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# Navigating Graduate School: Resource Guide for Undocumented Students

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# NAVIGATING GRADUATE SCHOOL: GUIDE FOR UNDOCUMENTED STUDENTS

From Applications to Graduation



**Disclaimer:** Information in this guide is intended for information purposes only. It is not offered for the purpose of providing individualized legal advice. Use of this guide does not create an attorney-client relationship.

## Executive Summary

This guide will detail the legal and practical concerns of undocumented students who are contemplating or currently pursuing a graduate school education. Each section is divided into important milestones that occur during the graduate school process. Topics addressed include the application process, accessing financial aid, transportation, employment, taxes and resources for support.

The focus of this guide is to provide insight and recommendations to the undocumented population in relation to graduate school and life after graduation. Extensive guides and resources currently exist for undocumented students who have received DACA protection, equivalent resources and guides are scarce for undocumented graduate students who do not have DACA protection. Thus, the bulk of this guide is tailored to those without DACA status.

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## I. Terminology

**Undocumented** - A foreign-born person who: 1) entered the United States without inspection or with fraudulent documents; or (2) entered legally as a nonimmigrant but then violated the terms of his or her status and remained in the United States without authorization.<sup>1</sup>

**Undocu-friendly** - This term refers to institutions or states that have policies or systems in place that aim to support undocumented students. For instance, a university that has a counseling program to provide guidance to undocumented students or states with laws that make it easier for undocumented students to get access to financial aid.

**DACA**- Deferred Action for Childhood Arrivals is a program created by the Department of Homeland Security in 2012, aimed at deferring immigration action, such as deportation, for certain undocumented population who arrived in the US as children and met several other enumerated criteria.<sup>2</sup>

**GRE** - Graduate Records Examinations, it is the common standardized test that many graduate schools require you to take as part of the admissions process.<sup>3</sup>

**GMAT** - Graduate Management Admissions Test, commonly required for business school applications, especially Master's of Business Administration (MBA) programs.<sup>4</sup>

**LSAT** - Law School Admission Test, nearly every law school requires students to take the LSATs in order to gain admission.<sup>5</sup>

**MCAT** - Medical College Admission Test, it is a multiple choice exam that prospective students are required to take to apply for medical school.<sup>6</sup>

**DAT** - Dental Admissions Test, the required exam for students applying to dental school.<sup>7</sup>

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<sup>1</sup> As defined by the National Immigration Law Center.

<sup>2</sup> *Frequently Asked Questions*, USCIS, <https://www.uscis.gov/archive/frequently-asked-questions> (last visited May 2, 2018).

<sup>3</sup> *About the GRE® General Test*, ETS, [https://www.ets.org/gre/revised\\_general/about](https://www.ets.org/gre/revised_general/about) (last visited May 2, 2018).

<sup>4</sup> *About the GMAT Exam The Official GMAT Web Site*, Graduate Management Admissions Council, <https://www.mba.com/us/the-gmat-exam/about-the-gmat-exam.aspx> (last visited May 2, 2018).

<sup>5</sup> *About the LSAT*, LSAC, <https://www.lsac.org/jd/lsat/about-the-lsat> (last visited May 2, 2018).

<sup>6</sup> *Taking the MCAT*, Association of American Medical Colleges, <https://students-residents.aamc.org/applying-medical-school/taking-mcat-exam/> (last visited May 2, 2018).

<sup>7</sup> *Dental Admission Test*, American Dental Association, <https://www.ada.org/en/education-careers/dental-admission-test> (last visited May 1, 2018).

**FAFSA** - Free Application for Federal Student Aid. It is the online forms students are required to fill out to receive financial aid. A social security number is required to apply for federal aid.

**ITIN** - Individual Taxpayer Identification Number. It is a nine-digit number issued by the Internal Revenue Service (IRS) who US taxpayers who do not have or are not eligible for a Social Security Number (SSN). ITINs can be used for various purposes, including but not limited to opening bank accounts and filing taxes.

