



<b>Guidance on</b>	Guidelines on Administering Identity-Conscious Financial Aid
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## UNIVERSITY OF CALIFORNIA

### Guidelines on Administering Identity-Conscious Financial Aid

#### I. SUMMARY

The University of California financial aid policies, programs and practices are structured to support the goal of inclusive excellence in the enrollment and graduation of undergraduate, graduate, and professional students from all backgrounds. As the Regents' Financial Aid Policy 3201 states, financial considerations should not be an insurmountable obstacle to student decisions to seek and complete a University degree.

These guidelines should be understood to provide the University community with advice on administering financial aid that is sensitive to the recipients' identities in accordance with State and federal laws that may apply to their administration.

#### II. DEFINITIONS

For purposes of these Guidelines, the terms listed below have the following definitions:

1. *"Identity-Restricted Financial Aid"* means aid for which a student's race, sex (including gender identity and sexual orientation for purposes of this policy), color, ethnicity, or national origin is a factor in determining whether a student receives the aid or the amount of aid.
2. *"Identity-Conscious Financial Aid"* means aid for which a student's race, sex (including

gender identity and sexual orientation for purposes of this policy), color, ethnicity, or national origin are considered in determining the funding source of a student's aid, but not eligibility, receipt, and amount of financial aid.

3. “*Gift*” includes grants, donations, contributions, distributions from trusts or other entities, bequests and all other charitable transfers.
4. “*University*” includes all University campuses; the Lawrence Berkeley National Laboratory; Medical Centers, the Office of the President; Agriculture and Natural Resources; and Campus Foundations, Recognized Campus Support Groups, Constituency Alumni Groups, and Campus Alumni Associations as defined by Regents Policy 5203 and staffed by University employees.
5. “*Financial Aid*” includes scholarships, fellowships, grants, loans and other payments to students to assist them financially while at the University.

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### III. LEGAL BACKGROUND

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Federal and State laws affect the University's ability to administer and, in some cases, advertise Identity-Restricted or Identity-Conscious financial aid.

1. Proposition 209 refers to article I, section 31 of the State of California Constitution, which prohibits the University from discriminating or conferring benefits, including financial aid, on the basis of race, sex, color, ethnicity, and national origin.
2. Title IX refers to Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibits the University from discrimination on the basis of sex, including gender identity and sexual orientation.<sup>1</sup>
3. Title VI refers to Title VI of the Civil Rights Act of 1964 and its implementing regulations, which prohibits the University from discrimination on the basis of race, color or national origin.
4. 8 U.S.C. §1621 prohibits the provision of federal, as well as “state and local,” benefits, including financial aid, to undocumented people, except<sup>2</sup> a state may affirmatively extend benefits to undocumented people through state legislation. 8 U.S.C. § 1623 also restricts the University's ability to offer residency for tuition purposes to undocumented students.
5. “AB 540” refers to California Education Code § 68130.5, which exempts certain students, including undocumented students, who attended and graduated from California schools from paying Nonresident Supplemental Tuition, even as these students continue to be classified as nonresidents. Education Code § 66021.6 and § 66021.7 allow the University to provide State and University financial aid to students who satisfy the requirements in Education Code § 68130.5.<sup>3</sup>

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<sup>1</sup> Gifts to University Athletics and athletic financial aid scholarships are treated under separate Title IX regulations that are not discussed in this document. Consult with UCOP Institutional Advancement regarding the applicable analysis.

<sup>2</sup> 8 U.S.C. § 1621 also specifically allows for such benefits to accrue to international students on a valid visa.

<sup>3</sup> The federal immigration status of Deferred Action for Childhood Arrivals (DACA) provides students with work authorization, but it is not relevant to the provision of financial aid, except for employment-based aid like work-study.

