

# Postsecondary Educational Access for Undocumented Students: Opportunities and Constraints

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## Introduction

Each year, U.S. high schools graduate an estimated 65,000 undocumented students, of whom only 5 percent ever attend college.<sup>1</sup> For most undocumented immigrants, the major barriers to postsecondary access are both financial and legal. For instance, 39 percent of undocumented children live below the federal poverty level (compared to 17 percent of native-born children) while the average income of an undocumented immigrant's family is 40 percent lower than that of either native-born families or legal immigrant families.<sup>2</sup> Although states are required to provide undocumented students access to free public K-12 education, once they reach college age such students are in some respects abandoned by the public educational system. For instance, even if an undocumented student was brought by his/her parents to the United States as a young child, graduated from a U.S. high school, and is accepted to a public college or university, in 40 states that student is required to pay non-resident or out-of-state tuition, which costs an average 140 percent more than resident tuition.<sup>3</sup> Equally, under federal law these same undocumented students are prohibited from receiving federal financial aid for their education. This prohibition, which applies to undocumented students but not to their counterpart non-citizens who are legal permanent residents, prevents undocumented students from receiving Pell Grants and participating in federally funded work study programs. Furthermore, even if they could afford to attend college or university, such students' undocumented status means they cannot legally work after graduation under current law. This is another restriction that distinguishes undocumented students from their counterpart documented non-citizens, who may obtain permission to work legally in the United States.

Given the size of the undocumented immigrant population in the United States, now estimated to number some 11 million<sup>4</sup>, a significant public policy debate

has emerged concerning the main issue of whether undocumented students should be entitled to attend public postsecondary institutions, and the narrower issues of whether they should be eligible for resident or in-state tuition and who (the federal government or the states) should have the authority to determine this, and whether economic and social returns accrue from investing in undocumented immigrants' higher education. Within the context of this phenomenon of growing numbers of undocumented students graduating from U.S. high schools, then, in this article I explore two aspects of the issue of undocumented students' access to public colleges and universities. In the first section I examine a number of key court rulings, relevant federal statutes, recent state legislative action, and current Congressional proposals impacting undocumented immigrants' eligibility to attend public postsecondary institutions and access in-state tuition. I also consider the extent to which these measures may actually improve undocumented students' access to public colleges and universities and the way in which current policy affects the opportunities available to students upon graduation from college. In the second section, I investigate the economic and non-economic costs and returns of measures to improve postsecondary opportunities for undocumented students. I also examine whether the economic and social returns to higher education accrue in the same way for undocumented students as for resident students. Finally, I offer a policy option for states, should they wish to improve educational opportunities for undocumented immigrants.

## **The Regulatory Environment**

Any discussion of the legal issues surrounding undocumented students and higher education must be situated within the larger debate surrounding unauthorized immigration in general. As Massey, Durand, and Nolan (2002) note, U.S. citizens' attitudes towards immigrants have varied historically, often reflecting the state of the U.S. economy and other internal political considerations, rather than the realities of the actual migration process.<sup>5</sup> So, paradoxically, even as the movement of goods and capital between the United States and other nations is on the rise, much of the discourse concerning immigration is focused on seeking to restrict the movement of people across borders and to limit access for immigrants currently in the United States to social "benefits," including higher education. It is perhaps more often this highly politicized discourse, rather than sound public policy, that has impacted the way in which immigration, particularly that from Latin America, has been legislated, regulated, and litigated at both the federal and state levels.

### ***Plyler v. Doe***

One of the most important statements to date on undocumented immigrants' access to public education was the landmark US Supreme Court case *Plyler v. Doe* (1982), a case related not to postsecondary schooling but to K-12 education. In a 5-4 decision, the *Plyler* Court held that the State of Texas could not deny undocumented immigrant children access to free K-12 public education. While the Court did not explicitly extend the same protections to undocumented students at the college level, *Plyler v. Doe* is relevant to the debate at hand for at least two reasons. First, the Court held that states must show that they have a compelling interest in limiting access to education for a particular group, and that in this case Texas had failed to do so. Indeed, the Court found that there was no significant financial burden imposed by undocumented immigrants on the state and rejected the claim that preventing undocumented immigrants from accessing education would be an effective deterrent to further illegal immigration.<sup>6</sup> Second, while holding that education is not a fundamental right, the Court stressed that denying K-12 education to undocumented children amounted to creating a "lifetime of hardship" and a permanent "underclass" of individuals. This is significant, because at the time of the *Plyler* decision a high school diploma could very well lead to a well-paying job that could help one move up the socio-economic ladder. Indeed, Justice Brennan's majority opinion is explicit in its declaration of the link between education and social mobility. Today, though, nearly a quarter of a century later, a high school diploma creates fewer opportunities for those entering the labor market. Arguably, the ticket to social and economic mobility has increasingly become a college degree, with college graduates' average annual earnings almost double those of high school graduates and nearly three times those of high school drop-outs.<sup>7</sup> While in 1982 the Supreme Court sought to prevent the creation of an underclass of undocumented individuals by assuring access to free public K-12 education, the new educational "ticket to the middle class" may well be a college degree.<sup>8</sup> By today's standards, then, not extending similar protections to undocumented students once they reach college age may create the very socio-economic chasms the Court had originally sought to avoid.

