

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

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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.



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## Preface

**T**his report investigates how and why colleges and universities make decisions about admitting immigrant and undocumented students. Among other factors, it examines how professional associations and societal pressures shape those decisions and what these choices mean for higher education's role in a changing society.

The issue of educational opportunity for immigrant and undocumented students has profound significance for our nation. Millions of people who live in the United States are not American citizens, an estimated 1.1 million of them are schoolchildren, and hundreds of thousands of them are of college age. No matter what public policies are in place, educators face a significant challenge.

Our nation has frequently struggled with the rights and restrictions of immigrants, but these days especially so. The greatest numbers of current immigrants originate within our own hemisphere and come into states bordering Mexico. The federal government historically addresses issues of citizenship but in the past fifteen years has failed to pass clarifying legislation. State policies are inconsistent. For students, their families, and educators, the situation is unclear and in constant flux.

This report sheds new light on how professional associations, individual institutions, and college leaders deal with this issue. Our findings, drawn from analyses of federal and state laws, public attitudes, surveys of institutional decision makers, and case studies, provide insight into the dilemmas posed when the values of opportunity, access and diversity that have characterized higher education for the last half century are in conflict with policies and attitudes today.

Our research examines decisions made at the "boundary points" that maintain the integrity of colleges and universities, especially admissions and financial aid. Our study reveals how educators try to act responsibly within a treacherous set of pressures. Because public

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

Ultimately, this report raises questions about the changing relationship between higher education, the states, and society. Citizenship is a federal issue, but these days states are setting their own, dramatically divergent policies. More and more states limit college eligibility, usurping what's historically been a prerogative of higher education.

It is appropriate to study how such an important and controversial public issue is being managed by college and university decision makers. The individuals most clearly in the middle of the issue are young people who aspire to continue their educations. Their inability to do so is the injustice at the heart of the problem.

We hope our investigation may help others understand the costs and consequences of inaction and the implications of continuing inconsistencies in policy. Perhaps we can also expose how uncertainty and obscurity trap educators and potential students in a sort of conspiratorial denial. We hope that educators can better grasp the importance of dealing with complexity in the decisions they make.

Higher education has been a powerful force for change in our society. College and university presidents, faculty, staff, and students have often been in the forefront of social issues and have often distinguished themselves as leaders within their institutions and the nation. Once again, we are asked to mediate a challenging environment. And once again we must do so guided by the values of universal access and the vision of diversity we profess.



## Executive Summary

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).

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

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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?
- 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. We also seek to provide broader insight into how institutions make decisions on ambiguous or contested issues.

## Significance of the Issue

The influx of unauthorized immigrants into the United States constitutes a significant challenge to educators and policy makers. 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

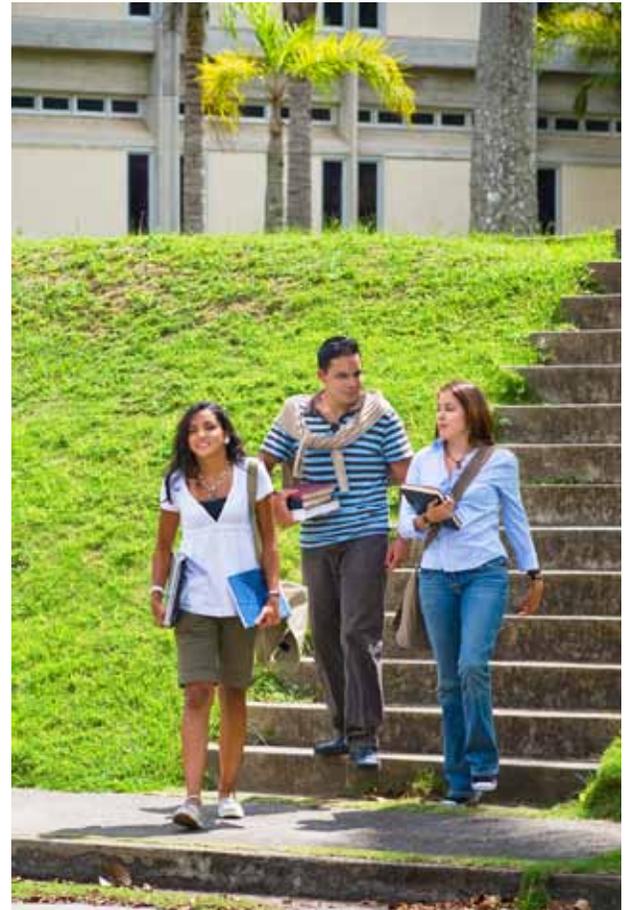
**Widening access to higher education for previously marginalized groups and improving educational opportunity to achieve a more equal distribution of wealth have been important for American educators and institutions since the middle of the last century.**

young age and were brought by parents in search of better lives for their families (Gonzales, 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 (Gonzales, 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 & Brinkman, 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.

## 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.
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.

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

**Colleges and universities do.**

<b>Key Impact Areas Informed by This Study</b>
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 Regarding Access Policies for Undocumented Students

*1. The 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. The 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 school, 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 Regarding 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.

## Introduction

Until the end of World War II, few explicit constraints were placed on colleges' admission practices. With the post-war passage of the GI Bill and civil rights legislation, the latter half of the twentieth century saw more laws regulating postsecondary opportunities for historically underrepresented and marginalized groups. Federal laws have regulated the treatment of individuals on the basis of race (Title VI of the Civil Rights Act), gender (Title IX of the Education Amendments of 1972), disability (Section 504 of the Rehabilitation Act of 1973), and age (Age Discrimination Act of 1975). More recently, state and federal policies have placed issues of gay rights, academic freedom, and institutional autonomy under scrutiny.

Higher education has successfully rebutted challenges to its right to determine who will be admitted into college, but seldom has the threat been as virulent as in the case of access for immigrants, especially "undocumented" students. Legal rulings and legislation in the 1980s and 1990s have set the stage for the current controversy. The Supreme Court ruling in *Plyler v. Doe* (1982) established the legal precedent for the treatment of immigrants in the educational system; however, the logic behind this ruling has yet to be extended to postsecondary opportunities for undocumented students (Flores, 2010). Each year about 65,000 undocumented children, many of whom have attended school in this country since the first grade, graduate from high school here. (Gonzales, 2009). Between 5 and 10 percent of them enroll in a college or university (Russell, 2011). Many still have limited opportunities to legalize their immigration status and suffer ongoing uncertainty over postsecondary opportunities.

In the last twenty years, studies of immigration and postsecondary access have examined factors that prohibit postsecondary access for undocumented students, and some have explored the effect of in-state

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**We examine how government policies influence institutional decision making and how higher education professionals negotiate the tension between state and federal laws and the needs of undocumented students.**

residency tuition on citizenship and educational attainment (Castillo, 2007; Feder, 2006; Flores & Chapa, 2009; Olivèrez, Chavez, Soriano & Tierney, 2006). Policy studies have focused on the debate surrounding state and federal laws on undocumented students and have analyzed the historical and social context (Olivas, 1995; 2004; 2005; 2008; 2009; Kobach, 2007). Several recent studies have looked at enrollment trends and examined the benefits of in-state residency tuition policies on unauthorized students (Batalova & Fix, 2006; Gonzales, 2009; Flores, 2010).

Given intense efforts to change federal legislation, it is surprising that relatively little research has examined how postsecondary institutions respond to organizational pressures and local contexts. These “boundary activities” determine actual practice (Birnbaum, 1991) and may be the only way to remedy the exclusion of undocumented students.

This study addresses the way in which laws influence but do not ultimately determine institutional practice. We examine how government policies influence institutional decision-making and how higher education professionals negotiate the tension between state and federal laws and the needs of undocumented students.

We examine how laws shape institutional behavior and how postsecondary institutions reconcile these regulations with widely held values and beliefs, construct the meaning of compliance, and ultimately mediate the impact these policies have on society. First, we must acknowledge that laws have structural, organizational, and normative effects on institutions of higher education. Legal regulations shape widely held values and beliefs of higher education. In addition, regulating agencies such as the federal government and higher education coordinating agencies determine acceptable behavior among institutions of higher education. As history shows, laws can shape societal expectations of postsecondary institutions and influence public attitudes.

However, certain laws are ambiguous, created with language open for interpretation and not always understood by all members of an organization or a professional group. Informed by both socio-legal theory (Suchman & Edelman, 1996) and new institutional theory in organizational behavior (Meyer & Rowan, 1977; DiMaggio & Powell, 1983), our hypothesis suggests organizations’ policies and practices define compliance with laws. Our theoretical framework views

organizations in wider legal, sociopolitical, and institutional contexts, suggesting that institutional behavior is not shaped just by legal regulations but also by the need of colleges and universities to comply with widely accepted beliefs, rules, and norms (Meyer & Rowan, 1977; DiMaggio and Powell, 1983). These two theoretical traditions of socio-legal and new institutionalism show how organizations are influenced by their legal, sociopolitical, and institutional environments; how institutions respond and adapt to laws; and how institutions of higher education mediate the impact of these laws on society.

## Organization of This Report

This report presents the findings of a study conducted in early 2011 by the National Forum on Higher Education for the Public Good (National Forum) in partnership with the National Association of Student Financial Aid Administrators (NASFAA) and the American Association of Collegiate Registrars and Admissions Officers (AACRAO). Part I analyzes the institutional, legal, and sociopolitical contexts underlying the current policy environment affecting the issues of immigration and postsecondary opportunities for undocumented students. We examine various state policies as well as some social and economic concerns that may influence policy decisions and shape public opinion. This section also highlights how ambiguities in laws regulating postsecondary educational benefits for undocumented students have led to inconsistent policies and practices. Part II describes the theoretical, analytical, and methodological constructs that frame our study. We present findings from a national survey of members of nasfaa and AACRAO that examines how postsecondary institutions respond to laws and how they construct the meaning of compliance. Finally, we present our results and discuss their impact. Part III presents two case studies we conducted to further examine how our findings play out in the daily decisions about policies that promote access for immigrant and undocumented students.

## The Issue in Context

### Normative Values and Beliefs: Higher Education and the Search for Universal Access

Regulations and public policy can shape the values of higher education. For example, the Morrill Land Grant Act created a diverse system of public universities that increased access to college for a vast number of young Americans (Geiger, 2005).

The Servicemen's Readjustment Act of 1944 (the GI Bill) opened the opportunity to attend college to millions of veterans (Geiger, 2005).

*Brown vs. Board of Education* ended de jure segregation and promised access to higher education to people of color (Geiger, 2005). The National Defense Education Act offered low-cost loans to students in certain academic careers (Geiger, 2005). The Higher Education Act designed aid programs—grants, loans, and work—to remove cost as a barrier to higher education (Geiger, 2005). Title IX demanded a drastic overhaul of policies in athletic departments and of admissions procedures (Geiger, 2005). These laws enabled higher education institutions to offer greater access to many students.



According to Eaton (1997), from 1944 to 1990, public policy was intended to help students overcome barriers restricting their access to higher education, advancing the principle of participation with increasingly complex and more inclusive criteria. The concept of access has evolved from removing financial obstacles to removing barriers

concerning race, gender, disabilities, lack of academic preparation, and motivation. The definition of access now includes encouraging marginal students to try to become fit for higher education: “Access policy has come to mean that higher education [institutions] ha[ve] responsibility for getting students onto college campuses as well as assisting them once they [are] there” (Eaton, 1997, p. 239).

Policy has not yet evolved enough to include undocumented students in this agreement. Barriers still prevent educational attainment for them. Consequently, institutions must educate these students without the support of public programs and must interpret ambiguous or inconsistent regulations regarding them.

## Postsecondary Opportunities for Undocumented Students

The expansion in enrollment in higher education has been driven largely by economic priorities, linked to technological change, globalization, and increased international competition and by a social agenda concerned with justice, democratization, and diversity (Clancy & Goastellec, 2007). Undocumented students could be a better economic asset if they had more educational opportunities tailored to their needs. Their educational marginalization prevents the country from reaping these benefits and exposes the students and their families to future hardship.

The Pew Hispanic Center estimates that 11.2 million undocumented immigrants reside in the United States, about 4 percent of the nation’s population and 5.4 percent of its workforce (Passel & Cohn, 2009; 2011). Their lack of proper immigration documentation, their low levels of education, and their low-skilled occupations give them lower household incomes than other immigrants or native-born Americans.<sup>1</sup> Undocumented immigrants do not attain markedly higher incomes the longer they live in the United States. A third of children of unauthorized immigrants live in poverty, compared to 18 percent of children of U.S.-born parents. A fifth of adult unauthorized immigrants live in poverty, double that of U.S.-born adults (Passel & Cohn, 2009). More than half (59 percent) of the adults who are unauthorized immigrants have no health insurance. Almost half (45 percent) of their children are uninsured, compared to 25 percent of those who were born here (Passel & Cohn, 2009).