**INA** - Immigration and Nationality Act

**IRCA** - The Immigration Reform and Control Act (IRCA), “which was passed in order to control and deter illegal immigration to the United States. Its major provisions stipulate legalization of undocumented aliens who had been continuously unlawfully present since 1982, legalization of certain agricultural workers, sanctions for employers who knowingly hire undocumented workers, and increased enforcement at U.S. borders.”

**IIRIRA** - The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIA) of 1996.

## II. Applying for Graduate School

A student’s immigration status does not preclude him or her from becoming a graduate student. As such, undocumented students can pursue a graduate education. In fact, there are a number of undocumented students who have applied to, been admitted to, and reaped the benefits of a graduate education. Additionally, graduate school can be a valuable investment for those looking to advance their careers. Data from the US Bureau of Labor Statistics shows that those with advanced degrees earn higher median salaries and have lower unemployment rates than those who just a Bachelor’s Degree:

**Unemployment rates and earnings by educational attainment, 2017**

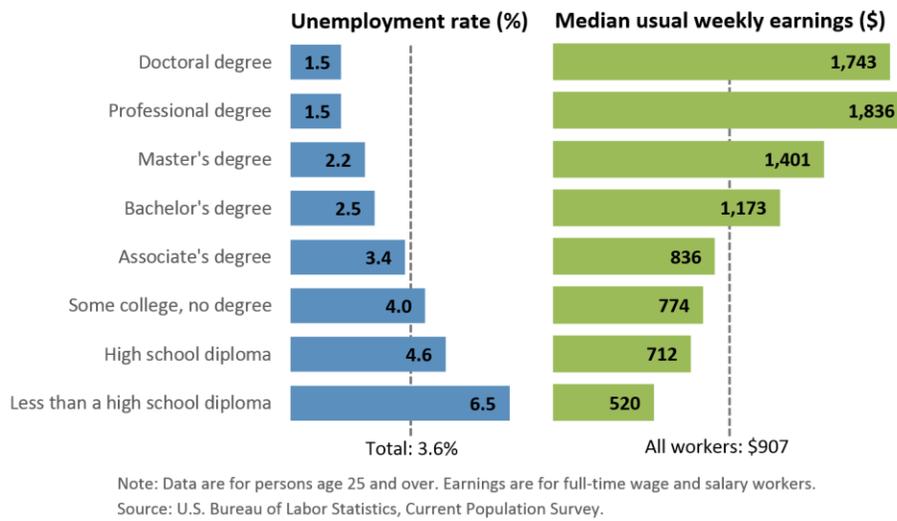


Figure 1: Unemployment Rates and Earnings by Educational Attainment, 2017 from the U.S. Bureau of Labor Statistics<sup>8</sup>

However, undocumented students need to carefully consider various factors when deciding to pursue graduate school. During the application stage, some of the most important factors to consider are location, application requirements, available student resources, and financial aid.

<sup>8</sup> *Unemployment Rates and Earnings by Educational Attainment*, U.S. Bureau of Labor Statistics (2018), (last updated March 27, 2018), [https://www.bls.gov/emp/ep\\_chart\\_001.htm](https://www.bls.gov/emp/ep_chart_001.htm).

## A. Comparing State Laws that Affect Graduate School Admission

Just like in real estate, one of the most crucial considerations in choosing a graduate school is location, location, location. For undocumented students, the state in which they decide to attend graduate school has enormous impact on their access to necessary resources and support. Some states actively facilitate the pursuit of graduate degrees for undocumented persons. Other states are neutral in their treatment of a student's immigration status. Meanwhile, some states have specifically prohibited undocumented students from even applying to public universities in their state.<sup>9</sup>

### 1. Which States are the Most Undocu-friendly?

The federal government has jurisdiction over immigration law and federally, there are no laws that directly prohibit undocumented students from attending graduate schools.

To complicate things, education is largely state and locally controlled, meaning each state and local jurisdiction can have their own requirements for enrollment and graduation. Undocumented students are faced with navigating both federal laws, that limit access to federal aid, and state laws, which vary wildly on their stances on tuition rates. To help understand the current policy landscape education leaders from the University Leaders for Educational Access and Diversity Network (“uLEAD”)<sup>10</sup> have created a map dividing all 50 states into three categories. Specifically, uLEAD categorizes each states’ policies as “Restrictive,” “Unstipulated,” and “Inclusive.”