### **Beyond The *Plyler* Ruling**

The regulatory issues related to undocumented immigrants' access to public higher education emerged rapidly post-*Plyler*, becoming engulfed in the larger debate regarding immigration and immigrants' access to social services and

benefits. This larger debate is part and parcel of a broader shift in U.S. domestic politics and foreign relations ushered in by the Reagan administration and the Republican-controlled Congress in the 1980s. Domestically, social welfare programs came under attack while relations with other nations came to be framed within the context of the Cold War and the war on drugs, both of which required strict control of U.S. borders. During this time immigrants and immigration increasingly became synonymous for many with “foreign terrorism,” “invasions” of foreigners “flooding” the border to get access to U.S. welfare benefits, and the nation increasingly being “under siege” from Latin American migrants.<sup>9</sup> However, and somewhat paradoxically, efforts to secure the border actually encouraged growing numbers of immigrants, once they had successfully crossed, to settle with their families within the United States, as the difficulties of making multiple crossings—the pattern in the 1960s and 70s—increased.

This politicization of the broader issue of immigration has resulted in a number of legislative efforts to limit access to certain benefits, including higher education. A prime example of the latter is California’s controversial 1994 ballot initiative Proposition 187, which would have denied undocumented immigrants almost all social services, including access to K-12 and higher education institutions. The federal courts eventually ruled Proposition 187’s provisions invalid, with a U.S. district court (*League of United Latin American Citizens v. Wilson*, 1998) finding that California’s ban on undocumented students attending higher education institutions was preempted by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (discussed below), both of which indicated Congress’s intention to occupy the field of regulating higher education benefits<sup>10</sup>; however, the fact that some 59 percent of California’s electorate voted for it highlights how divisive immigration had become by the mid-1990s.

### **Federal Law**

In 1996, Congress weighed in on the matter of undocumented immigrants, passing the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), both of which are relevant to the issue of undocumented students’ access to post-secondary education. Hence, according to Section 505 of the IIRIRA:

An alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State ... for any

postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident (8 U.S.C. § 1623).

The Act further states:

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible ... through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility(8 U.S.C. § 1621).

For its part, the PRWORA declared that:

An alien who is not a qualified alien is not eligible for any Federal public benefit [including] any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States (8 U.S.C. §1611).

Rather than settling the issue of undocumented students and higher education, however, the vagueness of these statutes has led to significant differences of opinion concerning Congress's intent. Generally, though, there is agreement about two aspects of the laws: 1) neither the PRWORA nor the IIRIRA prohibit public postsecondary institutions from admitting undocumented students; and 2) under these statutes, undocumented individuals are not eligible for public benefits that entail actual monetary assistance, such as federal financial aid programs that provide student loans or work study payments.<sup>11</sup> What is not clear, however, is whether the federal statutes confer on states the authority to decide whether or not to grant in-state tuition to undocumented students. Hence, Michael Olivas (2004) interprets the IIRIRA as giving states the authority to determine state residency for tuition purposes (a state benefit) and asserts that this state residency (and thus in-state tuition) does not entail a monetary benefit. Similarly, Ruge and Iza (2005) argue that the statutes do not prohibit states from granting in-state tuition as long as qualified out-of-state U.S. citizens can also receive the same benefit. Others, including the governor of Maryland,

a former Wisconsin governor, and a former attorney general of Virginia, though, have cited the IIRIRA as the primary legal barrier to enacting state laws providing in-state tuition to undocumented students.<sup>12</sup>

### The States Respond

Despite—or perhaps because of—the IIRIRA’s unclear intent, since 2001 at least 23 states have considered legislation allowing resident tuition for undocumented students, seven states have proposed laws restricting resident tuition for undocumented students<sup>13</sup>, and Alaska and Mississippi have implemented legislation prohibiting undocumented students from access to resident tuition.<sup>14, 15</sup> Ten states have enacted laws providing in-state tuition to undocumented students (see Table 1), with such laws having been crafted to ensure that in-state tuition is awarded based on attendance and graduation from a state high school rather than residency within the state. Because a U.S. citizen also would be entitled to in-state tuition based on this criterion, the ten states argue that their laws conform to the restrictions placed on them by the IIRIRA and PRWORA.<sup>16</sup>

Over the past few years, several judicial tests of such state laws have emerged. For instance, in *Equal Access Education v. Merten* (2004), a group of undocu-

**Table 1 : States allowing resident tuition for undocumented students**

State and date enacted	Requirements	Eligible for state financial aid
California - 2001	Must attend CA high school for 3 years and graduate or earn a GED	Proposed, S. B. 160
Illinois - 2003	Must attend IL high school for 3 years and graduate or earn a GED	No
Kansas - 2004	Must attend KS high school for 3 years and graduate or earn a GED	No
Nebraska - 2006	Must attend NE high school for 3 years and graduate or earn a GED	Yes
New Mexico - 2005	Must attend NM high school for 1 year and graduate or earn a GED	Yes
New York - 2002	Must attend NY high school for 2 years and enroll at a state institution within 5 years of graduating or earning a GED	No
Oklahoma - 2003	Must attend OK high school for 2 years and graduate or earn a GED	Yes
Texas - 2001	Must attend TX high school for 3 years and graduate or earn a GED	Yes
Utah - 2002	Must attend UT high school for 3 years and graduate or earn a GED	No
Washington - 2003	Must attend WA high school for 3 years and graduate or earn a GED	No

NOTE. From Krueger, C. (2006, April). In-state tuition for undocumented immigrants. *Education Commission of the States State Notes*. Boulder, CO.

mented students filed suit against seven public universities in Virginia, claiming that the institutions' policies denying undocumented students admission were in violation of federal law. A US district court, however, ruled that federal law permits states to regulate postsecondary admission and so Virginia's public institutions could set their own admissions policies. More recently, a federal district court in Topeka dismissed a legal challenge (*Day v. Sebelius*, 2005) to the 2004 Kansas law providing in-state tuition for certain undocumented students after several out-of-state students attending Kansas colleges and universities, together with the anti-immigration group Federation for American Immigration Reform (FAIR), filed suit against the governor of Kansas and the president of the Kansas Board of Regents, claiming that the Kansas law violated the IIRIRA and the Equal Protection Clause by discriminating against U.S. citizens who would not be eligible for in-state tuition under Kansas law. Although the court did not offer an interpretation of the IIRIRA, it did find that the Kansas law does not create a private right of action and that the plaintiffs failed to show any injury as a result of the law, though currently the district court's decision is being appealed to the Tenth U.S. Court of Appeals.