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<sup>1</sup> The 2007 median household income of unauthorized immigrants is \$36,000, well below the \$50,000 median household income for U.S. residents.

**Although the last two decades have seen a shift in funding higher education away from the public and toward individual students and their families, public support for universal access to higher education remains strong.**

The generally steady influx of unauthorized immigrants constitutes a significant challenge to educators and policy makers. There are approximately 1.1 million undocumented children living in the United States (Passel & Cohn, 2011). These children usually arrive at a very young age, brought by parents in search of better lives for their families (Gonzales, 2009). Each year about 65,000 undocumented children graduate from high school; many have lived and attended school in this country for most of their lives (Gonzales, 2009). Only between 5 and 10 percent of them enroll in a college or university (Russell, 2011).

Only 25 percent of undocumented immigrants ages twenty-five to sixty-four have attended college compared to 61 percent of U.S.-born adults and 54 percent of legal immigrants (Passel & Cohn, 2009). Among unauthorized immigrants ages eighteen to twenty-four, 40 percent have not completed high school—compared to 15 percent of legal immigrants and 8 percent of U.S.-born residents (Passel & Cohn, 2009).

Around 76 percent of undocumented youth in this country are Latino<sup>2</sup> (Passel & Cohn, 2011). Latino youth, especially those who are undocumented, are much more likely to drop out of high school: of those who enter the country after age fourteen, 40 percent do not complete high school, compared to 12 percent of African Americans, 6.5 percent of whites, and 3.5 percent of Asian students. For undocumented Latinos who enter the country before age fourteen, the non-completion rate is 25 percent. Furthermore, Latino youth who graduate from high school are less likely than other minority and white youth to attend college (Passel & Cohn, 2011).

In some states, such as California and New Mexico, Latino youth are the majority underage population. The educational gap between Latinos and their peers presents dramatic social and economic challenges (Sutter, 2011). As the geographic dispersion of Latinos continues, the educational gap has implications that are increasingly national. Considering that nearly one-fifth of Latinos between the ages of sixteen and twenty-four are undocumented, the barriers to postsecondary access for undocumented students must be addressed.

The goal of increasing access to postsecondary education for underrepresented groups has been a central tenet of federal policy

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<sup>2</sup> About three quarters (76 percent) of the nation's unauthorized immigrant population are Hispanics. The majority of undocumented immigrants (59 percent) are from Mexico, numbering seven million. Significant regional sources of unauthorized immigrants include Asia (11 percent), Central America (11 percent), South America (7 percent), the Caribbean (4 percent), and the Middle East (less than 2 percent).

since the passage of the Higher Education Act of 1965 (Eaton, 1997). The broadly held public belief that higher education provides a public good to society has been crucial in sustaining support for federal and state policies that extend universal access to higher education. Although the last two decades have seen a shift away from public funding of higher education, public support for universal access to higher education remains strong (Callan, 2001).



Despite progress toward eliminating exclusionary practices over the last thirty years, recent trends such as increasing financial barriers and a widening college preparation gap indicate that educational opportunities for underrepresented students are still at risk (Callan, 2001). For undocumented students, recurrent access barriers such as racial and socioeconomic discrimination are coupled with the unique difficulties of documentation and legal status.

## Legal Context

### *Federal Legislation Governing Educational Access*

A single case set the parameters for the treatment of immigrants in the United States educational system. Education from kindergarten through high school is a protected right, but under a Supreme Court ruling higher education is not. In 1975, Texas enacted a statute allowing public school districts to charge tuition to undocumented children.<sup>3</sup> This policy was implemented in response to growing migration by Mexicans. The resulting population shift created problems for public schools in Texas, and the new law sought to preserve the state's "limited resources for the education of its lawful residents" (Olivas, 2005). The state maintained undocumented children were less likely to remain and contribute to society (Olivas, 2005).

However, the U.S. Supreme Court ruled in *Plyler v. Doe* (1982) that the 1975 Texas statute violated the Constitution (Feder, 2010). The court

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<sup>3</sup> Texas Education Code Ann. §21.031.

ruled that undocumented students have a legal right to attend public primary and secondary schools, arguing that education is essential “to maintaining the fabric of our society” (Feder, 2010). It admonished the state for creating a subclass of individuals with no access to education and suggested that such exclusion would add to the “problems and costs of unemployment, welfare, and crime” (Olivas, 2011). Since the ruling, a number of undocumented students benefiting from the *Plyler* decision have attended and graduated from public high schools (Flores, 2010).

The ruling in the *Plyler* case did not extend to postsecondary education (Flores, 2010). Lacking guidance from the federal court, a number of states have been attempting to address educational accessibility for undocumented students for the latter half of the past century (Flores, 2010). In *Leticia A. v. Board of Regents of the University of California (1985)*, the courts ruled in favor of providing undocumented students in California with in-state tuition and state financial aid, but this case was overturned in 1990 (Olivas, 1995, 2004; Rincon, 2008).

Legislative and judicial action started to get attention at the institutional level. In the early 1980s the City University of New York (CUNY) and the State University of New York (SUNY) put into place policies to provide in-state tuition rates to undocumented students (Olivas, 1995; Rincon, 2008).

### *Illegal Immigration Reform and Immigrant Responsibility Act (1996)*

Public support for educational opportunities for African Americans and other minorities following the civil rights movement of the 1960s did not translate into acceptance of immigrants. New terms entered public discourse, separating immigrants as “authorized” or “unauthorized.” While the dichotomy is legal, demographic trends have demonstrated that economic, familial, social, and cultural phenomena of movement across borders are far more complex. Still, for many in policy circles and for many Americans, the issue of legality has been absolute.

Growing antagonism toward public benefits for unauthorized immigrants led to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA §505), which constrained the ability of states to provide educational benefits to undocumented students (Bruno, 2010). The law states that unauthorized immigrants

*“...shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit...”* (Feder, 2006, p.1).

**The law gave states the authority to decide how they would handle the provision of in-state tuition to undocumented students.**

**The ambiguous language of IIRIRA has resulted in various interpretations, particularly how “residence” is defined and what constitutes a “postsecondary educational benefit.”**

Since the law makes no explicit reference to granting “in-state” residency for the purposes of tuition, this provision is the subject of debate. The law gave states the authority to decide how they would handle the provision of in-state tuition to undocumented students. The ambiguous language of IIRIRA has resulted in various interpretations, particularly concerning how “residence” is defined and what constitutes a “postsecondary educational benefit” (Russell, 2011). A number of states have passed laws extending tuition benefits to undocumented students, and these have passed judicial review (Flores, 2010).

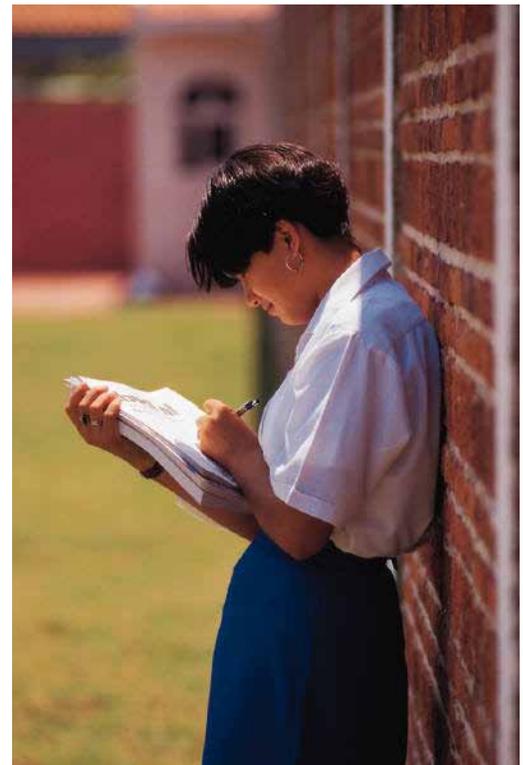
### *Development, Relief, and Education for Alien Minors Act (DREAM Act)*

While IIRIRA has given some states the legal backbone to provide in-state tuition to undocumented students, these students lack the legal means to find employment after college. As a result, beginning in 2001, a series of bills that would provide permanent relief to undocumented students have been regularly introduced in the U.S. Congress, yet the measures have repeatedly failed to pass (Olivas, 2008). These bills, often entitled Development, Relief, and Education for Alien Minors Act (DREAM Act), would repeal IIRIRA, enable undocumented students to receive in-state tuition, and provide a pathway to citizenship for those who meet certain provisions (Bruno, 2010). The most recent version of the DREAM Act, introduced in 2010, would have allowed undocumented students to become eligible for federal work-study programs and student loans while providing a way for them to apply for permanent resident status after two years of college or military service (Russell, 2011). The bill passed the House of Representatives but failed to achieve the sixty votes needed to achieve cloture in the Senate.

### *State Mediation of the Federal Law: Legal Context*

The ambiguity in IIRIRA and the failure of Congress to enact comprehensive immigration policies have shifted the debate from the federal level to the states. State policy makers must reconcile this issue amid growing public concerns and mixed sentiments about unauthorized immigrants.

A number of states have introduced policies that either extend or deny postsecondary opportunities to undocumented students. Multiple interpretations of the federal law have served as the impetus for states to take the following legislative actions:



- Regulate the **provision of in-state tuition**<sup>4</sup> by explicitly denying or allowing public institutions the ability to extend this benefit to undocumented students,
- Address undocumented students' **rights to be admitted**<sup>5</sup> to state public postsecondary institutions, and
- Legislate the availability of **state financial aid**<sup>6</sup> for undocumented students.

The actual situation more appropriately would be described as fifty different state policy structures interpreted through thousands of different lenses. But for purposes of our analysis, we have grouped state policies into three categories:

1. **Inclusive Policies**—policies that explicitly extend the provision of in-state residency tuition and admit undocumented students to public and/or private institutions;
2. **Restrictive Policies**—policies that either explicitly prohibit undocumented students from gaining admission to public or private institutions and/or bar the provision of in-state residency tuition to undocumented students; and
3. **Unstipulated Policies**—no current legislation that explicitly prohibits undocumented students from gaining admissions to public or private institutions and/or provides in-state residency tuition to undocumented students.

During the past decade several states have considered inclusive policies that regulate the provision of in-state tuition to undocumented students at public institutions. Policy makers in fourteen states have passed legislation allowing undocumented students to qualify for in-state tuition. Oklahoma amended its legislation in 2007 with language that authorizes the Oklahoma Board of Regents to decide if an undocumented student can qualify as an in-state resident (National

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<sup>4</sup> Due to the constraints imposed by §505 of the IIRIRA, many states that have decided to offer in-state tuition to undocumented students have done so on a basis other than residency (Feder, 2010).

<sup>5</sup> Federal law neither explicitly prohibits undocumented students from attending public postsecondary institutions nor explicitly grants their access to such institutions. Rather, states have the authority to decide whether to admit and enroll undocumented students. In the absence of state law, individual institutions may decide whether to grant access (U.S. Department of Homeland Security, 2008).

<sup>6</sup> The Higher Education Act of 1965 prohibits undocumented students from receiving federal financial aid, yet some states have enacted policies concerning their eligibility to receive state financial aid.

Conference of State Legislatures, 2011). Studies are conflicted as to whether this amendment renders Oklahoma’s state policy as “inclusive” or “restrictive” (Olivas, 2009; Blume, 2011; National Immigration Law Center, 2011); it will be considered inclusive in this report (see Table 1). Wisconsin is the only state to have fully revoked in-state resident tuition legislation through a budget bill passed in 2011 (see Table 1). Recently, the Board of Governors for Higher Education in Rhode Island passed a policy extending in-state tuition rates to undocumented students, after several years failing to get a similar bill through the legislature (see Table 1). In most of these states, all students who meet certain duration requirements or attend a state high school for a specified number of years, complete a high school diploma or a GED in the state, and sign an affidavit stating intent to file for legal residency are eligible

<b>Table 1: State Policy Environments</b>	
<b>Current State Policy Environments Regarding Undocumented Students (September 2011)</b>	
Allows in-state tuition for some undocumented students and makes them eligible to receive state financial aid	**California, New Mexico, ^Texas
Allows undocumented students to receive privately funded university scholarships from non-state funds	**California, *Illinois
Allows in-state tuition for some or all undocumented students but does not make them eligible for state financial aid	*Connecticut, ^Kansas, **Maryland, ^Nebraska, ^Oklahoma, *New York, *!Rhode Island, ^Utah, ^Washington
Explicitly prohibits undocumented immigrants from being granted in-state tuition	**Arizona, *Colorado, ^Georgia, ^Indiana, ^Wisconsin
Bans admission of undocumented immigrants at some or all public colleges and universities	^Alabama (all public colleges and universities), ^Georgia (five most selective public institutions), South Carolina (all public colleges and universities)
Unstipulated Policy	Alaska, ^Arkansas, Delaware, **Florida, Hawaii, Idaho, *Iowa, ^Kentucky, ^Louisiana, Maine, *Massachusetts, Michigan, Minnesota, **Mississippi, *Missouri, ^Montana, Nevada, New Hampshire, *New Jersey, ^North Carolina, North Dakota, Ohio, *Oregon, *Pennsylvania, South Dakota, ^Tennessee, Vermont, ^Virginia, West Virginia, Wyoming

\* States considered legislation that would allow in-state tuition and/or extend state financial aid benefits to undocumented students.

