

**In-State Tuition for Members of the
Armed Forces, Foreign Service, and their Families
(Higher Education Opportunity Act, 20 U.S.C. 1015d)**

Background from the American Foreign Service Association (www.afsa.org)

Congress in Public Law 117-81 of December 27, 2021, amended the long-standing federal law requiring states to extend in-state tuition rates to members of the U.S. armed forces (see the end of this document for the text). The amendment extended coverage to members of the U.S. Foreign Service because, just like members of the armed forces, they frequently change their location of assignment as directed by government orders over the course of a long federal career.

The law requires that states grant in-state tuition to members of the military, Foreign Service, and their families in two circumstances:

-- When their permanent duty station is in the state, irrespective of how long they have been physically present at that location, or

-- When that is their state of domicile, irrespective of how long it has been since they were last physically present in that state.

Documentation of Status

States have long applied this special consideration to members of the military and their families. To do so, some states have developed lists of evidence for military members to present to document their current permanent duty station or their state domicile. As state higher education authorities will now make the same evaluation for applications for in-state tuition from members of the Foreign Service and their families, the following information is presented to help do that.

1. To document being a member of the U.S. Foreign Service

U.S. Foreign Service members are employed in several federal agencies: the Department of State, the U.S. Agency for International Development, the Foreign Commercial Service of the Department of Commerce, the Foreign Agricultural Service and the Animal and Plant Health Inspection Service of the Department of Agriculture, and the U.S. Agency for Global Media.

Those agencies have both Foreign Service and non-Foreign Service employees, but all their Foreign Service employees (and only Foreign Service employees) possess a U.S. government Official Form 126 “Foreign Service Residence and Dependency Report” issued by their agency. OF-126 forms are issued to all new Foreign Service members and remain valid throughout their careers. Evidence of their continued employment in their Foreign Service agency can be shown via documentation such as a photocopy of their agency identification card, W-2 statements, or pay statements.

Spouses and children of Foreign Service members can provide the standard documentation like

any person of those relationships such as a marriage certificate, birth certificate, or federal income tax form.

2. To document a permanent duty station in the state

Foreign Service members are transferred to new duty locations by written orders issued by their employing federal agency. The formats vary, but they all detail the location of assignment, the date the assignment begins, and the length of the assignment. Foreign Service members serving domestically can also provide standard documentation like any person of physical presence such as utility bills or residential rental agreements.

3. To document domicile in the state

After joining the Foreign Service, its members typically spend two thirds of their careers serving overseas and are rarely assigned to work in their state of domicile. But, like all people, their state of domicile does not change unless they establish a physical presence in a new state with the intent of making it their permanent home. Under the Vienna Convention on Diplomatic Relations to which the United States is a signatory, U.S. diplomats and their families are not considered to be a resident of the foreign country to which they are accredited.

The federally issued document showing state of domicile for Foreign Service members is the Official Form 126 “Foreign Service Residence and Dependency Report” which is similar in function to the U.S. military’s DD Form 2058 “State of Legal Residence Certificate.” On the OF-126 in block 4, the Foreign Service member certifies their state of legal residence (domicile) under penalty of a \$10,000 fine and five years in prison for willful misrepresentations.

Furthermore, unlike the DD-2058, the OF-126 requires the Foreign Service member to also declare their residence address for service separation. That is the location where the government will ship the Foreign Service member, their family, and household effects at retirement. Listing their state of domicile as their separation address is clear evidence of their intent to resume physical presence in that state after their Foreign Service career ends.

If state educational authorities want additional documentation of legal residence, Foreign Service members assigned outside that state can document their earlier physical presence by showing past state tax returns, school transcripts, voter registration, or other evidence of long-time physical presence. After joining the Foreign Service, they can show continuing ties to their state of domicile by presenting documentation such as absentee voting, maintaining that state’s driver’s license when assigned overseas (when serving domestically, the state where they are assigned may require them to get a local driver’s license), paying nonresident state income tax (when required), and reflecting that state in their will. Some, but not all, may continue to own property in the state and may visit the state when on leave from work.

Effective Date

Congress, in their 2021 amendments to the Higher Education Opportunity Act, set the first period of enrollment that begins after July 1, 2024, as the date by which states must grant in-state

tuition to qualifying Foreign Service members and their families. This delay in mandatory application affords time for the states that need to do so to amend state law or regulations. However, numerous states have long granted in-state tuition to Foreign Service members on the same basis as the military. Some other states that did not do so previously are implementing the new federal requirements on July 1, 2023. All states must do so by the July 1, 2024, deadline.

For More Information

Questions can be sent to the American Foreign Service Association at member@afsa.org or by writing to AFSA, 2101 E Street NW, Washington, DC 20037.

Revised May 2023

20 U.S.C. 1015d (excerpts), as amended by Pub. L. 117-81, Dec. 27, 2021

§1015d. In-State tuition rates for members of qualifying Federal service

(a) Requirement

In the case of a member of a qualifying Federal service who is on active duty for a period of more than 30 days and whose domicile or permanent duty station is in a State that receives assistance under this chapter, such State shall not charge such member (or the spouse or dependent child of such member) tuition for attendance at a public institution of higher education in the State at a rate that is greater than the rate charged for residents of the State.

(b) Continuation

If a member of a qualifying Federal service (or the spouse or dependent child of a member) pays tuition at a public institution of higher education in a State at a rate determined by subsection (a), the provisions of subsection (a) shall continue to apply to such member, spouse, or dependent while continuously enrolled at that institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State. ...

(d) Definitions

In this section, the term "member of a qualifying Federal service" means—

(1) a member of the armed forces (as defined in section 101 of title 10, United States Code) who is on active duty for a period of more than 30 days (as defined in section 101 of title 10, United States Code); or

(2) a member of the Foreign Service (as defined in section 103 of the Foreign Service Act of 1980 (22 U.S.C. 3903)) who is on active duty for a period of more than 30 days.

(Pub. L. 89-329, title I, §135, as added by Pub. L. 110-315, title I, §114, Aug. 14, 2008, 122 Stat. 3111 and amended by Pub. L. 117-81, title LXII, §6206, Dec. 27, 2021)