In December 2005, a similar lawsuit was filed in California Superior Court by a group of out-of-state college students who were attending or who had attended California's public institutions (*Martinez v. Regents of the University of California*, 2005). In this class action suit, the plaintiffs claimed that California's law permitting in-state tuition to undocumented students violates both federal (IIRIRA and PRWORA) and state laws and thus sought reimbursement of non-resident tuition fees and other financial damages. The defendants, however, have filed for dismissal, claiming, among other things, that no private right of action exists and that the plaintiffs have suffered no injury as a result of the state's policy of granting California high school graduates in-state tuition while denying the plaintiffs, who are non-California resident U.S. citizens, in-state rates.<sup>17</sup>

### **Recent Congressional Initiatives**

Within this context, a number of recent Congressional initiatives to address undocumented students' postsecondary opportunities offer alternative and, perhaps, more far-reaching solutions to improving higher education access for the undocumented population. Since 2001, at least six bills have been introduced addressing undocumented students and higher education (see Table 2), all of which would have repealed Section 505 of the IIRIRA. This is significant

**Table 2: Summary of recent Congressional bills relating to undocumented immigrants' access to postsecondary education**

Date	Legislation	Sponsors
107 <sup>th</sup> Congress August 2001	S. 1291 Development, Relief, and Education for Alien Minors (DREAM) Act	Sen. Orrin Hatch 18 Cosponsors
107 <sup>th</sup> Congress May 2001	H.R. 1918 Student Adjustment Act of 2001	Rep. Chris Cannon 62 Cosponsors
108 <sup>th</sup> Congress July 2003	S. 1545 DREAM Act of 2003	Sen. Orrin Hatch 47 Cosponsors
108 <sup>th</sup> Congress April 2003	H.R. 1684 Student Adjustment Act of 2003	Rep. Chris Cannon 152 Cosponsors
109 <sup>th</sup> Congress November 2005	S. 2075 DREAM Act of 2005	Sen. Richard Durbin 20 Cosponsors
109 <sup>th</sup> Congress April 2006	H.R. 5131 American Dream Act	Rep. Lincoln Diaz-Balart 16 Cosponsors

because while the proposed bills would not require states to give undocumented students resident tuition, they would have given states the authority to determine who is a resident for the purposes of determining in-state tuition. Further, all of the proposed legislation, including the Development, Relief, and Education for Alien Minors (DREAM) Act, would have initiated a process for legal permanent residence, provided that the undocumented students met certain qualifications.

Most recently, on May 25, 2006, the Senate passed the Comprehensive Immigration Reform Act of 2006 (S. 2611), Section 621 of which includes provisions for the DREAM Act of 2006. Like its predecessors, S. 2611 would repeal Section 505 of the IIRIRA, thus giving states the authority to decide who is a resident for tuition purposes. Additionally, DREAM Act provisions of S. 2611 would:

- Make eligible to start the process of conditional legal permanent residence undocumented individuals who:
  - Have been in the United States for at least five years preceding passage of the law.
  - Are under 16 years of age at the time of entering the United States.
  - Are of good moral character (no criminal record prior to age 16).
- Allow individuals who meet the above qualifications and who have graduated or finished two years of an undergraduate degree or served two years in the armed forces to apply for removal of the conditional basis for permanent residence.

- Make undocumented students who adjust their status to lawful permanent residence eligible for student loans, federal work study programs, and certain benefits for armed services members.

The fate of the DREAM Act, however, may depend on how the highly charged broader immigration debate plays out. As this political theater unfolds, the issue of resident tuition for undocumented students may well become buried in the more dramatic debates on increased militarization of the border, tighter enforcement of immigration laws, and the question of amnesty for unauthorized immigrants currently in the United States.<sup>18</sup>

### **Limitations of State and Federal Initiatives**

Ten states have passed laws to extend resident tuition to undocumented students, with the laws in three of these states including provisions for tuition aid. Although these states are clearly attempting to improve postsecondary opportunities for undocumented students, such laws do not address the limitations inherent in having undocumented status. For example, they do not remedy the fact that under current federal law undocumented students are not eligible for any of the \$129 billion annually distributed in federal financial aid and loans for postsecondary education.<sup>19</sup> This lack of access to federal funds for postsecondary education may represent a significant financial barrier to college for undocumented students that even resident tuition cannot offset.

To understand more clearly how the lack of access to federal financial aid may impact undocumented students, a closer look at college costs is warranted. Over the last five years, the average advertised tuition and fees at U.S. public institutions has increased 40 percent at four-year institutions and 19 percent at two-year institutions. For the lowest-income families, such sharp increases mean that without access to student aid, the average price of public four-year colleges and universities would comprise nearly 29 percent of their total household income and the price of two-year institutions would make up about 11 percent. Most students, though, do not end up paying full price because they receive some form of federal, state, or institutional financial aid; in 2004, 36 percent and 44 percent of undergraduate students attending public four-year and two-year institutions respectively received tuition aid. This financial aid has helped to offset college price increases such that from 1996-2006, the net price (tuition and fees minus financial aid) increased only \$300 at public four-year

institutions and actually decreased by \$500 at two-year colleges.<sup>20</sup> However, because undocumented students are not eligible for federal financial aid and in all but three cases are not eligible for state aid, these students may find that, even with in-state tuition rates, college—particularly four-year institutions—may still be out of reach.