^ States considered legislation that would restrict postsecondary access for undocumented students.

\*\* States considered multiple pieces of legislation that would either allow or restrict postsecondary access for undocumented students.

! Rhode Island’s policy will become effective in 2012.

Sources: National Immigration Law Center (2011, Aug. 30); Russell (2011); Olivas, M. (2011); *The Chronicle of Higher Education* (2010, July 25)

to receive in-state tuition (Russell, 2011). In 2001, Texas became the first state to explicitly offer in-state tuition to undocumented students. Currently, only three states (California, New Mexico, and Texas) have passed laws that explicitly allow undocumented students to qualify for state financial aid. Illinois has recently enacted legislation to allow undocumented students to receive financial aid at public institutions, but only in the form of privately funded scholarships from non-state funds (see Table 1).

Beginning in about 2006, the momentum shifted away from the inclusive policies of the early years of this century toward restrictive policies that denied in-state tuition to undocumented students. Arizona was the first state to take this action, and seven more states followed suit. Currently, eight states have adopted laws that either deny in-state tuition or ban unauthorized immigrants from gaining admission to public four-year or two-year colleges or universities (see Table 1). During the 2010–2011 legislative sessions, there were bills under consideration in thirty-three different states (see Table 1). While sixteen of those policies would either extend in-state tuition or state financial aid benefits to undocumented students, twenty-two seek to explicitly deny in-state tuition or ban undocumented students from enrolling at public institutions. In five states—Arizona, California, Florida, Maryland, and Mississippi—multiple bills have been introduced that would either improve or restrict postsecondary access for undocumented students.

## Sociopolitical Context

Institutions are influenced by a number of sociopolitical characteristics. The undocumented student issue is part of a larger debate about immigration. The public’s willingness to support college access for undocumented students depends on the development of a durable consensus on immigration. In a 2011 Gallup poll about the issues of most concern to the public, only 30 percent thought “illegal immigration” was of high priority, compared to 52 percent who named the economy and 47 percent who were most concerned about unemployment (Jones, 2011). The crossover between economic issues and immigration policies confounds analysis.

Given the increasing role that states play in determining educational opportunity in the absence of a clear federal law on citizenship, it is also important to identify trends that supplement state and local policy. Institutions must be responsive to their missions, roles in society, direct constituencies (faculty, students, parents, and alumni), boards, system

**Institutions must be responsive to their missions, roles in society, direct constituencies (faculty, students, parents, and alumni), boards, system offices, policy makers, and business and community leaders.**

offices, policy makers, and business and community leaders. Each has tremendous influence on the policies and practices of an institution.

### *Economic Factors*

Negative public sentiments toward immigrants follow periods of sharp economic downturn. Policy makers and labor unions tend to blame foreign-born workers for rising unemployment and for driving down wages of select occupations (Olzak, 1992). “Job threat” has a tremendous influence on the negative sentiments directed at the unauthorized immigrant population, especially low-skill, low-wage occupations (Borjas & Freeman, 1992; Passel, 1994). We can observe a few trends that shed light on the interplay between economic issues, attitudes, and policies about immigration.

### *Labor Competition*

The percentage of the labor force represented by unauthorized immigrants may affect the willingness of states to adopt inclusive or restrictive policies. Among the states with the highest percentage of

States	Total Labor Force (Thousands)	Unauthorized Immigrants (Thousands)		Policy Prior to 2010–2011 Legislative Sessions	Legislation Proposed	Current Policy
		Population <sup>^</sup>	Percent Share			
<b>U.S. TOTAL</b>	154,939	8,000	5.2			
California	18,811	1,850	9.8	Inclusive	*Both	Inclusive
Texas	12,261	1,100	9	Inclusive	Restrictive	Inclusive
Florida	9,064	600	6.6	Unstipulated	Inclusive	Unstipulated
New York	9,742	450	4.6	Inclusive	Inclusive	Inclusive
New Jersey	4,679	400	8.5	Unstipulated	Inclusive	Unstipulated
Illinois	6,719	375	5.6	Inclusive	Inclusive	Inclusive
Georgia	4,777	325	6.8	Unstipulated	Restrictive	Restrictive
North Carolina	4,658	250	5.4	Unstipulated	Restrictive	Unstipulated
Arizona	3,116	230	7.4	Restrictive	*Both	Restrictive
Maryland	3,100	190	6.1	Unstipulated	*Both	Inclusive
Washington	3,623	190	5.2	Inclusive	Restrictive	Inclusive
Virginia	4,082	160	3.9	Unstipulated	Restrictive	Unstipulated

<sup>^</sup>Indicates that a state considered both “restrictive” and “inclusive” policies during its 2010–2011 legislative sessions.  
Source: Pew Research Center (2011); Olivas, M. (2011)

undocumented immigrants in the labor force, six have inclusive policies while two have policies that restrict postsecondary access (see Table 2).

Although the motives behind any state’s policy are unclear, recent reports by the Immigration Policy Center and the Center for American Progress have highlighted the benefits of unauthorized immigrants to local economies (Hinojosa-Ojeda & Fitz, 2011). Unauthorized immigrants not only fill jobs, they also stimulate growth through their spending (Hinojosa-Ojeda & Fitz, 2011). However, the recent economic downturn and the resulting competition for jobs may be one reason behind the proposal of restrictive policies in 2010 and 2011 by two-thirds (eight) of the states with a large percentage of unauthorized immigrants in their labor force (Table 2).

### *Unemployment Rates*

Rising unemployment may also affect public will and policy on postsecondary education for undocumented students. Fourteen states in 2010–2011 had unemployment rates greater than 10.3 percent, with Nevada the highest at more than 14 percent (Table 3). Seven of those states have implemented some kind of policy or law that directly

States	Unemployment Rate	Policy Prior to 2010–2011 Legislative Sessions	Legislation Proposed	Current Policy
U.S. TOTAL				
Nevada	14.40	Unstipulated	None	Unstipulated
California	12.20	Inclusive	*Both	Inclusive
Michigan	12.20	Unstipulated	None	Unstipulated
Rhode Island	11.30	Unstipulated	Inclusive	Inclusive
Florida	11.10	Unstipulated	Inclusive	Unstipulated
Oregon	11.00	Unstipulated	Inclusive	Unstipulated
South Carolina	11.00	Restrictive	None	Restrictive
Mississippi	10.90	Unstipulated	*Both	Unstipulated
Georgia	10.70	Restrictive	Restrictive	Restrictive
Indiana	10.60	Unstipulated	Restrictive	Restrictive
Alabama	10.50	Restrictive	Restrictive	Restrictive
North Carolina	10.50	Unstipulated	Restrictive	Unstipulated
Arizona	10.40	Restrictive	*Both	Restrictive
Kentucky	10.30	Unstipulated	Restrictive	Unstipulated

\*Indicates that a state considered both “restrictive” and “inclusive” policies during the 2010–011 legislative sessions.  
Source: Olivas, M (2011)

addresses undocumented students. Two have inclusive policies that allow undocumented students to receive in-state tuition, while the remaining five deny undocumented students in-state residency tuition or explicitly ban them from all public institutions. Eleven of the states in the table have *proposed* policies that will regulate the provision of in-state tuition for undocumented students; eight of these proposed policies would restrict undocumented students from receiving in-state tuition.

In states like Alabama, Georgia, and South Carolina, where rising unemployment has affected a number of public programs, restrictive policies were introduced in 2008.

### *Ideology and Political Affiliation*

Ideological orientation and political party identification may also affect policy on immigration. Political divisiveness on this issue is a challenge to the passage of inclusive policies. Among the nation’s ten most conservative and ten most liberal states as identified by the Gallup Poll, policy formation and legislative behavior were strikingly different.

**Conservative States**—Among the ten most conservative states (Table 4) only three have policies that regulate postsecondary educational opportunities for undocumented students. Only Utah extends the provision of in-state tuition to undocumented students. South Carolina bans undocumented students from all public colleges, and Alabama bans them from all public two-year colleges. Four of these

States	Percent of Population Conservative	Policy Prior to 2010–2011 Legislative Sessions	Legislation Introduced	Current Policy
Mississippi	50.5	Unstipulated	*Both	Unstipulated
Idaho	48.5	Unstipulated	None	Unstipulated
Alabama	48.3	Restrictive	Restrictive	Restrictive
Wyoming	47.4	Unstipulated	None	Unstipulated
Utah	47.3	Inclusive	Restrictive	Inclusive
South Dakota	46.9	Unstipulated	None	Unstipulated
Louisiana	46.8	Unstipulated	None	Unstipulated
North Dakota	46.7	Unstipulated	None	Unstipulated
South Carolina	45.8	Restrictive	None	Restrictive
Arkansas	45	Unstipulated	Restrictive	Unstipulated

\*Indicates that a state considered both “restrictive” and “inclusive” policies during the 2010–2011 legislative sessions.

Source: Gallup Poll, Jones, 2011; Olivas, M. (2011)

**Table 5: Top 10 Liberal States by Policy Environment, 2010–2011**

District/States	Percent of Population Liberal	Policy Prior to 2010–2011 Legislative Sessions	Legislation Introduced	Current Policy
District of Columbia	41.1			
Vermont	30.5	Unstipulated	None	Unstipulated
Rhode Island	29.3	Unstipulated	Inclusive	Inclusive
Massachusetts	28	Unstipulated	Inclusive	Unstipulated
Connecticut	26.7	Unstipulated	Inclusive	Inclusive
New York	26.6	Inclusive	Inclusive	Inclusive
Oregon	26.3	Unstipulated	Inclusive	Unstipulated
Colorado	26	Restrictive	Inclusive	Restrictive
Washington	25.9	Inclusive	Restrictive	Inclusive
New Jersey	24.2	Unstipulated	Inclusive	Unstipulated

Source: Gallup Poll, Jones, 2011; Olivas, M. (2011)

conservative states proposed policies during the 2010–2011 legislative term that would prohibit undocumented students from receiving in-state tuition. Only Mississippi was considering a policy that would offer in-state tuition to undocumented students, but restrictive policies were also being proposed there.

**Liberal States**—Among the country’s ten most liberal states or districts (Table 5) as identified by long-term patterns of polling, four have passed legislation or policy regulating postsecondary educational benefits for undocumented students. Colorado is the only one that prohibits undocumented students from receiving in-state tuition. In April 2011, Colorado introduced a bill that would overturn its current policy, but the bill failed to pass. New York and Washington have had inclusive policies that offer in-state tuition to undocumented students since 2003. Five states proposed legislation or policy in 2011 that would extend the provision of in-state residency tuition to undocumented students, but only Connecticut and Rhode Island approved that provision. A bill to overturn Washington’s longstanding inclusive policy was proposed but failed.

### *Population and Settlement Patterns*

Unauthorized immigrants are concentrated in a few states. Their presence has a tremendous influence on public opinion. The heavy influx of unauthorized immigrants into certain states intensifies public perception of economic competition (Olzak, 1992). However, it may also increase the economic dependency of these states on these individuals (Olzak, 1992).

According to a report by the Pew Hispanic Center, twelve states (Table 6) had estimated unauthorized immigrant populations greater than 210,000 (Passel & Cohn, 2011). Texas and California have a combined undocumented immigrant population of 4.2 million, more than one-third of the nation’s total (Passel & Cohn, 2011). These two states have the longest continuous in-state residency tuition policies, dating to 2001.

Among the twelve states with large populations of unauthorized immigrants, seven considered policies in 2010–11 that provide educational opportunities for undocumented students. Of these seven, only Illinois, Maryland, New York, and Washington have passed policies that provide undocumented students with in-state residency tuition.