***RESTRICTIVE:*** States with policies that explicitly deny or restrict eligibility for admission and/or in-state tuition for undocumented students.<sup>11</sup>

Arizona, Oklahoma, Missouri, Indiana, Ohio, Alabama, Georgia, South Carolina, North Carolina, and New Hampshire

**Note:** Alabama and South Carolina have enacted state laws that prohibit undocumented students from applying to public post-secondary institutions in their states<sup>12</sup>

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<sup>9</sup> [AL Code § 31-13-8 \(2013\)](#) and [SC Code § 59-101-430 \(2012\)](#)

<sup>10</sup> *Who We Are*, uLEADNet.org, <https://uleadnet.org/content/who-we-are> (last visited Apr 29, 2018).

<sup>11</sup> *Policy Environment*, uLEADNet.org, <https://uleadnet.org/> (last visited May 2, 2018).

<sup>12</sup> [AL Code § 31-13-8 \(2013\)](#) and [SC Code § 59-101-430 \(2012\)](#)

**UNSTIPULATED:** States which do not have stated policies that explicitly address undocumented students access to higher education.<sup>13</sup>

Montana, Wyoming, Hawaii, Alaska, Utah, North Dakota, South Dakota, Iowa, Michigan, Wisconsin, Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, West Virginia, Virginia, Pennsylvania, Delaware, Vermont, Rhode Island, Massachusetts, and Maine

**INCLUSIVE:** States with policies that facilitate or grant in-state tuition and/or eligibility for financial aid for undocumented students.<sup>14</sup>

Washington, Oregon, California, Nevada, Idaho, New Mexico, Colorado, Nebraska, Kansas, Texas, Minnesota, Illinois, Florida, Maryland, New Jersey, New York, and Connecticut

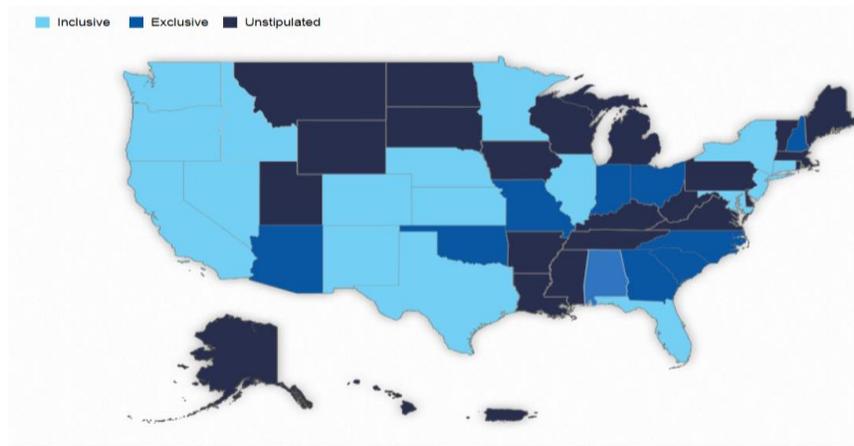


Figure 2: Undocumented Student Policy Environments by State, 2018 from uLEADNet.org<sup>15</sup>

It is worth noting that the five states with the highest undocumented populations (California, Texas, New York, Florida, and Illinois) all are included in the list of “Inclusive” states.<sup>16</sup> Those five states alone have over half of the reported undocumented population.<sup>17</sup>

<sup>13</sup> *Policy Environment*, uLEADNet.org , <https://uleadnet.org/> (last visited May 2, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Unauthorized Immigrant Population Profiles*, Migration Policy Institute (2016), <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles> (last visited May 2, 2018).