The low numbers of undocumented students taking advantage of resident tuition seem to bear this out.<sup>21</sup> For example, officials in Kansas had predicted 370 undocumented students would register for in-state tuition in the first semester after it passed its law, but in fact just 30 registered, 22 of whom did so at less expensive community colleges. Likewise, in the first year of New Mexico's law, only 41 undocumented students enrolled with in-state tuition.<sup>22</sup> Although between 2001 and 2006 more than 6,500 undocumented students filed for resident tuition in Texas (where the state provides some state-based financial aid for undocumented students), 75 percent attended lower-priced community colleges.<sup>23</sup> Moreover, the fact that in Kansas and Texas students disproportionately registered for community colleges raises the question of whether improved access to community colleges or two-year institutions represents sufficient access to the full array of benefits that a college education provides. This concern is particularly significant in the current winner-take-all higher education market where the individual returns to education increase relative to the prestige of the institution attended.<sup>24</sup>

The early evidence, then, seems to suggest that providing in-state tuition alone may not provide sufficient financial support for undocumented students to pursue postsecondary education. This is important for two reasons. First, as might be expected, empirical research shows that lower-income students are much more responsive to the price of tuition than are other students.<sup>25</sup> Second, the availability of financial aid, particularly grants, has a much greater impact on the postsecondary participation of lower-income students than on middle- or high-income students. This has significant bearings upon whether undocumented students will even attempt to attend college. Thus, while many lower-income, undocumented students have high expectations that they will attend college, these expectations more often than not do not match reality.<sup>26</sup> For example, a 2003 study of the undocumented and legal immigrant high school population in Chicago found that while more undocumented students surveyed had college aspirations (80 percent) than did their legal immigrant counterparts (77 percent),

43 percent of undocumented students indicated that they did not know how they would pay for college, compared to 17 percent of immigrant students with legal status.<sup>27</sup> Perhaps more troubling is the fact that even if undocumented students attend college, their perceptions about the availability of financial aid may affect whether or not they integrate into institutions' academic and social settings and whether they ultimately persist.<sup>28</sup>

Taking this all one step further, it is important to recognize that even if undocumented students do attend and complete college using state resident tuition, state laws do not address the fact that even upon graduation their unauthorized status prevents them from working legally in the United States.<sup>29</sup> Without legal residency, college-educated undocumented immigrants will find it difficult or impossible to enter professional positions and thus may be relegated to lower paying, unskilled positions that they would have obtained without a college degree—all of which may make them less likely to bother with postsecondary education.

At the federal level, while a DREAM Act would be the best solution proposed to date for such interconnected problems, it is still not a perfect solution for two reasons. First, like other Congressional amnesty initiatives of the past, the DREAM Act would amount to a “one-time fix”<sup>30</sup> since it would apply only to those immigrants who entered the United States five years prior to its passage and would not apply to undocumented children brought to the United States post-enactment. This potentially re-starts the problem once the current group of eligible students cycle through the eligibility requirements. Second, DREAM Act students would only be eligible for federal aid in the form of student loans, federal work study, and aid for members of the military (Subtitle C, Sec 631, 2006). The fact that they would not, however, be eligible for federal grant aid amounts to a serious financial obstacle to access.

### **The Benefits and Costs Under Current Law**

Numerous national-level empirical studies have been conducted on the economic costs and returns of immigrant populations, both documented and undocumented, although by its very nature, estimating the impacts of the latter is difficult. Using various methodologies and scenarios, researchers have examined, for example, the public fiscal costs and returns of immigrants in terms of social services used relative to taxes paid and their effects on employment

and wages, the growth rate of the economy, and prices of goods and services, among other variables.<sup>31</sup> Though such studies provide interesting snapshots of some of the costs and returns of immigrant populations, they also have limitations. These limitations include the fact that the immigrant population itself is not homogenous and so “typical” behavioral assumptions concerning immigrants often skew the studies’ results,<sup>32</sup> the use of different time spans (immigrants’ impacts on receiving communities in the short-term versus long-term may be quite different),<sup>33</sup> and the fact that immigration may have quite different impacts in different locations as a result of localized demographic or economic structures, such that immigrants may be beneficial to the local economy in Georgia but not in Kansas. Despite reaching often quite different conclusions, such studies have, however, generally illuminated some important points. First, recent immigrants generally have low incomes, lower than those of native residents. This is significant because, typically, lower-income families contribute less to public revenue. Second, research indicates that, although children and elderly immigrants consume more tax revenues than they contribute (as is also the case with U.S. citizens who are children or elderly), immigrants are net tax payers during their working age years. Finally, the long-term fiscal impact of an immigrant depends upon the level of education achieved. *In particular, immigrants with more education have more positive long-term fiscal impacts.*<sup>34</sup> Putting these together, then, the fact that many studies show undocumented immigrants as net consumers (rather than contributors) of public services appears to be “more a product of their low incomes [and low educational levels] than their immigration status.”<sup>35</sup>

The notion that higher levels of education can translate into higher public fiscal returns was demonstrated in a recent RAND/Hispanic Scholarship study of the potential economic benefits of doubling the rate at which U.S.-born Hispanics receive college degrees.<sup>36</sup> The study estimated a cost of \$6.5 billion to double the rate of Hispanics earning a bachelor’s degree; however, doing so would result in an increase of \$13 billion in public revenues in the form of funds from increased taxes and contributions to Medicare and Social Security, and savings made in public welfare, health, and law enforcement programs—a 2 to 1 public benefit cost ratio. RAND researchers found that it would take only 13 to 15 years for the public to recoup the costs of the necessary investment in education.<sup>37</sup>

## **Economic and Social Returns of Investing in Undocumented Students' Higher Education**

The finding that immigrants with more education have greater long-term fiscal impact on a receiving society echoes much of the literature surrounding human capital theory and the investment concept of education—investing in education generally increases individuals' lifetime earnings and makes them more productive members of the labor force, which itself translates into higher levels of output, income, and economic return at the local, state, and national levels.<sup>38</sup> Along with the quantifiable economic benefits of investing in education, scholars have also pointed to the broader societal impacts of higher levels of educational attainment—Bowen (1971), for instance, argued that education has value beyond direct economic benefits because it contributes to enriching individuals' lives and the societies in which they live, whereas Baum and Payea (2005) observed significantly lower incarceration rates and higher volunteerism among those with some college.