Large concentrations of unauthorized immigrants do not always result in favorable public opinion. In recent years, Arizona and Georgia have implemented restrictive policies denying undocumented students in-state residency tuition. The Georgia Board of Regents also voted to ban undocumented students from the state’s five most selective public institutions. In some states the size of the unauthorized population may serve as a catalyst to curb the number of immigrants who migrate there. In the past year, eight of the twelve states with the largest percentage of undocumented immigrants introduced restrictive legislation to deny

States	Estimated Population (in Thousands)	Policy Prior to 2010–2011 Legislative Sessions	Legislation Introduced	Current Policy
U.S. TOTAL	11,200			
California	2,550	Inclusive	*Both	Inclusive
Texas	1,650	Inclusive	Restrictive	Inclusive
Florida	825	Unstipulated	Inclusive	Unstipulated
New York	625	Inclusive	Inclusive	Inclusive
New Jersey	550	Unstipulated	Inclusive	Unstipulated
Illinois	525	Unstipulated	Inclusive	Inclusive
Georgia	425	Restrictive	Restrictive	Restrictive
Arizona	400	Restrictive	*Both	Restrictive
North Carolina	325	Unstipulated	Restrictive	Unstipulated
Maryland	275	Unstipulated	*Both	Inclusive
Washington	230	Inclusive	Restrictive	Inclusive
Virginia	210	Unstipulated	Restrictive	Unstipulated

\*Indicates that a state considered both “restrictive” and “inclusive” policies during the 2010–2011 legislative sessions.

Source: Pew Research Center (2011); Olivas, M. (2011)

in-state tuition or ban undocumented students from some or all of their public institutions.

### *Regional Differences*

Regional differences provide further context for the cultural environments shaping public attitude in particular states. Some regional trends observed are as follows:

**Midwest**<sup>7</sup>—While the Midwest is close to the border with Canada, 81 percent of unauthorized immigrants come from Mexico and Latin America (Passel & Cohn, 2011). To date, only one Midwestern state (Indiana) has passed legislation that explicitly prohibits undocumented students from receiving in-state tuition. While Wisconsin has recently revoked a law that had allowed in-state tuition, no state law explicitly prohibits it. Two of the states with inclusive policies are in the Midwest (Illinois and Nebraska). Seven midwestern states had policies under consideration during the 2011 legislative session. Iowa, Missouri, and Illinois considered bills that would extend in-state tuition to undocumented students (Illinois successfully introduced a state version of the dream Act) and Indiana, Kansas, and Nebraska debated policies that would deny the provision of in-state tuition to undocumented students (Indiana passed such a policy, along with Wisconsin).

**West**<sup>8</sup>—Four western states—Utah, California, New Mexico, and Washington—offer in-state tuition to undocumented students, and New Mexico is one of only two states in the country offering them financial aid. Arizona and Colorado are the only states in the West that prohibit students from receiving in-state tuition.

**Northeast**<sup>9</sup>—To date, three states in the Northeast (Connecticut, New York, and Rhode Island) have a policy that regulates in-state tuition for undocumented students. Six states in the Northeast have considered inclusive state policies to regulate in-state tuition. No states in the Northeast have restrictive policies.

**South**<sup>10</sup>—The South, home to half the states with the largest unauthorized immigrant populations, is one of the most restrictive

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<sup>7</sup> Source: Census Regions Midwest: Indiana, Illinois, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota

<sup>8</sup> West: Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, Wyoming, Alaska, California, Hawaii, Oregon, Washington

<sup>9</sup> Northeast: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, Pennsylvania

<sup>10</sup> South: Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma, Texas

policy environments for undocumented students. Texas, Maryland, and Oklahoma provide them with in-state tuition—Texas being one of the two states that make state financial aid available. Alabama, Georgia, and South Carolina have policies that prohibit educational opportunities to undocumented students—South Carolina bans them from enrolling at any of its public institutions. Oklahoma amended a policy that allowed undocumented students to receive in-state tuition; in-state residency status is now under the jurisdiction of the Oklahoma Board of Regents.

## Institutional Context

While states currently have the authority to decide on in-state tuition for undocumented students, historically, even with restrictive federal or state laws, institutions have frequently admitted marginalized groups on their own, and some have defied federal or state protections to keep out unwanted students. Long after federal law required racial integration, and a century after women were admitted into most fields of professional study, exclusionary pressures have persisted in higher education, frequently buttressed by state, institutional, and professional policies and norms. While colleges and universities have generally been committed to admitting students from across the social spectrum (Clancy & Goastellec, 2007), local attitudes have had strong influence on actual practice. Now institutions are faced with the challenge of meeting the compelling needs of undocumented students while balancing the complex federal and state laws that govern their access.

Institutional response to undocumented students has varied. According to a 2009 study by AACRAO, 53 percent of the 384 institutions that responded admit undocumented students under certain circumstances. Of these institutions, 138 institutions (35.3 percent) were following a state policy, while 223 (57 percent) were acting under an institutional policy. A number of institutions have put policies in place that ban undocumented students. Following a highly publicized case in Georgia in which politicians called for the deportation of an undocumented student at Kennesaw State University, the state's board of regents voted to ban undocumented students from attending Georgia's five most selective public institutions. Some factors that might also explain various behaviors are presented below.

### *Institutional Autonomy*

Public and private colleges have historically varied in levels of dependence on the state. Public institutions receive most of their

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financial support from the state. For public and private institutions, state coordinating agencies oversee institutional policy, and trustees elected statewide govern public universities. Such levels of dependency influence how institutions respond to the issue of undocumented students.

### *Boundary Organizations*

Scholars of higher education and organizational change (e.g. Oliver, 1997; Pfeffer & Salancik, 1978; Pfeffer, 1982; Scott, 1987) have demonstrated that postsecondary institutions mediate external and internal pressures through their “boundary” functions (Birnbaum, 1991). The most important are the processes that govern admissions, retention, and graduation.

Educators who make decisions about enrollment and the cost of attendance directly influence who crosses the boundary to higher education. This is true whether they are operating under clear and direct policies or with no guidance at all. They stand at the gate. Administrators must respond to the needs of students and the goals of their institutions. Financial aid directors and enrollment managers balance enrollment targets and mission fulfillment when considering admission and financial aid for undocumented students. Since these administrators know how institutional policies regarding undocumented students have been implemented, their positions on this issue are crucial.

### *Professionalization of Boundary Organizations*

Policies and practices that are widely accepted by professional groups within an organization become systemic norms that act much like a compass. Professionals implement them and in so doing increase the legitimacy of their departments and organizations. Hospitals, for example, follow protocols to “ensure” the quality of their service among their peers. Institutions of higher education use protocols recommended by experts in order to attain valuable certification ensuring their legitimacy. Thus, positions of professional organizations of strategic groups in higher education may influence how institutions address the needs of undocumented students.

Recent findings indicate that higher education generally supports policies to provide undocumented students with postsecondary educational benefits and a clear pathway to citizenship (Ortega, 2011). Since 2006, the most influential U.S. higher education associations (often referred to as the “Big Six”) have gone on record in support of the DREAM Act. Many of these associations cite a commitment to

access for all students as their primary rationale. This commitment has a long history. This report, however, shows colleges and universities behave in ways not always congruent with the national organizations that represent them. The following sections seek to shed light as to why these inconsistencies might exist.

### *Minority-Serving Institutions*

Some institutions (MSIs) have historically served underrepresented groups and established cultures that support the success of members of those groups (Baez, Gasman, & Viernes Turner, 2007). Hispanic Serving Institutions (HSIs), which educate 54 percent of Latinos enrolled at U.S. colleges and universities, are mostly located near the Mexican border or the Caribbean (Bensimon, Malcom, & Davila, 2010) or in states with high numbers of undocumented immigrants. Table 7 illustrates that 67 percent of all HSIs (defined as having at least 25 percent Hispanic students) are in these six states.

States	Percentage of Total HSIs	Policy Prior to 2010–2011 Legislative Sessions	Legislation Introduced	Current Policy
U.S. TOTAL	256			
California	31%	Inclusive	*Both	Inclusive
Texas	18%	Inclusive	Restrictive	Inclusive
New Mexico	6%	Inclusive	None	Inclusive
Arizona	4%	Restrictive	*Both	Restrictive
New York	4%	Inclusive	Inclusive	Inclusive
Florida	4%	Unstipulated	Inclusive	Unstipulated

\*Indicates that a state was considering both “restrictive” and “inclusive” policies.  
Sources: Pew Hispanic Center, 2011; US Census, 2010; HACU website, 2011 Olivas, M. (2011)

### *Two-Year and Four-Year Institutions*

Community colleges are more likely to enroll undocumented students than four-year programs (Oseguera, Flores, & Burciaga, 2010). Latino immigrant students (like other first-generation college students) are more likely to select community colleges (Adelman, 2005), even as their first choice (Hagy & Staniec, 2002). They have lower tuitions, and many undocumented immigrants are poor. (Kurlaender, 2006). Also, according to Rincon (2008), immigrants are more likely to enroll in college starting at age twenty-one (Betts & Lofstrom, 2000). By this time, these students have jobs and family responsibilities that must be

balanced with college. Community colleges have more flexible course scheduling that appeals to working students. As a result, “community colleges represent the epicenter of the educational advancement of undocumented students and one of the most crucial links to the local labor markets that these students will enter either formally or informally” (Oseguera, Flores, & Burciaga, 2010; p.37).

### *Open Admissions*

Undocumented students, who are highly likely to be of Latino origin and low socioeconomic status (Passel, 2009), are most likely to attend college at non-selective institutions. This is not entirely explained by their academic qualifications. According to Flores (2010), Latino parents have less information than other racial groups about financial aid and admissions processes. Open-door admission policies might lure undocumented students because they provide an opportunity regardless of academic preparation. Also, institutions with open admission policies might appear more welcoming to a wider range of students than those with selective processes. This is important because undocumented students fear exposure and deportation, which may affect their families, and they may be insecure in institutions that are not welcoming to them (Flores, 2010). Thus, institutions with open admissions policies may be getting a higher influx of undocumented students and honing policies to retain them.

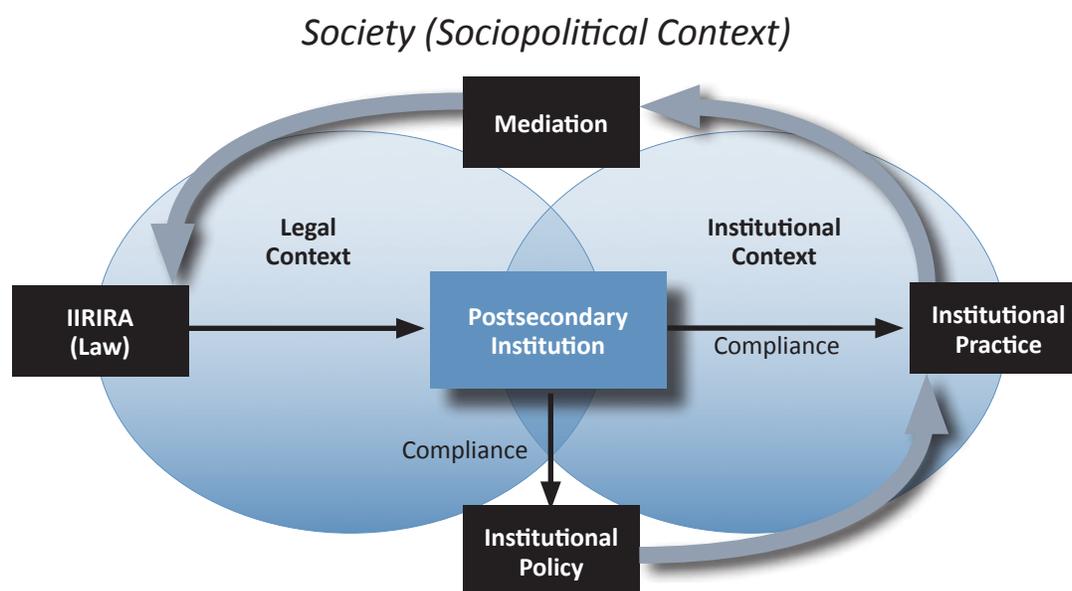
Educational opportunity for immigrant and undocumented students is a community, state, and national challenge. The students who aspire to a college education in our country are currently, and perhaps permanently, here. They are our future neighbors, business owners, and workers. They number in the tens of millions. How will we prepare them to live in twenty-first century society? As our research findings suggest, the responsibility of answering that question may be in the hands of higher education institutions and professionals.

## Research Study

### Theoretical Model

Figure 1 illustrates the process by which colleges and universities define and construct compliance with existing immigration law (IIRIRA) and mediate the impact of this law on institutional decisions.