6. “SB 77” refers to California Education Code § 66021.9, which allows the University to provide gift-funded University financial aid to any students, including those who do not qualify for AB 540 and including undocumented students, through June 30, 2027.
7. Federal Immigration Reform and Control Act (“IRCA”) requires all employers to verify that their employees have authorization to work in the U.S.
8. Deferred Action for Childhood Arrivals (DACA) is a federal policy that grants some undocumented students the work authorization required by IRCA.

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#### **IV. ADMINISTERING IDENTITY-RESTRICTED FINANCIAL AID.**

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The University may not accept gifts or administer and award Identity-Restricted financial aid unless it is necessary to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the University.

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#### **V. ADMINISTERING IDENTITY-CONSCIOUS FINANCIAL AID.**

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The University may accept gifts or administer and award Identity-Conscious financial aid in accordance with the stipulations below.

##### **A. Pooling and Matching Funds<sup>4</sup>**

The University may continue to accept and/or administer Identity-Conscious financial aid gifts so long as (1) the terms of the gift permit such aid to be pooled with non-Identity-Conscious financial aid when awarding, (2) the criteria for the award of financial aid is not Identity-Conscious (e.g., grade point average or financial need); and (3) no student receiving such financial aid will receive a greater financial benefit than they would have without the availability of Identity-Conscious funds<sup>5</sup>.

##### **B. Notification to Donors**

In accepting Identity-Conscious financial aid gifts, the donor must be informed that while a donor may express a desire or goal to support students with a particular identity, any of the donor’s funds will replace other funds that the recipient would have received and will not result in that student receiving a larger award or an award on more favorable terms because of the recipient’s identity.

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#### **VI. ADMINISTERING FINANCIAL AID ON THE BASIS OF CERTAIN OTHER DESIGNATIONS AND CLASSIFICATIONS.**

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##### **A. Residency**

The University may accept and administer financial aid that is restricted based on or conscious of a student’s California resident or non-resident status as described in Regents Policy 3105 (Residency and Payment or Waiver of Tuition, Non-Resident

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<sup>4</sup> Previous guidance referred to this practice as “student-to-fund matching.” However, “pool and match” is a more commonly accepted term nationally.

<sup>5</sup> Campuses should consult Institutional Advancement and UC Legal if at any point an Identity-Conscious gift cannot be pooled and matched.

Supplemental Tuition and Mandatory Systemwide Fees).

## **B. Citizenship or Documentation Status**

The University may accept and administer financial aid that is restricted based on or conscious of citizenship or documentation status subject to the restrictions in this section.

The University may provide financial aid to students who are US citizens, permanent residents, or to students on a valid visa, such as international J-1 or F-1 visas under federal law and may even accept and administer gifts restricted to or conscious of such statutes.

### **1. Undocumented Students**

The provisions of 8 U.S.C. § 1621 prohibit the provision of any State benefits, including financial aid, to certain individuals on the basis of their citizenship or documentation status. The University may provide financial aid to some undocumented students because the State of California took affirmative steps to establish eligibility under Education Code § 68130.5, § 66021.6, and § 66021.7 (i.e., “AB 540”), as well as time-limited eligibility under Education Code § 6601.9.

#### **a. Students who Qualify for AB 540**

Students who qualify for AB 540 are eligible for all State and University financial aid, subject to work authorization requirements under IRCA for work-study awards (e.g., citizens, students with DACA status). This includes aid from any fund source.

#### **b. Students who do not Qualify for AB 540**

SB 77 provisions in Education Code § 66021.9 allow the University to provide gift-funded financial aid through June 30, 2027. Because the current statute provisions will sunset unless State law is amended to either remove or extend the June 30, 2027 date, campuses should carefully consider how this could impact any gifts accepted that restrict aid to non-AB 540 undocumented students.

## **C. Members of Federally Recognized Native American Tribes**

UC may provide financial aid to students based on their membership in federally recognized tribes. The University may administer financial aid that is based on membership in federally recognized tribes without applying the guidelines in Section V above.

Financial aid that provides a benefit or is restricted to members of non-federally recognized tribes is subject to the provisions of Section V of these Guidelines.