Critics of the idea that increased investment in education necessarily translates into economic growth posit that the relationship between education and the economy is tentative at best. Wolf (2002), for example, notes that while education is certainly good for the educated who benefit from higher incomes, it also is true that more education and more education spending do not automatically mean more benefits for society. Pointing to flawed methodologies used to calculate social rates of return on education, she argues that there is not enough convincing quantitative evidence to support the widely accepted assumption that education can deliver economic growth. Further, she concludes that policymakers and business people who focus on education's impact on economic growth are overlooking what is at the heart of education—knowledge and values that are fundamental to society.

How the economic benefits from investing in higher education are quantified, then, may depend on how inputs and returns are measured and compared. What is clear, though, is that the discourse around higher education among policymakers at the state and federal levels is one that largely values higher education relative to its contribution to economic growth. While this may or may not be ideal, it is the political and economic reality in which higher education policy is made.

Are there benefits to be had, then, both to the individual and to the state, from improving undocumented immigrants' postsecondary educational attainment levels? Unfortunately, to date no empirical studies of the returns (either

individual or public) of investing in undocumented individuals' postsecondary education exist, and attempting such a calculation would be monumentally complex. It is possible, however, to explore the most commonly cited returns on investment in postsecondary education more generally, and then to extrapolate how these benefits might accrue in the case of undocumented students. In this regard, four sets of benefits of higher education have been commonly identified, these being public economic benefits, private economic benefits, public social benefits, and private social benefits (see Table 3).

**Table 3: The benefits of higher education**

	<b>Public</b>	<b>Private</b>
<b>Economic</b>	Increased tax revenues	Higher salaries and benefits
	Greater productivity	Employment
	Increased spending on consumer goods and services	Higher savings levels
	Increased workforce flexibility	Improved working conditions
	Decreased reliance on government financial support	Personal/professional mobility
<b>Social</b>	Reduced crime rates	Improved health/life expectancy
	Increased charitable giving and community service	Improved quality of life for offspring
	Increased quality of civic life	Better consumer decision making
	Social cohesion/appreciation of diversity	Increased personal status
	Improved ability to adapt to and use technology	More hobbies and leisure activities

NOTE: From The Institute for Higher Education Policy (1998, March). *Reaping the benefits: Defining the public and private value of going to college*. Washington, DC.

Would the private higher education benefits outlined in Table 3 accrue for undocumented college graduates in the same way as for residents? The answer to this question will depend upon changes in the law, for even in states that currently provide undocumented immigrants with resident tuition or tuition aid for college, the students' status will remain undocumented upon graduation, preventing them from working legally. This means that they may end up working in lower-paying, under-the-table jobs that require limited skills and in which they can largely go undetected. Upon graduation, these undocumented students, then, may not see the private economic benefits of lower unemployment, higher salaries, improved working conditions, higher savings, and professional mobility. They may also not reap the private social benefit of increased personal

status or improved quality of life for their children. This is significant, for in choosing to pursue postsecondary education undocumented students will, in effect, forego the earnings they could have accrued by working those four years (albeit without authorization and, most likely, in a low-paying position) even though their net returns to postsecondary education are uncertain. Given that the economic costs seem to outweigh the payoffs, it is likely that many undocumented students will decide that even with access to in-state tuition it is simply financially not worth going to college.

Although for the individual student, then, going to college may be a risky, though laudable, decision, discerning whether or not there are public economic and social benefits to increasing undocumented students' access to college may be the more relevant question for public policy debates, since state policymakers are likely to be more concerned about the collective social return (in the form of greater economic competitiveness and/or reduction of social problems) on their investment in higher education. Presumably, the ten states that offer resident tuition to undocumented students have decided that it is worth making some type of fiscal investment in these students, whether that be in the form of state-based financial aid (Texas, Oklahoma, and New Mexico) or simply through the fact that an institution's tuition is typically lower than the actual per student costs incurred by the institution—the result of the fact that many costs for facilities, utilities, and other operations are subsidized by the institution and the state. Again, though, as in the case of individual returns, the public economic benefits would accrue only if students can obtain earnings commensurate with those of a college-educated worker who can work legally after graduation. Certainly, public social benefits in the form of reduced crime, improved civic life, and appreciation of diversity may be enjoyed, but these may not be sufficient incentive for more states to invest in undocumented students. It is important to recognize, however, that this problem is not one confined to expending public resources on undocumented students—any time a state invests in the education of a student, even U.S. citizens, there is always the risk that upon graduation students will move to another state, such that the state that funded the student will not gain any further economic benefit.