**Figure 1: Theoretical Framework**



The framework, consistent with previous literature presented in Part I, represents colleges and universities as social institutions which contribute to societal norms, values, and beliefs and operate in a range of social and historical constraints, traditions, and patterns of collective behavior. For our analysis, the model represents the legal environment created by IIRIRA. This law represents a discontinuity in the institutional context that has triggered a response by the institutions that must observe it in setting their own policies. The model predicts two possible outcomes:

1. The institution reacts by changing its practice in providing postsecondary educational benefits to undocumented students (no action also constitutes a practice that has implications on society); or
2. The institution implements a policy that extends postsecondary educational benefits to undocumented students, which then becomes integrated, formally or informally, into the behaviors of the institution.

Informed by the work of scholars that examines the tension between legal regulation and organizational practices (i.e., Dobbin & Sutton, 1998; King & Lenox, 2000; Schneiberg & Bartley, 2001), we hypothesized that the ambiguity of laws on undocumented students creates an environment where higher education professionals generally have a wide latitude to interpret such policies. However, as suggested by neo-institutional theorists, institutions of higher education do not operate in a vacuum; in addition to being accountable to their own managerial and institutional interests, they must also be responsive to society, sociopolitical context, and the legal context (Meyer & Rowan, 1977; DiMaggio & Powell, 1983).

When a law is introduced it creates a context shared between regulators and those regulated by its provisions. In our model, the legal environment interacts with the institutional context—and both are driven by their own values and beliefs. Institutions are constrained by the law but also respond to society. By focusing on law in action rather than law on the books, the framework highlights the ways in which extralegal social processes reconstitute the meaning and impact of legal norms (Edelman, 1992). Through their practices and policies and their diffusion across higher education, institutions play a direct role in establishing the parameters of compliance. Ultimately, this influences public expectations about higher education.

## Research Questions

Our findings from the literature and our model led us to develop a set of testable questions. We exposed our questions for review by our association partners and then by scholars with background in this issue or in the relevant research methodology. We benefited enormously from their input.

We are confident that our findings can contribute to a greater understanding of this topic. Through surveying administrators at

**Through surveying administrators at postsecondary institutions across the nation, this study offers a sophisticated explanation of the external, internal, and professional factors that may influence institutions' decisions to provide education to undocumented students.**

postsecondary institutions across the nation, this study offers a sophisticated explanation of the external, internal, and professional factors that may influence institutions' decisions to provide education to undocumented students.

Our study seeks to examine these factors by answering the following questions:

- To what extent do state policy, professional organizations, and forms of institutional control influence how institutions mediate policies related to undocumented students?
- What mechanisms do institutional leaders perceive influence policies related to undocumented students?

In answering these questions, we can better prepare higher education leaders to anticipate how undocumented students' access will be affected by action, inaction, or ambiguity in institutional policy and practice. We also may be able to provide insight into how institutional decisions are rendered in response to ambiguous or contested issues.

## Methodology

To test our theoretical model and assumptions, we needed to learn from individuals within institutions who were making decisions about enrollment and support of these student populations.

Financial aid administrators are constantly interpreting the laws regulating the distribution of available resources to students. They influence institutions' decisions to create and implement policies regarding financial aid for undocumented students.

Likewise, admissions officers and enrollment managers interpret institutional, state, and federal policies pertaining to admissions and may significantly shape institutions' responses to access for undocumented students.

Therefore, we partnered with the National Association of Student Financial Aid Administrators (NASFAA) and the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and worked closely with them to design and distribute a survey instrument to their members. Our partnerships are described in detail in Appendix 1.

## Survey Design and Data Collection

The first phase of data collection began in late fall 2010. To design the survey instrument, research associates at the National Forum on Higher

Education for the Public Good at the University of Michigan constructed a preliminary set of possible questions. Then, the research team held a series of focus groups with financial aid representatives and enrollment managers. The final survey instrument consisted of three sections that collected information about institutional characteristics and institutional- and state-level policies and practices related to undocumented students, plus background descriptions of staff training opportunities and respondents' perceptions of best practices.

After the survey was finalized, it was distributed electronically to financial aid directors who were members of NASFAA and enrollment managers who were members of AACRAO. The surveys were distributed to NASFAA and AACRAO during the winter and early spring of 2011, respectively. For NASFAA, only one representative from each member institution was provided with an email invitation containing a link to the survey. In the AACRAO sample, invitations were sent to multiple representatives, but respondents were given instructions to ensure that only one response was provided per institution. Members of each organization were given approximately one month to submit a response.

## Respondents

### *Financial Aid Director Respondents*

The survey was distributed to 2,650 member institutions of NASFAA and 447, or 17 percent, of financial aid directors responded. We suspect that many individuals were hesitant to respond given the controversial nature of the topic. In the sample we obtained, 45 percent of the institutions are publicly controlled, 47 percent are privately controlled, and 7 percent are for-profit institutions. The majority of the institutions in the sample are four-year institutions (64 percent), while 29 percent are two-year or technical colleges and 5 percent are graduate institutions only. Twenty-one percent of the institutions are designated as minority-serving institutions (MSIs), and of the private institutions 50 percent are religiously affiliated.

### *Enrollment Manager Respondents*

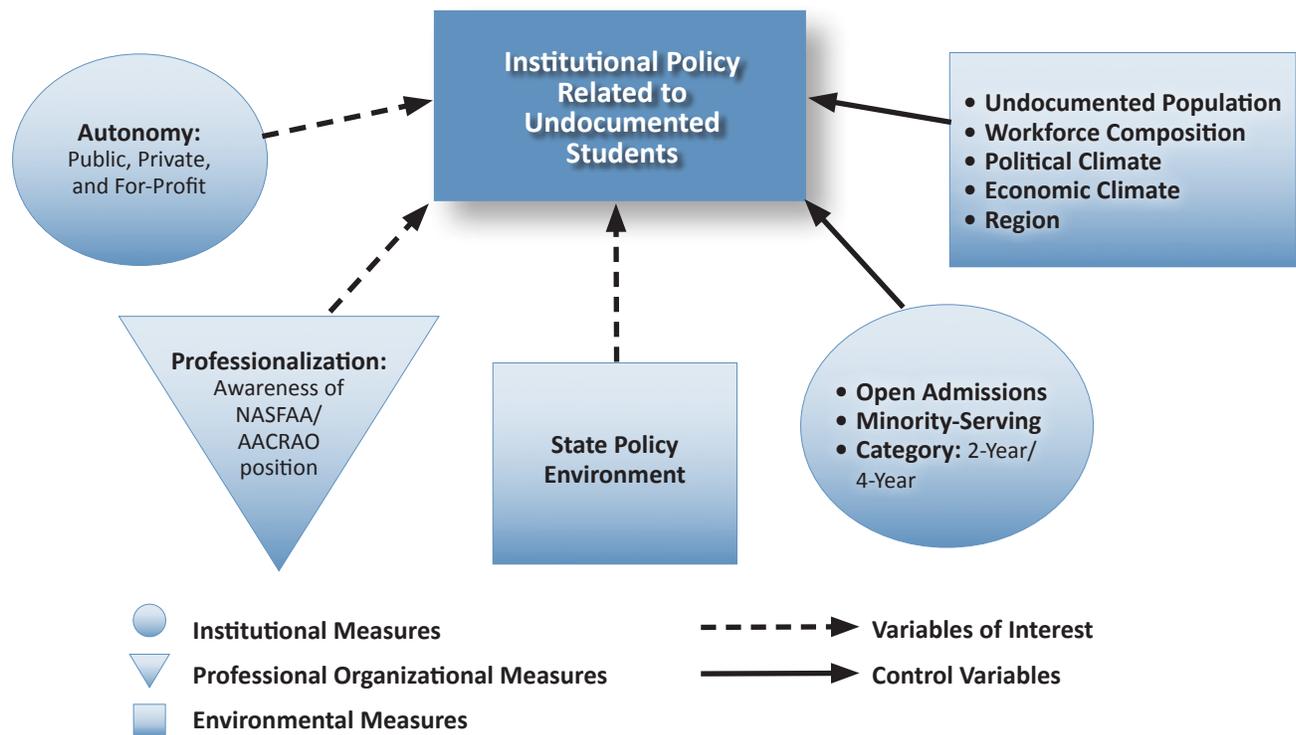
In the AACRAO survey, 227 enrollment managers responded. Unlike the NASFAA respondents, we cannot be sure that only one representative from each of the member institutions responded. Thus, we refer to these data as generated by respondents rather than institutions. Of the respondents, 58 percent were at public institutions.

The majority of responses (69 percent) came from four-year institutions, while 29 percent were from two-year institutions and 2 percent from graduate-level-only institutions. In addition, 25 percent of the respondents were employed at institutions designated as minority serving, while 75 percent of the private institutions represented are religiously affiliated.

## Analytic Framework

This model illustrates the relationship between internal and external factors and institutional admissions and financial aid policies related to undocumented students.

**Figure 2: Analytic Framework**



The shaded square in the upper part of the figure represents each of our institutional outcome variables: inclusive admissions policy, restrictive admissions policy, or financial aid offered. These outcomes are influenced by institutional and environmental characteristics.

Conceptually, the circle at the top left includes only an institutional characteristic (public, private, and for-profit). In the model, we separated these characteristics because they also connote the degree of autonomy

from government these institutions have. We expect these variables to have an important impact on admissions and financial aid policies. The triangle in the model represents professionalization (that is, awareness of a professional association’s stance on admission and financial aid for undocumented students) and its impact on our outcomes of interest. Finally, we expect inclusive or exclusive state policy has an important impact on institutional policies related to undocumented students. The circle and box at the bottom right represent control variables we used to account for factors believed to have an impact on our outcome variables.

## Description of Variables

### *Dependent Variables*

We examined three dependent variables: inclusive admissions policy, financial aid, and in-state residency tuition for undocumented students. Table A presents the responses about these policies in our surveys.

### *Independent Variables*

We included in our analysis several independent variables drawn from the theoretical framework driving this study: degree of autonomy of each institution, professionalization, and state policy environment

We also included several control variables to account for factors that have been shown in previous research to influence institutional

<b>Table A: Responses about institutional policies</b>		
	<b>NASFAA</b>	<b>AACRAO</b>
<b>Institutions that explicitly allow admissions</b>		
Yes	27 %	40 %
No	56 %	50 %
Don't know	17 %	10 %
<i>n=</i>	<i>420</i>	<i>171</i>
<b>Institutions that allow in-state tuition</b>		
Yes, for all undocumented	3 %	4 %
Yes, for those who meet state requirements	21 %	27 %
No	21 %	28 %
Don't know	7 %	7 %
Does not apply	48 %	34 %
<i>n=</i>	<i>408</i>	<i>150</i>
<b>Institutions that offer any type of financial aid</b>		
No	59 %	57 %
Yes	41 %	43 %
<i>n=</i>	<i>389</i>	<i>143</i>

policy. At the institutional level, these include institutional selectivity, minority serving status, and sector of postsecondary education. At the environmental level, these include an indicator for the state political climate (proportion of registered conservative voters<sup>11</sup>), an indicator for the population composition (proportion of population that is undocumented<sup>12</sup>), an indicator of poverty (proportion of citizens in the state living under the poverty threshold<sup>13</sup>), and finally an indicator for the census region in which the institution is located.

## Results

Because we distributed the survey separately to AACRAO and NASFAA members, and because of the different sample sizes we received, we employed slightly different statistical analyses for the data.

### *AACRAO Admission Results: Inclusive Admission Policy*

We used a series of chi-square tests of independence to examine the observed versus expected distribution of responses across categories. This approach enabled us to determine whether there was a significant relationship between our dependent and independent variables.

Table B shows the results of the chi-square tests used to determine if there is an association between our independent variables and an institution having an *inclusive admissions policy* for undocumented students. The results suggest that there appears to be a relationship only between an institutional awareness of AACRAO's access-oriented position on undocumented students and the maintenance of an institutional policy that extends admission to undocumented students.

### *AACRAO Financial Aid Results: Offer of Financial Aid & In-State Residency Tuition Policy*

We also used chi-square tests of independence to explore the relationships between the independent variables and the law that impacts financial aid policies for undocumented students. Table B shows whether any of the variables are associated with the *offer of financial aid* or the extension of *in-state residency tuition* to undocumented students.