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## **VII. ASSISTANCE TO OUTSIDE ENTITIES SOLICITING AND ADMINISTERING IDENTITY-RESTRICTED AID**

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### **A. Use of personal time**

University officials may use personal time to raise and assist in the administration of financial aid funds on behalf of an outside entity whether or not the aid is Identity-Restricted. Personal time may include the incidental use of University resources as

permitted for other personal use.

#### **B. Attendance and Participation at Outside Entity Events Fundraising for Identity-Restricted Financial Aid**

University officials may attend outside events benefiting educational or related identity-based opportunities so long as the official does not take a significant role in lending University resources, endorsement, or sponsorship to the event or opportunity. For example, University officials routinely use University resources to attend a variety of outside entity fundraising events where such events may benefit the University, its students, faculty and staff, and this may include events where Identity-Restricted financial aid funds are raised. University officials should not, however, use official time or resources to initiate or plan an Identity-Restricted fundraising event beyond any routine assistance provided to any other outside entity planning similar events.

#### **C. Routine Assistance to Outside Entities in Administering Their Identity-Restricted Awards**

The University may provide routine assistance to outside entities administering Identity-Restricted financial aid funds. Routine assistance is the level of resource or access that the University typically provides to any similar outside entities seeking to assist the University through financial aid and related opportunities. Routine assistance to outside entities that administer Identity-Restricted financial aid is permissible provided that the assistance is of the same type and amount routinely given to any other outside entities seeking to make an award on any basis.

Routine assistance may include 1) advertising financial aid opportunities in a neutral and factual manner without regard to identity-based criteria,<sup>6</sup> 2) providing names of qualifying students (in accordance with applicable privacy laws and policy, including written consent to the release of information), 3) disbursing funds, and 4) distributing and collecting applications on behalf of the entity.

Activities are not routine when the University has some control or influence in the operation of the outside entity or administration of its opportunities. Activities that are not considered routine assistance include University personnel participating in the selection of scholarship/financial aid recipients, awarding recipients of the outside entity's opportunity with UC matching funds that exceed what an individual student would qualify for otherwise, or offering preferential access to University events, programs, or resources.

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### **VIII. IDENTITIES NOT COVERED BY THESE GUIDELINES**

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These guidelines are intended to support the University's compliance with the federal and State laws identified in Section III above. Identities not covered by those laws and these

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<sup>6</sup> Under Title IX provisions, the University may not advertise on its websites or other platforms scholarships that are limited by sex. Neutral advertising of externally held scholarships and fellowship opportunities means that all opportunities are listed in a similar manner regardless of whether they contain identity-based eligibility criteria contemplated under these Guidelines. Any such advertising may not imply, either directly or indirectly, the University's endorsement, support, or favor of any certain opportunities' eligibility criteria nor may the University solicit support for certain select external opportunities and not others.

Guidelines include, but are not limited to, religion, veteran status, disability, parental status, and age. There may be other policies or laws that apply to financial aid for these identities.

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## **IX. ALTERNATIVES TO IDENTITY-RESTRICTED OR -CONSCIOUS CRITERIA**

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The University may choose to advance its educational goals, including diversity and equal opportunity, by introducing or placing additional weight on a broad range of selection criteria when administering financial aid, as long as race, sex, ethnicity, and national origin are not limiting factors.

Financial aid might be solicited, accepted and awarded based on other life experiences and interests. For example, those who are first in their family to attend college; have overcome disadvantaged social or educational backgrounds; are admitted from particular high schools or regions of California; attended a federally designated Minority Serving Institution; have participated in registered UC student organizations; have demonstrated potential for leadership in promoting cross-cultural understanding; have an outstanding record of service dedicated toward helping educationally disadvantaged students; or with a demonstrated academic interest in topics such as race, sex, and multiculturalism as they intersect with traditional academic fields. Such financial aid must be administered such that any interested individual, regardless of their race or sex, has access to the same opportunity and benefits.