What is needed for undocumented students, then, beyond greater access to higher education, is the full enfranchisement that results from documented status, thus leading to higher-paying jobs that can improve their individual

socio-economic status. There is an apparent policy disconnect between providing tuition benefits to undocumented students while not providing a mechanism that allows either the students themselves or the public to reap the returns of this investment. This policy disconnect takes on greater or lesser proportions depending on predictions of future workforce needs. For example, by some estimates by 2015 the United States will have increased its college participation rates by only 13 percent, a growth rate that will cause it to lag further behind other developed nations, including Canada, Korea, and Sweden, in levels of postsecondary attainment.<sup>39</sup> Carnevale and Fry (2001) estimate that by 2020, the United States will have created 15 million new jobs requiring some college education, but will face a shortfall of 12 million workers with qualifications to fill the new positions. Furthermore, the Aspen Institute (2002) notes that while economic growth in the United States has traditionally been facilitated by growth in the numbers of native-born workers of prime working age, from now until 2021 there will be no net increase in the numbers of native-born workers aged 25-54, so any growth in the labor supply must come from immigrants or older workers. These two trends mean that the projected worker and skills gap could threaten U.S. productivity, growth, and international competitiveness and, most importantly, widen the socio-economic divide.<sup>40</sup> Certainly, it should be recognized that predicting the future is fraught with difficulties. Thus, Rothstein (2002), positing that estimates of a college-educated workforce shortage are wildly exaggerated, warns against expanding higher education based on predicted needs of the future workforce, concluding that many of the jobs in the expanding service sector will not require college-educated workers. Nevertheless, even he predicts about a 1 percent shortage in college-educated workers over the next few years.

### **Arguments About Costs**

Precise figures of the exact costs of extending resident tuition to undocumented students are difficult to come by as the majority of cost estimates are annualized and thus do not reflect costs relative to long-term returns in the form of benefits such as increased tax revenue. There are clear direct costs, however, of federal and state measures to increase undocumented students' access to higher education. The Congressional Budget Office (2006), for instance, estimates that the costs of implementing the DREAM Act of 2006 would be some \$60 million between 2007 and 2016. At the state level, costs depend on the number of undocumented students who actually participate, the difference between resident and

non-resident tuition, and whether students are eligible for state-based scholarship programs. New Mexico, for example, estimated that the cost of extending in-state tuition to undocumented students was not “significantly large” but that the costs to its Lottery Tuition Scholarship fund would be between \$200,000 and \$600,000 over a four-year time period.<sup>41</sup> The State of Washington estimated the fiscal impact of its law at less than \$50,000 per year.<sup>42</sup> Researchers at the University of Illinois-Chicago have estimated it would cost Illinois \$46 million annually in lost revenue from the difference between resident and non-resident tuition, although these estimates were based on the assumption that all eligible undocumented students in Illinois would take advantage of the resident tuition and that all undocumented students would also have otherwise attended college paying full non-resident freight.<sup>43</sup>

On the other side of the coin, however, the Massachusetts Taxpayers’ Foundation (2006) estimated that resident tuition for undocumented students in that state would actually net new revenues over a three-year period of \$2.5 million by expanding the numbers of students at the state’s underutilized postsecondary institutions. Such net gains may also be reaped in other states where undocumented students paying in-state tuition would represent new students, thus generating revenue. This is particularly significant in states where the difference between in-state and out-of-state tuition is so great that very few undocumented students would attend if they were required to pay full non-resident tuition and in states where higher education capacity exceeds the number of students who apply. For the eight states that will see significant (11-35 percent) declines in the number of high school graduates and the twelve that will experience more moderate reductions (1 to 8 percent) during the next two decades, then, undocumented students could represent an important untapped higher education market.<sup>44, 45</sup>

In weighing the potential costs and benefits of increasing higher education access for undocumented students, though, it is also important to consider the costs to institutions themselves, particularly given that evidence suggests that undocumented students are likely to come from low-income backgrounds and that low-income students often arrive on campus with risk factors that require institutional attention<sup>46</sup>—for example, students from low-income backgrounds often have lower levels of academic preparation that require remedial coursework or specialized programs to ensure retention, all of which mean more institutional dollars need to be invested in the student. However, given that

proposals to provide access to undocumented students require them to have graduated from a U.S. high school, these problems are not confined to undocumented students and would also be associated with having to educate a citizen with similar socio-economic status.

Certainly, opponents of measures to provide in-state tuition to undocumented students argue that the direct costs are simply too high and that it is patently unfair to ask taxpayers to shoulder the burden for non-U.S. citizens. Thus, FAIR estimates that providing K-12 education for undocumented children already costs the United States some \$7.4 billion per year and that providing access to college would only cost more.<sup>47</sup> However, the fact that the *Plyler* ruling requires undocumented students to be educated at least through the end of high school means that there are today tens of thousands of undocumented students graduating from high school each year, many of whom have lived in the United States for nearly two decades and who are unlikely to leave after graduation. Moreover, even if the U.S. border were hermetically sealed today, the immigration patterns of the past 20 years mean that U.S. high schools will be graduating undocumented students for at least the next 15 to 20 years, which raises the policy question of what to do with such students when they do finish high school. Irrespective of whether we may agree with the moral argument that allowing such students access to college would be rewarding the illegal behavior of their parents, then, from an economic policy point of view the major question would seem to be whether allowing them to go to college and to work would serve as a means to begin to recoup some of the social investment already made in them.

Finally, opponents of enacting either federal or state legislation to provide tuition benefits to undocumented immigrants argue that doing so condones illegal immigration and will be an incentive for more people to enter the United States illegally in search of education benefits, which will further increase costs. This interpretation of the migration process—that immigrants are attracted to the United States by high social benefits (health, education, and welfare)—fails to appreciate the complexity of international migration. Factors including the role of migrant networks and family connections, the migration industry (labor recruiters, brokers, interpreters, smugglers, etc.), structural dependence on immigrant labor on the part of host countries, and structural dependence on exporting labor on the part of sending nations all impact the migratory process.<sup>48</sup> Although the empirical evidence suggests undocumented workers do not come

to the US to take advantage of its welfare system, and conversely are not likely to leave because the state denies certain benefits, the dominance of this discourse has been significant: It has served to structure the political thinking and rhetoric of those who oppose giving undocumented students access to in-state tuition. They suggest that to grant such students this access will simply encourage greater migration and/or reward their parents' illegal behavior.