It appears that the *offer of financial aid* is associated with institutional type, minority serving status, open admissions designation,

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<sup>11</sup> Gallup Poll, Jones, 2011

<sup>12</sup> Pew Research Center (2011)

<sup>13</sup> U.S. Census Bureau, Current Population Survey, 2007 to 2010 Annual Social and Economic Supplements

<b>Table B: Results of chi-square analysis examining the association between independent variables and variables of interest</b>				
	<i>x</i> <sup>2</sup>	<i>df</i>	<i>n</i>	<i>p</i>
<b>Inclusive Admission Policy for Undocumented Students</b>				
Institutional Control	4.206	2	68	0.122
Minority-Serving Designation	2.948	2	65	0.229
Open Admission Institution	0.151	2	75	0.927
Sector of Postsecondary Education	0.879	2	67	0.644
Inclusive State Policy Environment	5.930	4	74	0.204
State Percentage of Undocumented Population	5.838	4	74	0.212
State Percentage of Registered Conservative Voters	7.278	4	74	0.122
Region	2.211	6	74	0.899
Awareness of AACRAO Position	6.054	2	76	0.048
<b>Offer Financial Aid to Undocumented Students</b>				
Institutional Control	23.286	1	119	0.000
Minority-Serving Designation	5.083	1	116	0.024
Open Admission Institution	4.703	1	137	0.030
Sector of Postsecondary Education	7.414	1	118	0.006
Inclusive State Policy Environment	6.902	2	136	0.032
State Percentage of Undocumented Population	5.723	2	136	0.057
State Percentage of Registered Conservative Voters	0.795	2	136	0.672
Region	0.080	3	136	0.849
Awareness of AACRAO Position	0.010	1	139	0.920
<b>Extend In-State Residency Tuition to Undocumented Students</b>				
Institutional Control	85.601	4	123	0.000
Minority-Serving Designation	10.093	4	120	0.039
Open Admission Institution	29.072	4	140	0.000
Sector of Postsecondary Education	25.957	4	122	0.000
Inclusive State Policy Environment	53.526	8	140	0.000
State Percentage of Undocumented Population	16.208	8	140	0.039
State Percentage of Registered Conservative Voters	11.515	8	140	0.174
Region	22.652	12	140	0.031
Awareness of AACRAO Position	2.503	4	143	0.644

sector of postsecondary education, and the state policy environment. Table B suggests that having an institutional *in-state residency tuition policy* for undocumented students is associated with minority serving status, open admission designation, postsecondary sector, the state policy environment, census region, the region in which the institution is situated, and the percentage of undocumented immigrants in a state.

We cannot be sure of the “controlled” or independent contribution of the independent variables on the outcomes we examine (admission, offer of aid, and in-state tuition). Nonetheless, the results presented

hint that there is reason to investigate these associations further. We use the NASFAA data to better understand the relationships uncovered.

### *NASFAA Admission Results: Inclusive Admission Policy*

To test the theoretical explanations for institutional mediation of the laws that impact access, we estimated a series of theoretically grounded blocked logistic regression models. Logistic regression is the appropriate method for these analyses because our dependent variables were dichotomous and because it allowed us to examine the independent contribution of the variables we included in each of the models (Long & Freese, 2005). Although we estimate three blocked regressions, we discuss in this section the results from Model 3 in detail because the final block fit the data best for each of the models (see Table C for full blocked results). For information about the mean and percentage differences of the variables included in the following models please see Appendix 2.

Table C presents the perceived factors that influence an institution to implement an *inclusive admission policy* for undocumented students. Model 3, in which we controlled for important covariates, indicates the strongest relationship between state-level policy that provides in-state tuition to undocumented students and institutional policy that extends admission to undocumented students. Not surprisingly, the likelihood of an institution having an inclusive admission policy is much higher in an inclusive state policy environment. We also found that institutional control was associated with whether an institution reported maintaining an inclusive admission policy for undocumented students, both before and after controlling for other institutional and environmental variables. More specifically, public colleges and universities, relative to private and for-profit institutions, were significantly more likely to report having such a policy. Finally, Table C suggests that professional associations can play a role in institutional decision making related to admission policies for undocumented students. We found that awareness at the institutional level of NASFAA's position on undocumented students increases the probability that an institution will have an inclusive admission policy.



<b>Table C: Results of nested linear regression models examining determinants of institutions having an inclusive admission policy for undocumented students</b>						
	<b>Model 1</b>		<b>Model 2</b>		<b>Model 3</b>	
	<b>Logit Coefficient</b>	<b>Odds Ratio</b>	<b>Logit Coefficient</b>	<b>Odds Ratio</b>	<b>Logit Coefficient</b>	<b>Odds Ratio</b>
Public Institution	0.726*** (0.227)	2.066	0.818** (0.282)	2.265	0.780** (0.287)	2.182
Minority-Serving Institution	0.522* (0.264)	1.685	-0.179 (0.333)	0.835	-0.218 (0.335)	0.803
Open Admission Institution	0.069 (0.230)	1.072	-0.027 (0.270)	0.973	0.036 (0.276)	1.036
Four-Year Institution	-0.028 (0.016)	0.972	-0.024 (0.012)	0.976	-0.019 (0.013)	0.980
Inclusive State Policy Environment			1.507*** (0.397)	4.514	1.489*** (0.415)	4.433
State Percentage of Undocumented Population			-0.022 (-0.022)	0.977	-0.039 (0.114)	0.960
State Percentage of Registered Conservative Voters			-0.031 (0.032)	0.969	-0.026 (0.033)	0.973
<b>Region</b>						
Midwest (vs. Northeast)			0.561 (0.517)	1.752	0.381 (0.527)	1.464
South (vs. Northeast)			1.543 (0.628)	4.681	1.419 (0.658)	4.134
West (vs. Northeast)			0.921 (0.507)	2.514	0.785 (0.534)	2.194
State Percentage of Citizens Under Poverty Threshold			0.074 (0.066)	1.076	0.088 (0.069)	1.092
Awareness of NASFAA Position					0.835** (0.272)	2.306
Constant	-1.482*** (0.204)		-2.520* (1.303)		-3.145 (1.397)	
<i>n</i>	415		342		342	
<i>model x2, df</i>	18.73, 4***		42.52, 11***		52.22, 12***	

Notes: Robust standard errors in parentheses. \*p ≤ 0.05 \*\*p ≤ 0.01 \*\*\*p ≤ 0.001

### *NASFAA Financial Aid Results: Offer of Financial Aid & In-State Residency Tuition Policy*

We used a series of blocked logistic regression models to explore the factors that contribute to institutions offering financial aid or having an in-state residency tuition policy for undocumented students. The full estimates from the blocked models are displayed in Tables D and E, but we will discuss only the results of Model 3.

Similar factors that influence institutions with an inclusive admission

policy also impact colleges and universities that *offer financial aid to undocumented students*. For example, institutions in states with legislation that extends in-state tuition to undocumented students, as well as those institutions with an awareness of NASFAA’s access-oriented position, are more likely to offer this aid. However, the influence of institutional type is reversed when we consider financial aid. Whereas the data indicate that public institutions are more likely to admit undocumented students, we found that for-profit and private institutions tend to offer financial aid more frequently than public

**Table D: Results of nested linear regression models examining determinants of an institution offering financial aid to undocumented students**

	Model 1		Model 2		Model 3	
	Logit Coefficient	Odds Ratio	Logit Coefficient	Odds Ratio	Logit Coefficient	Odds Ratio
Public Institution	-0.652** (0.221)	0.520	-0.629* (0.256)	0.532	-0.727** (0.267)	0.483
Minority-Serving Institution	0.010 (0.287)	1.010	-0.177 (0.324)	0.837	-0.212 (0.329)	0.808
Open Admission Institution	-0.238 (0.233)	0.787	-0.126 (0.270)	0.881	-0.114 (0.272)	0.891
Four-Year Institution	0.805** (0.265)	2.238	1.120*** (0.304)	3.065	1.053*** (0.308)	2.866
Inclusive State Policy Environment			1.330*** (0.357)	3.782	1.329*** (0.368)	3.780
State Percentage of Undocumented Population			0.106 (0.101)	1.112	0.092 (0.103)	1.096
State Percentage of Registered Conservative Voters			0.030 (0.037)	1.030	0.037 (0.038)	1.038
<b>Region</b>						
Midwest (vs. Northeast)			0.290 (0.435)	1.337	0.140 (0.442)	1.150
South (vs. Northeast)			0.937 (0.525)	2.552	0.842 (0.532)	2.323
West (vs. Northeast)			-0.074 (0.445)	0.928	-0.182 (0.452)	0.832
State Percentage of Citizens Under Poverty Threshold			-0.115 (0.071)	0.890	-0.113 (0.071)	0.892
Awareness of NASFAA Position					0.646** (0.259)	1.908
Constant	-0.523 (0.292)		-1.711 (1.415)		-2.114* (1.450)	
<i>n</i>	384		338		338	
<i>model x2, df</i>	25.05, 4***		42.03, 11***		41.57, 12***	

Notes: Robust standard errors in parentheses. \*p ≤ 0.05 \*\*p ≤ 0.01 \*\*\*p ≤ 0.001

institutions. Also, four-year colleges and universities provide more financial aid to undocumented students than community colleges, trade schools, and graduate-level-only institutions.

The final practice we considered is the extension of *in-state residency tuition (ISRT)* to undocumented students. We limited our analysis of ISRT to public institutions. The results are presented in Table E. As in the previous models, institutions in states with an inclusive state policy environment are much more likely to have implemented an in-state residency tuition policy. Moreover, the results in Table E suggest that institutions in states with a higher proportion of undocumented immigrants report maintaining an in-state residency tuition policy more often than institutions in states with fewer undocumented immigrants.

	Model 1		Model 2		Model 3	
	Logit Coefficient	Odds Ratio	Logit Coefficient	Odds Ratio	Logit Coefficient	Odds Ratio
Minority-Serving Institution	0.465 (0.315)	1.592	0.365 (0.438)	1.441	0.340 (0.448)	1.405
Open Admission Institution	0.086 (0.355)	1.090	0.595 (0.528)	1.813	0.596 (0.530)	1.815
Four-Year Institution	-0.554 (0.345)	0.574	0.430 (0.547)	1.538	0.377 (0.545)	1.459
Inclusive State Policy Environment			1.824*** (0.543)	6.201	1.789*** (0.547)	5.984
State Percentage of Undocumented Population			0.474** (0.183)	1.606	0.464** (0.186)	1.591
State Percentage of Registered Conservative Voters			0.071 (0.063)	1.074	0.072 (0.063)	1.075
<b>Region</b>						
Midwest (vs. Northeast)			0.674 (0.793)	1.962	0.597 (0.804)	1.816
South (vs. Northeast)			-0.272 (0.882)	0.761	-0.333 (0.887)	0.716
West (vs. Northeast)			0.022 (0.706)	1.022	-0.008 (0.716)	0.991
State Percentage of Citizens Under Poverty Threshold			-0.178 (0.111)	0.836	-0.166 (0.114)	0.846
Awareness of NASFAA Position					0.255 (0.404)	1.290
Constant	-0.070 (0.403)		-3.687 (1.999)		-3.882 (2.024)	
<i>n</i>	212		178		178	
<i>Model <math>\chi^2</math>, df</i>	7.47, 2*		48.78, 10***		52.13, 11***	

Notes: Robust standard errors in parentheses. \* $p \leq 0.05$  \*\* $p \leq 0.01$  \*\*\* $p \leq 0.001$

## Limitations

There are several limitations of the study. Several factors that might influence how institutions mediate law were not included in our models. According to Edelman (1992), the visibility of an institution to the general public can explain how institutions mediate the law, but we did not include that factor. We were not able to include this information because we could not identify all the institutions participating in the study. We also did not have a way to directly gauge public perceptions of the issue and the type of media coverage an institution might expect in response to any decision. (We do know from our case studies and focus groups that these factors often are considered in reaching institutional decisions.) Finally, since we were not able to identify each institution, we were not able to measure other factors, such as the level of activism of students or the number of previous court cases that institutions have faced because of policies regarding undocumented students or challenges to other access-related policies (such as affirmative action). Also, there are other boundary functions that might have influence on the institutional policies regarding undocumented students such as general counsel, government relations, board members, or presidents – yet they were not part of the study. Finally, a longitudinal model could have helped explain and analyze the political dynamics of the states or localities and their relationship to institutional policies.



Methodologically, our sample is representative of the respondents to the survey and not of all higher education institutions. Additionally, we received a higher number of responses from states with favorable state policies for undocumented students. This overrepresentation could be another source of selection bias. We had a very low response rate from members of AACRAO. This constrained us from using similar statistical models for both samples, and thus we were not able to accurately compare the information provided. And since we were not

provided with Integrated Postsecondary Education Data System (IPEDS) numbers, we were not able to include other variables that might have an impact on outcomes. For example, we could not include a variable representing institutional financial resources, such as endowments and state appropriations, that bear on financial aid. Finally, immigration is a political and controversial issue, and that might have been a source of response bias.