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## **X. CONSULTATION**

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Attorneys from UC Legal and administrators in the Office of the President are available to help in interpreting these Guidelines and should be consulted whenever questions arise.

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## **XI. FREQUENTLY ASKED QUESTIONS**

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1. What is an example of “pool and match” or “student-to-fund-matching?”

A campus could pool scholarship dollars directed to Pacific Islander students in the College of Letters and Sciences with other scholarship funds available to any student with a major in the College. Recipients for the pooled College scholarships would be identified based on academic measures such as grade-point average (GPA) and financial need, and the award amount determined based on said financial need. Then, from the list of College scholarship recipients, a Pacific Islander student could be “matched” with a source of donor funds that have a goal to support Pacific Islander students, while other students who are not Pacific Islanders would receive their scholarship funds from other sources. The Pacific Islander student receives the same level of scholarship support as their College peers based on GPA and financial need level.

In other words, criteria other than race and sex must be used to identify and award financial aid and scholarship recipients. Once the recipients are identified, the source of funds can then be matched according to the identities of the recipients.

2. Which funds do we need to use “pool and match” for?

Any University-held, Identity-Conscious gift must be awarded on the basis of “pool and match.”



3. On a campus with a decentralized scholarship model, who is responsible for ensuring that the policy is understood and equitably applied across departments?

Campuses with a decentralized scholarship awarding model must inform and train responsible parties with these guidelines. Campuses may want to consider consolidating scholarship awarding to knowledgeable departments to ensure compliance with these guidelines. For example, a small academic department with an Identity-Conscious fellowship could work with the campus Graduate Division to pool its fund with unrestricted fellowships across other departments.

4. May we continue to accept checks for students from an outside entity that uses Identity-Restricted criteria?

Yes, as this would be routine assistance.

5. Can we set up an external entity that is not subject to these restrictions?

UC cannot assist in establishing any external entity that offers Identity-Restricted scholarships. Any assistance to an outside entity that administers Identity-Restricted financial aid must be routine in nature. Campuses may not direct the entity in selecting scholarship recipients. Consult with UCOP Institutional Advancement about what may constitute routine in this context.

6. There are donors who want to donate money to the University based on identity. How do we support their giving and comply with the law?

Campuses may accept gifts with Identity-Conscious criteria when pooling and matching is possible as described in Section V, but not Identity-Restricted criteria. Campuses must explain the pool and match method of awarding such funds when doing so. Campuses could offer criteria as described in Section IX instead of identity-based criteria.

7. What is the impact of these Guidelines on employment, work-study, or fellowships?

Under federal tax and financial aid law, payments to students are either employment, financial aid, or, in the case of need-based work-study, both employment and financial aid. These guidelines apply to any financial aid program, including scholarships, fellowships and work-study. These guidelines do not address employment. Generally, however, the University also may not make employment-related decisions on the basis of race or sex.

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## **XII. REVISION HISTORY**

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**April 7, 2025:** Guideline revisions include:

- Clarification that all identity-conscious financial aid, regardless of when the gift was received, should be awarded using the “pool and match” method.
- Clarification on “routine assistance” and referrals to outside scholarships.

**June 27, 2024:** Guidelines revisions include:

- Guidance as it relates to race- and ethnicity-conscious aid is largely unchanged from the prior version of these guidelines.
- Guidance as it relates to sex-conscious aid is expanded to include sexual orientation

and gender identity in recognition of recent case law and Title IX rules.

- Section VI on citizenship and documentation status was added.
- Sections V, VII, and IX describe what the University can do, including pooling and matching funds, routine assistance, and alternatives to identity-based aid.

**March 5, 2021:** Guideline update:

- Added the footnote clarifying the defined term “Preferential Financial Aid” and other minor typographical edits
- Reformatted into the standard guideline template and to meet Web Content Accessibility Guidelines (WCAG 2.0.)

**November 1, 2001:** Guideline issuance