## **Conclusions and Policy Recommendations**

Approximately 1.8 million of the nation's 11 million undocumented immigrants are under the age of 18.<sup>49</sup> Where, exactly, these children end up as adults along the socio-economic stratum may well depend on whether or not they have access to affordable postsecondary opportunities and whether they then have opportunities to put their education to work as legal permanent residents. Although state laws are important in that they are strong statements of states' fundamental belief in the importance of equal educational opportunities for all students, state laws alone cannot fully address financial barriers to access or issues related to employment. This means that neither the students themselves nor society at large can reap the full spectrum of benefits that college-educated undocumented students could bring. Clearly, passage of the federal DREAM Act is the best solution currently on the table, since it would allow access to federal student loans and enable eligible students to obtain legal permanent residence. However, a more comprehensive solution would be for the DREAM Act to allow eligible undocumented students access to additional federal financial aid beyond student loans and to extend eligibility beyond those who are already in the United States at the time of its passage.

Although the immediate, direct costs of improving undocumented students' postsecondary opportunities are real and in some cases significant, there are likely to be far greater long-term costs for essentially excluding from the benefits of higher education an entire group of individuals who have received their K-12 education in the United States. Obviously, however, neither higher education nor immigration policies are made in a political vacuum, and what may be good in the long term from a public policy perspective may be untenable as a political position when the future is defined in terms of the next election cycle.

While the federal aspects of undocumented students' postsecondary access are being debated, including giving them residency status so they can legally work,

states can impact undocumented students' educational attainment through other policy options. Two sets of policies may be appropriate in this regard. First, improving postsecondary opportunities for undocumented students is arguably just one piece of the puzzle to ensure that there are no gaps in undocumented students' educational attainment. A well-coordinated state-level educational policy to increase the numbers of undocumented students in public colleges and universities should include not only resident tuition, but also a seamless K-16 approach that addresses high drop-out rates among at-risk populations, identifies best practices to overcome K-12 obstacles such as language and cultural barriers and lack of parental involvement in education, and institutes college retention strategies to ensure that the undocumented students who enter institutions actually graduate.

Second, the issue of the costs and benefits of providing undocumented students access to postsecondary education is clearly one that is sensitive to geography. Currently, some 30 states will see increases in the numbers of students graduating from high school in the next ten years, ranging from increases of less than 10 percent to more than 100 percent, whereas the other 20 states will experience significant declines.<sup>50,51</sup> In states where demand for seats at public colleges and universities is likely to outpace capacity, the costs of providing sufficient facilities to educate undocumented students may be greater than the immediate benefits to be reaped in terms of tuition dollars (though still less than the long-term benefits of so doing). In those twenty states where the numbers of students graduating from high school will decline, however, providing access to undocumented students may serve as a way to address the problem of too few students for the amount of educational infrastructure that such states have. As different states grapple with their various future enrollment challenges—challenges that are shaped by the particular demographic and economic forces impacting them—they might consider policies and interstate agreements that facilitate undocumented students' migration to attend public institutions in other states. This might provide benefits both to the “student rich” sending states and to the “student poor” receiving states. By admitting undocumented students from neighboring states, those states with too few students, in particular, would be able to fill previously vacant higher education seats and in the process receive new tuition dollars. Already, agreements to share students and resources exist among the states of the nation's four higher education compacts—the Midwestern Higher Education Compact (MHEC), the Southern Regional Education

Board (SREB), the New England Board of Higher Education (NEBHE), and the Western Interstate Commission for Higher Education (WICHE). For example, students from any of the six NEBHE states may study at any other member state's public higher education institutions for reduced tuition rates when their home state does not offer the undergraduate or graduate degrees they are seeking.<sup>52</sup> Expanding such agreements to undocumented students would allow a state such as Texas, which will experience growth upwards of 25 percent, to partner with neighboring Louisiana, which is anticipated to see a decline of at least 12 percent in its high school graduates. Of course, such an approach assumes that Louisiana would agree to allow undocumented students to pay in-state rates to attend college and that Texas and Louisiana laws could be crafted to withstand judicial scrutiny (which would entail ensuring that a U.S. citizen from Texas would be eligible for Louisiana in-state rates under the same scheme), and that students and their parents from one region of the country would accept being educated out of state. Nevertheless, such a system is but one example of how states might look beyond their own borders to consider regional approaches to addressing postsecondary access for undocumented students.

## ENDNOTES

<sup>1</sup> Passel, 2003.

<sup>2</sup> Passel, 2005.

<sup>3</sup> College Board, *Trends in College Pricing*, 2005.

<sup>4</sup> Passel, 2005.

<sup>5</sup> Such variations are reflected in U.S. attitudes towards immigrants from Mexico: post-World War I "nativism" led to the establishment of the U.S. Border Patrol in 1924; virulent anti-immigrant sentiments during the Depression saw massive deportations; the World War II economic boom resulted in public acceptance of the importation of workers for the bracero program; and post-World War II recession and McCarthyism led to the simultaneous deportation of unauthorized immigrants (to satisfy those suspicious of foreigners) and the re-importation of the legal immigrants via the bracero program (to U.S. business interests). Between 1965 and 1985, Mexican migration to the United States developed into a system that "minimized the negative consequences and maximized the gain for both countries" (Massey, Durand, and Nolan, p. 71). In such a migratory regime, US border states received a steady supply of the most able workers (80 percent without dependents) to fill less desirable jobs, and most migrants did not utilize U.S. social services, such as schools, welfare, or food stamps (pp. 70-71). The "relatively porous border" meant that Mexican migrants could return home to families when work in the United States dried up, thus discouraging significant settlement in the United States. Indeed, until the mid-1980s, only 39 percent of migrants attempted to settle in the United States (p. 71).