## Discussion

The responses to our survey indicate a tremendous variation in institutional policies on access and affordability of higher education for undocumented students. This suggests that a number of factors are driving decision-making as organizations interpret federal policies. Several factors account for some of the variation in institutional policies, including the state political context, state demographics, the level of institutional autonomy and dependence on the state, and institutional characteristics.

### *The State Political Context*

Perhaps our most significant finding is that states play a powerful role in institutional policies in light of the repeated failure by Congress to pass the Development, Relief, and Education for Alien Minors (DREAM) Act. The state policy environment acts as a filter for institutions as they mediate federal policies. State policy usually regulates the right to offer undocumented students in-state tuition rates. However, in our sample, state policy also has an effect on admission and financial aid decisions whether institutions are public or private. State policy has a broader reach than anticipated.

Previous studies have also determined that states serve as a central source of legitimating authority in determining the “socially constructed systems of norms, values, beliefs, and definitions” (Suchman, 1995, p. 574). State policies and procedures influence postsecondary institutions’ norms. In the case of undocumented students, the ambiguity of federal laws provides states and institutions considerable latitude in interpreting these policies.

### *Institutions as Organizational Catalysts for Change*

Our results also suggest that institutions act as sources of independent legitimacy within each state. Public institutions have less

autonomy than private institutions and are more likely to have explicit admissions policies for undocumented students. This finding suggests an increase in institutions adopting an inclusive attitude—the more numerous the adopters and the more widespread the acceptance of these policies, the greater their legitimacy. This is important given that public institutions have traditionally promoted extended participation in higher education and played a role in public opinion.



Our findings also indicate that public institutions generally are respectful of the local political environment and public opinion. The inclination of institutions in our study located in states with a higher proportion of undocumented immigrants to maintain an in-state residency tuition policy provides compelling support for this claim. Though the evidence is not causal, this finding suggests they are likely responding to the communities they serve and are mediating policies in ways that meet both the needs of their students and the managerial interests of the institution (strategic enrollment goals and institutional mission).

### *The Role of the Professional Association*

The results of this report suggest that national higher education associations also play a critical role in mediating and interpreting federal access policies for undocumented students by influencing the professional values of administrators. Their members are usually seen as the experts on institutional policy. Yet, decisions of residency and pricing are made at a higher organizational level involving, in many cases, the president and governing board.

Not all associations influence institutional policy regarding the access of undocumented students. Previously we conducted a trends analysis that revealed a number of these professional organizations, including the “Big Six,” have publicly supported and advocated for increased access to postsecondary opportunities for undocumented

students (Ortega, 2011). However, these positions have not translated into institutional policies. NASFAA and AACRAO, on the other hand, have a mission of advocating for universal access, and their members are constantly making decisions regarding access. As a result, members of NASFAA and AACRAO might be in a better position to align their daily practices with the values of their association regarding undocumented students.

## Implications for Access

Admissions and recruiting are important, but financial aid for undocumented students may be the paramount concern for educators and policy makers. Federal policies aimed at increasing access to postsecondary education have focused primarily on expanding financial aid programs (Eaton, 1997). The rationale is clear—even if an undocumented student gains admission, financial aid is needed (Biswas, 2005; Perry, 2004; Szelenyi & Chang, 2002) because it's otherwise hard to pay tuition (Hausman & Goldman, 2001). Since only four states allow undocumented students to receive state financial aid, the institutions bear the burden of helping them pay. Only about half the institutions in our sample reported offering financial aid to undocumented students. So even when institutions allow admission and in-state tuition, undocumented students may be shut out of college.

To further complicate this issue, more immigrant students go to community colleges than to four-year institutions (Teranishi, Suárez-Orozco, & Suárez-Orozco, 2011), which are much more likely to offer financial assistance to them.

Institutional leaders who want to implement inclusive policies and practices on their campuses have many resources at their disposal. Ensuring access to higher education for all capable students is a professional value shared by many educators. However, professional associations such as AACRAO and NASFAA don't necessarily influence institutional leaders. Our results indicate only half of the colleges and universities in our sample are aware of NASFAA's position on undocumented students, and only 68 percent are aware of AACRAO's position. Of these institutions, 62 percent and 67 percent, respectively, consider the association's position to be at least somewhat important in determining their policies. Our findings suggest professional associations could do more to increase institutions' awareness of their positions regarding undocumented students.

**Despite some inclusive policies at the state level, challenges at the institutional level persist.**

**Our results demonstrate that many financial aid and enrollment professionals are unaware of their states' or institutions' policies regarding undocumented students.**

Despite some inclusive policies at the state level, challenges at the institutional level persist. Our results demonstrate that many financial aid and enrollment professionals are unaware of their states' or institutions' policies regarding undocumented students. This lack of awareness may lead to institutional practices that are misinformed and misaligned with state policies. In states where policy is unstipulated, our results indicate that institutions tend to act more conservatively, erring on the side of restricting admission, financial aid, and in-state residency tuition for undocumented students. As with affirmative action in the past, there may be many reasons why institutions can be slow or even unwilling to change their restrictive policies and practices when inclusive state policies are introduced.

## 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.

## Institutional Case Studies

Immigration has presented important challenges for postsecondary educators. Colleges and universities have historically served democracy and have changed to meet the needs of an increasingly diverse population.

The following case studies more deeply explore the factors that influence institutions' decisions to create inclusive admissions and financial aid policies. Understanding these decisions is essential in advocating for policies and practices that lead to increased access for undocumented students.

We interviewed presidents, vice presidents, admissions directors, and financial aid directors at two institutions, a private college and a public university. The names of the institutions and administrators have been changed to preserve confidentiality. We asked about the history, mission, and values of the institution and about the creation and implementation of financial aid and admissions policies.

### Case One

#### Cedar Oak College: Focusing on Social Justice

##### *Institutional History and Local Significance*

Like many higher education institutions, Cedar Oak College reflects its surrounding culture and community. Rooted in a Midwestern city known for past industrial triumphs, Cedar Oak's cultural past is tied to the city's heritage. During the first half of the twentieth century, the city enjoyed great prosperity. As its primary industrial product soared in demand, the city saw its population grow from 285,000 to more than 1.8 million between 1900 and 1950. However, through the second half of the century, the city faced dramatic changes, with the makeup of its financial base and residents transformed. Between 1960 and 1990,

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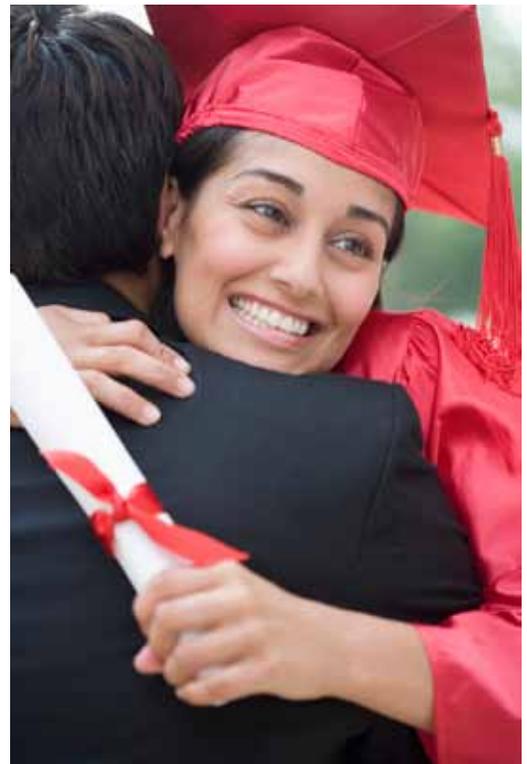
in one of the country's most striking displays of "white flight," the proportion of African American citizens in the city grew from 29 percent to 76 percent.

The changes left an impact on the city's many higher education institutions. After racial tensions reached a tumultuous point, it was nearly impossible to convince students from outside the city that campuses within the city were safe. By and large, students from surrounding communities and states stopped enrolling. The city's three Catholic colleges, including Cedar Oak, were hit particularly hard by the city's precipitous decline.

Founded in 1905, Cedar Oak originally operated out of a smaller town about forty miles south of the city. In 1927, the religious order in charge of the school moved it to its current location. Through its first decades in the city, the college enrolled almost exclusively affluent white Catholic women, and its curriculum focused on speaking, writing, and collaborative learning. However, in the 1960s, as the surrounding population shifted to predominately African American, the college faced serious drops in enrollment, and by 1980, it was in dire financial straits. Several times during the 1970s and early 1980s, the situation was so severe that the trustees considered moving the college to the suburbs or closing it altogether.

When President Timothy Duffee and Executive Vice President Sister Dana McMurphy arrived at Cedar Oak in the early 1980s, they refocused the college's mission toward educational justice and serving those most in need. Over the next decade, the student body evolved to become almost entirely African American single mothers, most in their late 20s or 30s and attending school part time. In large part due to the changes put in place by McMurphy and Duffee, the enrollment rebounded. By 1989, the school, while not wealthy, found itself on more secure financial footing.

In a period of great change for Catholic higher education, Cedar Oak avoided the fate of countless other faith-based institutions. Almost 150 colleges and universities closed their doors during the 1970s, and experts had estimated at least 200 more would do so in the 1980s. Cedar Oak College became committed to offering educational opportunities for typically underrepresented and underserved students, including undocumented students.



## *Current Policies Affecting Undocumented Students and the Creation of the Justice Fund*

The changes enacted by Duffee and McMurphy laid the groundwork for a more inclusive campus community, but it would take the leadership of the next president of Cedar Oak to effect a policy for explicitly serving undocumented students. One of the primary challenges the college has faced in this goal is financial resources. Nearly all students receive some form of financial aid, and the majority are eligible for Pell Grants. The college has a very small endowment, receives no public funding, and relies primarily on tuition to cover operating costs. Cedar Oak prides itself on being one of the least expensive private colleges in the state.

“The majority of our aid is federal aid,” said Jenny Doolin, director of financial aid. “When looking at our undergraduate population, we are considered to be one of the more needy groups in terms of the private schools in the state. Cedar Oak College has the largest percentage, or did several years ago, of Pell-eligible students. That makes our students much more needy than many other schools.”

Despite its relatively low tuition, many students at Cedar Oak need financial assistance beyond a Pell grant. To help meet their needs, the college offers a variety of institutional merit-based scholarships and need-based grants.

For undocumented students, the merit-based scholarships have been important, but they do not cover the entire cost of attending Cedar Oak. Furthermore, undocumented students are not eligible for need-based grants either, because FAFSA forms are required for those grants.

In an effort led three years ago by current president James Rife, the college created a scholarship fund to help students who have experienced “extraordinary circumstances.” This “Justice Fund” is not intended exclusively for undocumented students, but, as Rife explained, many undocumented youth have overcome hardships and barriers that can be deemed extraordinary.

In addition to establishing this fund, Cedar Oak College began formalizing an admissions policy for undocumented students in early 2011. The policy declares the institution’s belief that “a student’s education should not be hindered by citizenship.”

President Rife’s experience doing human rights work and community development in Latino communities helped shape his desire to facilitate access for undocumented students. Other key administrators at the

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college have supported the policy effort. Current Vice President of Student Affairs Ann Stergis drafted the pending admissions policy, drawing on her own background in multicultural education and interest in issues facing undocumented students.

The creation of the Justice Fund and the development of a formal admissions policy for undocumented students were supported by the mission and values of the institution, which emphasize compassion and social justice for underserved populations. President Rife does not foresee any opposition from the board of trustees when he presents the policy. However, Rife does understand how other institutions could experience problems getting approval for similar policies.

Rife explained: “I don’t have any worries or qualms about getting support from the board. That is a little bit different than, or at least I would imagine, a different environment for public institutions. The public institutions are going to have boards that are going to have many more issues as it relates to the political terrain that they are in. That could happen in the private setting as well, if you have a board that has various differences in opinions.”

The new policy represents much more than a shift for one private, faith-based school in the Midwest. The leadership at Cedar Oak College views the action as an opportunity to establish a long-lasting legacy of inclusion for undocumented students.

“If we don’t do this, in my opinion, we’re hypocrites,” said Stergis. “It goes against everything that we say we are. And, like I said, it’s more about consistency, because even with Dr. Rife and myself working here, we could just say, ‘well, we’re going to make sure the students get in, we’re going to make sure that there are no issues,’ and then students are singled out. But if it’s not in writing, if I leave and Dr. Rife leaves, then it means absolutely nothing...hopefully one day this is not an issue.”

