of enrollment;
 - 2. The veteran served at least 90 days of active duty and was discharged before the date of enrollment or the service member is currently on active duty; and
 - 3. The person is a covered individual as described in 38 U.S.C. § 3679(c).

The person who has qualified for in-state status pursuant to this section is eligible for in-state status as long as the student is continuously enrolled at the campus (excluding summers).

- (d) An individual living in Montana with full-time (30+ hours/week or 120+ hours/month) employment in Montana who files a Montana state resident tax return and the spouse and dependent children of such an individual, provided the primary purpose for coming to Montana was not the education of the employed individual, spouse, or dependent children. If the individual sought employment in Montana after the person seeking in-state status applied for admission to a campus, it is presumed that the primary purpose for coming to Montana was education;
- (e) An employee of the Montana University System living in Montana who is employed at least $\frac{3}{4}$ time and the spouse and dependent children of such an individual;
- (f) Any graduate of a Montana high school accredited by the board of public education who is a citizen of the United States or a resident alien and who registers at a campus no later than the fourth fall term following the student's high school graduation, provided:
 - (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 when the student graduated from high school.

A student remains 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);

- (g) An individual living 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;
 - (h) An individual incarcerated in Montana and participating in a Second Chance Pell or Prison Education Program is a resident for tuition and fee purposes. After release, the student retains this status as long as the student remained continuously enrolled at the campus (excluding summers).
2. If a person receives in-state status under the provisions of this subsection, the status continues only so long as the person meets the requirements of the applicable exception. If

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the person is no longer eligible for the exception, the person will be reclassified as out-of-state unless the person qualifies for in-state status under another policy provision. An individual must notify the campus if the individual is no longer eligible for an exception.

II. Procedures:

- A. To be classified as an in-state student, an applicant for admission to a campus or to a particular program 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 using forms prescribed by the commissioner's office and available at the campus. The burden of proof, including production, is on the individual seeking the change in classification. To be reclassified, an individual must meet the requirements found in this policy. 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 before the first day of the instructional term. 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 contradicting 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.
 - 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 on the first day of enrollment for the first term following the date of the registrar's decision letter and may not be applied retroactively to any previous terms.
- C. Board Regents Policy 203.5.2 applies to residency appeals except as set forth in this subsection. 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. Within 14 days of receiving the final campus decision, the individual shall submit an appeal to the campus administration for transmittal to the commissioner. For good cause, the commissioner may accept an appeal beyond the deadline. The commissioner's decision may be appealed within 30 days of receipt of the commissioner's written decision. An

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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 on 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 campus, the commissioner, or the board is subject to retroactive reclassification by the registrar or the commissioner as out-of-state. In such a 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 143-101-R0509 to add new section 1.G., approved May 29, 2009. Item 152-128-R0911, revised September 22, 2011. Item 156-101-C0912, temporary revision to expire after spring semester 2013, approved September 4, 2012. Updated May 14, 2013 to reflect automatic expiration of September 4, 2012 change. Revised May 22, 2015, adding Veteran's Access, Item 167-101-R0515. Updated February 18, 2016; to specify professional student exchange programs such as WICHE, WWAMI, Minnesota Dental and WIMU. Updated January 8, 2019; ITEM 182-102-C0119. Item 185-103-R1119; revised November 22, 2019. Revised November 20, 2020 via ITEM 191-103-R1120. Revised July 11, 2023, Item 207-101-R0723.