<sup>6</sup> Stevenson, 2004.

<sup>7</sup> U.S. Bureau of the Census, Educational Attainment in the United States, 2004.

<sup>8</sup> Romero, 2002.

<sup>9</sup> Massey, Durand, and Nolan, p. 87.

<sup>10</sup> Ruge and Iza, 2005.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Krueger, 2006.

<sup>14</sup> Olivas, 2004.

<sup>15</sup> Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, Virginia, Washington and Wisconsin have proposed legislation giving resident tuition to undocumented students. Alaska, Arizona, Colorado, North Carolina, Utah and Virginia have considered legislation banning undocumented students from receiving resident tuition. In 2003, Maryland's governor vetoed a bill allowing in-state tuition for undocumented students and Virginia's governor vetoed a bill prohibiting undocumented students from receiving resident tuition (Day v. Sebelius, 2005). In 2006, legislation was introduced in the Georgia General Assembly to deny undocumented students admission to public postsecondary institutions. The bill, SB 171, was later withdrawn by its sponsor, Senator Chip Rogers.

<sup>16</sup> Ruge and Iza, 2005.

<sup>17</sup> Defendants' California State University and California Community Colleges' Reply, 2006.

<sup>18</sup> President Bush has made immigration one of his domestic priorities, focusing on reform that combines increased border security, improved enforcement of immigration laws, holding employers accountable for hiring undocumented persons, a temporary worker program, and the establishment of a process of permanent residency for those already in the U.S. (the White House, 2006). Although the Senate bill combines all of his priorities for immigration, some members of the House of Representatives have rejected any immigration legislation that includes residency or citizenship for undocumented individuals. Representative F. James Sensenbrenner, the House lead negotiator on immigration, "said he would continue to reject President Bush's call for a compromise because he believed that the president, who supports a path to citizenship for illegal immigrants, remained out of touch with the public" (Swarns, 2006, p. 9). Former Speaker of the House, J. Dennis Hastert: "Our number one priority is to secure the border and right now I haven't even heard a lot of pressure to have a path to citizenship." The immigration bill that passed out of the House in 2005, The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, focused only on tightening the border and enforcement (Hulse, C., 2006, p. 1).

<sup>19</sup> College Board, *Trends in Student Aid*, 2005.

<sup>20</sup> College Board, *Trends in College Pricing*, 2005.

<sup>21</sup> There may be several other reasons for the relatively low numbers of undocumented students taking advantage of resident tuition. Language and cultural barriers, shortage of trained teaching professionals, lack of parental involvement, comfort and safety, and work conflicts are often cited as major obstacles to immigrants' educational attainment (Atiles and Bohon, 2002, pp. 42-43). Additionally, there may be a lack of information about college and the availability of resident tuition or complicated application procedures that lead to leaks in the K-16 pipeline.

<sup>22</sup> Lewis, 2005, p. A1.

<sup>23</sup> Fischer, 2004, p. 19.

<sup>24</sup> Frank, n.d.

<sup>25</sup> Paulsen, 2001, p. 121.

<sup>26</sup> Hearn, 2001.

<sup>27</sup> Mehta and Ali, 2003.

<sup>28</sup> Cabrera, Nora, and Castañeda, 1992; St. John, Paulsen, and Starkey, 1996.

<sup>29</sup> 8 U.S.C. 1324a and 1324a (b) (1) makes it unlawful and punishable by fines to employ unauthorized persons and requires employers to verify and document that employees have proper documentation.

<sup>30</sup> Connolly, 2005.

<sup>31</sup> Smith and Edmonston, 1997, p.4.

<sup>32</sup> Vernez and McCarthy, 1996, p.45.

<sup>33</sup> Smith and Edmonston, 1997.

<sup>34</sup> Ibid, p.11)

<sup>35</sup> Vernez and McCarthy, 1996, p.45.

<sup>36</sup> Vernez and Mizell, 2001.

<sup>37</sup> Ibid, p. ix.

<sup>38</sup> Paulsen, 2001, p. 56.

<sup>39</sup> Ruppert, 2003.

<sup>40</sup> Aspen Institute, 2002.

<sup>41</sup> S.B. Bill 582, Fiscal Impact Report, 2004.

<sup>42</sup> H.B. 1079 Fiscal Note, 2003.

<sup>43</sup> Mehta and Ali, 2003.

<sup>44</sup> Western Interstate Commission on Higher Education, 2003.

<sup>45</sup> Hawaii, Louisiana, Maine, Montana, North Dakota, South Dakota, Vermont, and Wyoming are predicted to see an 11 to 35 percent reduction in high school graduates between 2002-2018. Iowa, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, Oklahoma, Pennsylvania, West Virginia, and Wisconsin will experience reductions between 1-8 percent (WICHE, 2003).

<sup>46</sup> Corrigan, 2003, p. 27.

<sup>47</sup> Breaking the Piggy Bank, 2003.

<sup>48</sup> Castles, 2005.

<sup>49</sup> Passel, 2006.

<sup>50</sup> WICHE, 2003.

<sup>51</sup> The highest growth (26 to 103 percent) will take place in Arizona, Colorado, Florida, Georgia, Indiana, Nevada, North Carolina, Texas, and Utah. Moderate growth (13-19 percent) will occur in Delaware, Idaho, Maryland, New Jersey, South Carolina, and Virginia. Alabama, Alaska, Arkansas, California, Connecticut, Illinois, Kansas, Kentucky, Michigan, Minnesota, Ohio, Oregon, Rhode Island, Tennessee, and Washington will experience low growth (10 percent or lower) (WICHE, 2003).

<sup>52</sup> Morphey, 2005.

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