## Case Two

### Rockford Valley University: Avoiding the ‘Hornet’s Nest’

#### *Institutional History and Local Significance*

Like Cedar Oak College, Rockford Valley State University operates in a town that has a rich history of industrial manufacturing. During World War II, the city of Rockford saw a dramatic rise in industrial production as the demand for war-related materials spiked. Almost immediately,

**Currently, any Rockford Valley State student may qualify for in-state tuition if he or she has graduated from a high school within the state.**

**That helps to lower the cost of attending for undocumented students, but financial aid is still a concern, likely accounting for the small undocumented student population.**

Rockford became an attractive destination for workers left jobless in the wake of the Great Depression, especially migrants from the South.

Rockford experienced racial tensions as the city tried to segregate the rising numbers of African Americans moving to the city for work. Despite this, Rockford continued to boom following the war and began to invest large amounts of money in infrastructure.

Amongst the town's largest needs was a public university. In 1963, Rockford Valley College, a private liberal arts school, was granted a charter, becoming the state's newest public university.

By the end of the 1960s, Rockford Valley State University had constructed a number of academic buildings, added many classes to its growing catalog, and became a popular destination for students seeking teacher education programs. By 1972 the school had created enough new academic programs that it was no longer classified as a liberal arts college. Academic programs and student population continued to grow over the next two decades. By the end of the 1990s, enrollment reached 8,000 students, and the school's accreditation was renewed for ten years, the longest renewal in the university's history.

The school also began to attract a more diverse population of students. It became a leading urban commuter institution, serving students from surrounding counties in addition to Rockford. It began to enroll more underserved minority students and international students. From 2000 to 2010, international students at Rockford Valley State increased from about fifty to more than 300.

### *Current Admissions and Financial Aid Policies Affecting Undocumented Students*

"We wanted our undergraduate population to look like the population of high school graduates around us. We've come pretty close to reflecting that actually," said school president Dan Perkins.

Rockford Valley State's efforts to create a more diverse student body have largely been a success, and a longstanding university policy has helped. In the late 1970s the university passed a provision to allow the children of local migrant workers to qualify for in-state tuition. Although the community no longer attracts many migrant workers, the policy continues to have implications for undocumented students.

"In financial aid, citizenship is not a criteria for in-state residency," explained Perkins. "Now financial aid obviously has different sets of

criteria for federally administered programs, so there are other issues [for those programs]. But in terms of our general admission and for the purpose of in-state tuition, our policy does not use citizenship as an overriding factor.”

Currently, any Rockford Valley State student may qualify for in-state tuition if he or she has graduated from a high school within the state. That helps to lower the cost of attending for undocumented students, but financial aid is still a concern, likely accounting for the small undocumented student population.

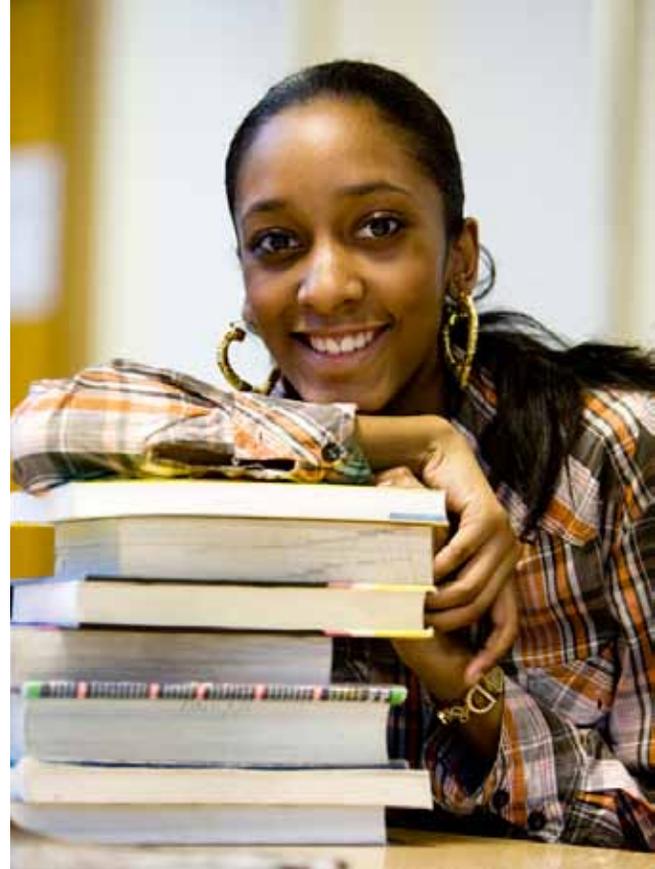
“I would have no way of knowing how many undocumented students there are here at Rockford Valley State,” said Nancy Bigsby, the university’s admissions director. “But I really would think that it’s pretty minimal because of the financial burdens of not receiving financial aid. I think that we wouldn’t have very many due to that restraint.”

Similar to Cedar Oak College, high-achieving undocumented students are able to qualify for an institutional merit-based scholarship. According to Bigsby, the university offers approximately 150 academic scholarships to each incoming class. Unfortunately, Rockford Valley State does not currently offer need-based financial aid to undocumented students, leaving many unable to pay for their education. Additionally, the school’s policy is for all fees to be paid prior to the start of the semester. Despite these barriers, Perkins does not foresee an amendment to the university’s policies anytime soon.

“That policy has been in place since before I came here,” explained Perkins. “There was no need to change it, and so we really haven’t visited it as a policy question for the institution in twenty years. In some of the other places where this has become controversial it is due to statewide governance, where you have legislators and others getting into the act on this. Since our current policy is working, and since we don’t have any issues, it isn’t a hornet’s nest I’ve wanted to kick.”

## Implications for Institutional Leaders

Colleges and universities vary in their approaches to serving undocumented students. Despite these differences, several themes have emerged from our data, and these findings have implications for institutional leaders.



Institutional mission and values, as well as demographics, play key roles in policies related to undocumented students. Cedar Oak's mission includes improving access for undocumented students in its community. Rockford Valley State's mission opened the door for children of local migrant workers, leading to a more inclusive environment for undocumented students. Serving undocumented students can be a natural extension of an institution's mission to provide access for its local community.

The personal and professional experiences of institutional leaders also appear to have influenced these institutions' decisions regarding access. Cedar Oak's president was clearly the catalyst for policy change, and he found support from other leaders there committed to access for all capable students. At Rockford Valley State, the migrant workers policy was in place before much of the current administration arrived; the personal interests of previous and current board members influenced its policies. Support from the college's board also helped shape Cedar Oak's decision to formalize its admissions and financial aid policies for undocumented students. Institutional leaders can draw support from others with personal or professional connections to undocumented communities and beliefs about greater access.

Additional in-depth interviews and institutional case studies could further illuminate our understanding of the way policy decisions are made to increase access for underserved groups.

## 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.

### *State Level*

With more undocumented immigrants seeking to enter postsecondary education, the role of individual states in restricting

educational access based on citizenship (a federal issue) echoes the issue of “states’ rights” in the civil rights movements of the 1960s and 1970s. At that time, the federal government asserted its authority to enforce its laws assuring educational opportunity, in fact arguing for “affirmative action” to address the historic exclusion of racial minorities and later to assure that women were represented in specific disciplinary and professional areas. The lack of federal direction on undocumented studies has ceded *de facto* this power to the states, at least for now. Thus, it is important for educators and advocates to influence state as well as national policies.

### *Institutional Level*

Institutions of higher education are giving meaning to the ambiguous wording of the IIRIRA “educational benefit” and to state policies regulating tuition, interpreting them as institutional policies on admissions, financial aid, and tuition price. Other crucial factors are demographics of their student body, values of higher education, and constraints in financial aid. Although public institutions are acting in admissions and tuition levels, undocumented students are often unable to afford their higher education. Private institutions that financially support undocumented students could also institute more specific admission policies.



### *Professional Organizations on Access Policies for Undocumented Students*

Professional associations have an important impact on institutional policies favorable to undocumented students. However, their reach depends on the type and scope of institutional policy. They could enhance their influence by explaining their position to more members and by lobbying at the state level.

# Appendices & References

## Appendix 1. Partnering Organizations and Their Roles

### *National Association of Student Financial Aid Administrators (NASFAA)*

The Higher Education Act of 1965 committed the federal government to providing student aid as a vehicle for access to higher education. The act resulted in a comprehensive set of aid programs (grants, loans, and work study) designed to remove cost as a barrier to college (Coomes, 1994). The National Student Financial Aid Council, a precursor to NASFAA, was created in 1966 in order to support and train the administrators of these new aid programs (NASFAA, 2006). Today NASFAA membership consists of more than 18,000 student financial aid professionals at nearly 2,800 postsecondary institutions, serving more than 16 million students (Join NASFAA, n.d.).

As part of its mission, NASFAA advocates for public policies and programs that increase student access to and success in postsecondary education. Its members pledge to be committed to removing financial barriers, to make every effort to assist students with financial need and be aware of the issues affecting students, and to advocate their interests at the institutional, state, and federal levels (NASFAA Statement, n.d.). Regarding undocumented students, NASFAA has been an advocate of the DREAM Act since its inception in 2001 (NASFAA Senate Committee, 2011). During his testimony to the U.S. Senate Subcommittee on Immigration, Refugees, and Border Security in 2011, NASFAA president Justin Draeger stated NASFAA's policy position as "...Congress must pass the DREAM Act for deserving students who have already been in the American educational system for years and have already demonstrated their ability and worth" (NASFAA Senate Committee, 2011). Any policy position taken by NASFAA requires the approval of its board of directors, which offered its unanimous support of this measure.

NASFAA also plays an active role influencing policy and practice at the institutional level. The association trains institutional staff and offers a discussion forum for its members to exchange information regarding changes in financial aid regulations and best practices on an array of financial aid issues. As part of its communication network, NASFAA is affiliated with six regional associations and fifty state associations. NASFAA also holds a national conference, with more than 2,000 financial aid administrators attending every year. Regional and local meetings are also organized on a yearly basis to offer localized communication and training opportunities. Additionally, NASFAA's website offers information about new trends and best practices in the field and training materials for its membership.

### *American Association of Collegiate Registrars and Admissions Officers (AACRAO)*

Representing more than 2,600 institutions in the United States and internationally, AACRAO was founded in 1910 to help facilitate communication between college registrars and improve standards in registration and enrollment practices (AACRAO Centennial Celebration, n.d.). Today, the mission of AACRAO is “to serve and advance higher education by providing leadership in academic and enrollment services” (AACRAO Statement, 2010).

AACRAO provides leadership to its 11,000 members through professional development and educational opportunities, information on best practices, and federal policy advocacy. Members of AACRAO are committed to promoting “broad and equal access to higher education for all qualified students” and pledge to “adhere to principles of nondiscrimination and equality within the framework of institutional mission and prevailing law,” (AACRAO Statement, 2010). AACRAO extends these principles of access and equality to include undocumented students. Joining with NASFAA and many other higher education associations, AACRAO has expressed its strong support for the DREAM Act, most recently in a statement to the U.S. Senate advocating the passage of the newest version of the legislation (American Council on Education, 2011).

### *Research Partnerships with NASFAA and AACRAO*

Our partnerships with NASFAA and AACRAO to conduct this research began in April 2010 during the National Summit on Immigration and Higher Education, which was sponsored by the National Forum

on Higher Education in partnership with the Lumina Foundation in Washington, D.C. At the summit, former NASFAA vice president of policy (and now the organization’s president) Justin Draeger presented a talk on NASFAA’s advocacy work for undocumented students. One of the summit’s achievements was securing both AACRAO’s and NASFAA’s commitments to partner with the National Forum in researching institutional policies and practices regarding undocumented students. Throughout our study NASFAA’s research committee and AACRAO’s staff members were valuable partners in the creation and dissemination of surveys and results.

## Appendix 2.

Variable	
Institution Allows Admission	0.27 (0.44)
Institution Offers Financial Aid	0.40 (0.49)
Institution Extends In-State Residency Tuition	0.45 (0.49)
Institutional Control (1=public)	0.45 (0.49)
Minority Serving Designation (1=msi)	0.21 (0.40)
Open Admission Institution (1=open admission)	0.49 (0.50)
Sector of Postsecondary Education (1=four-year)	0.64 (0.47)
Inclusive State Policy Environment	0.37 (0.48)
State Percentage of Undocumented Population*	3.93 (4.73)
State Percentage of Registered Conservative Voters**	37.93 (4.73)
Region***	2.58 (1.08)
Awareness of NASFAA/AACRAO Position	0.52 (0.50)

Sources:

\*Pew Research Center (2011)

\*\*Gallup Poll, Jones, 2011

\*\*\*U.S. Census Bureau, Current Population Survey, 2007 to 2010 Annual Social and Economic Supplements

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