Gift and Endowment Support
For Non-AB540 Undocumented Students

Background

The intent of the document is to provide guidance on how the University of California can extend non-State financial aid to undocumented students who do not qualify for AB540 Nonresident Supplemental Tuition (NRST) exemptions, an opportunity previously that was unavailable before July 1, 2019. This guidance is not intended to describe how to augment financial aid packages for students who already qualify for financial aid, e.g., AB540 recipients or state residents.

Prior to July 1, 2019, the University of California’s ability to provide financial aid to undocumented students was shaped by a few important laws:

1. **8 U.S.C. s 1621** prohibits the provision of “state or local public benefits,” including in-state tuition and financial aid, to undocumented students.1 However, it enables a state to affirmatively extend benefits to undocumented people through state legislation (see #3 below).

2. **8 U.S.C. s 1623** does not allow states to offer postsecondary education benefits to undocumented people on the basis of “residence” unless the same benefits are available to all citizen students (regardless of residence).

3. **Ed. Code 68130.5 (“AB 540”), 66021.6, and 66021.7** extended to students who attended a California school for a specified time2 an exemption from paying nonresident tuition and state and University financial aid eligibility. These laws (and their updates) and the subsequent Regents Policy 3106 and 3202 define the eligibility for the state benefit on a basis other than documentation status, or residence.

The State of California’s actions in #3 created the opportunity to exempt undocumented students who satisfied AB540 from paying nonresident tuition as well as to provide financial aid to them. Undocumented students who did not qualify for AB540 were not eligible for any UC-funded or State-funded financial support.

The California State Budget for 2019-20 included language that changes the eligibility of non-AB540 undocumented students for certain forms of financial aid.

SEC. 2. Section 66021.9 is added to the Education Code, to line 8 read:

(a) The University of California may provide a scholarship as established by the university or a campus of the university, derived from nonstate funds received for that purpose, to any of its enrolled students who meet the eligibility requirements for that scholarship.

(b) The Legislature finds and declares that this section is a state law within the meaning of subdivision (d) of Section 1621 of Title 8 of the United States Code.

(c) This section shall remain in effect only until June 30, 2021, and as of that date is repealed.

In this context, “nonstate funds received for that purpose” means gifts and endowments received for the purpose of awarding scholarships.

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1 8 U.S.C. s 1621 also specifically allows for such benefits to accrue to international students on a valid visa.

2 The original AB 540 required students to have attended for three years and graduated from a California high school. This has been expanded to recognize primary, secondary, or community college attendance, as well as equivalents to graduating from high school, e.g., obtaining a GED.
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Guidance for Scholarship Programs

Programs that award gift- or endowment-funded financial aid can be extended to undocumented, non-AB540 students. However, the selection criteria used to extend this eligibility may not be based solely on the lack of documentation. Any use of gift and endowment-funded financial aid must comport with the terms of the gift.

**Merit-based Financial Support**

Academic departments or scholarship programs that provide gift- or endowment-funded financial aid to resident and nonresident students alike can simply extend consideration for the awards to undocumented, non-AB540 students using the same criteria applied for other applicants. Previously, these offers would were not available to non-AB540 undocumented applicants. (Employment-based funding, e.g. assistantships, continues to be limited to students who have work authorization.)

For example, academic departments that offer fellowship packages to incoming graduate academic students typically extend financial aid to resident and nonresident students alike on the basis of academic merit. The same may be true for some merit-based awards to students in undergraduate or graduate professional programs.

**Need-based Financial Support**

At the undergraduate level, return-to-aid funded, need-based financial aid (e.g., University Student Aid Program, or USAP) is typically restricted to California residents or students eligible for AB 540 nonresident tuition exemptions. If a campus awards its endowed scholarships in the same way, it will need to develop a new policy that opens the opportunity to nonresidents in a way that targets the intended beneficiaries (i.e., the undocumented, non-AB540 student) without reference to where the student resides (see 8 U.S.C. s 1623 above). To offer scholarships funded by gifts and endowments to undocumented students, campuses may use the following criteria:

- Undocumented student status, and
- Require applicants demonstrate extreme financial need or hardship, and
- Be ineligible for state and federal financial aid.

The process for application will be labor-intensive for campus Financial Aid Offices given that undocumented non-AB540 students will not be eligible to submit either a Free Application for Federal Student Aid (FAFSA) or a California Dream Act Application (CADAA).

**Sunset Provision**

The University will work with partners in Sacramento to extend eligibility for students affected by the State Budget language cited above. However, until that language is changed, a disclaimer should be included with any offer of financial assistance to students who may be enrolled after June 30, 2021.