<sup>17</sup> *Id.*

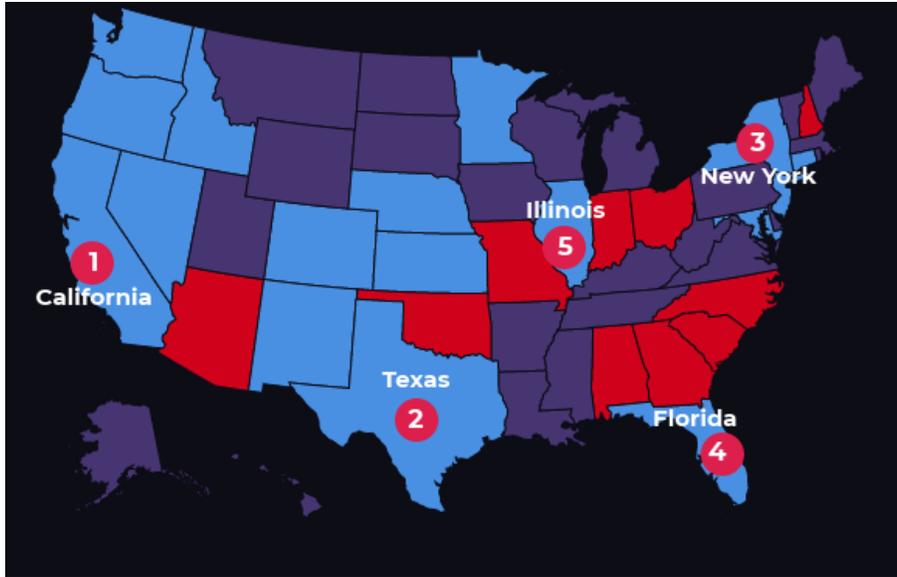


Figure 3: Map Visualization of States with Highest Undocumented Population Combined with Perceived Policy Environment Towards Undocumented Students, 2014 from the Migration Policy Institute<sup>18</sup>

These statistics and information impact undocumented students because the size of the undocumented population in a state may indicate the amount of resources available for undocumented persons as well as how familiar or exposed the respective state institutions are to issues that undocumented students may face. Undocumented graduate students may also be more likely to find support groups or networks of students to connect with in states that have a higher undocumented population.

## 2. Higher Education Institutions Along the U.S. Border and Interior Checkpoints

One important consideration to note when determining which state to attend graduate school in is the state's relative location to the US's international border and interior border patrol checkpoints.

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<sup>18</sup> Chart made using data from the [Migration Policy Institute](#) and Infographic templates from [Piktochart](#)



Figure 4: Map of 100 Mile Border Zone, Courtesy of the ACLU (2017)<sup>19</sup>

Undocumented students should be aware that states along the U.S. borders have interior traffic checkpoints that typically range from 25 to 100 miles inland from the border. The current number and location of interior border checkpoints has not been publicly released. In 2008, the U.S. Border Patrol disclosed there were 128 checkpoints nationwide.<sup>20</sup> The American Civil Liberties Union (ACLU) estimates there are now approximately 170 checkpoints.<sup>21</sup> The majority of these interior checkpoints are located on the U.S' southwest border with Mexico.<sup>22</sup> However, the U.S. Border Patrol operates checkpoints in northern states as well. The ACLU filed a request under the Freedom of Information Act and revealed design plans for permanent U.S.

<sup>19</sup> The Constitution in the 100-Mile Border Zone, American Civil Liberties Union, <https://www.aclu.org/other/constitution-100-mile-border-zone> (last visited May 12, 2018).

<sup>20</sup> U.S. Border Patrol Interior Checkpoints: Frequently Asked Questions, ACLU San Diego (2017), <https://www.aclusandiego.org/wp-content/uploads/2014/11/Border-Patrol-Checkpoint-FAQs.pdf> (last visited May 12, 2018).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Border Patrol checkpoints on southbound highways in New Hampshire, Maine, Vermont, Massachusetts and Rhode Island.<sup>23</sup>

The U.S. Supreme Court has held that Border Patrol agents may stop a vehicle at fixed checkpoints for brief questioning even if there is no reason to believe that the particular vehicle contains undocumented individuals.<sup>24</sup> In contrast, the Court held that Border Patrol agents on roving patrol outside these checkpoints may stop a vehicle only if the agents have reasonable suspicion that the vehicle contains undocumented persons.<sup>25</sup>

This means undocumented students may face a heightened risk of getting detained or deported if they choose to attend school in an institution within close proximity of the U.S. border checkpoints. This is also a concern for students who may have to travel in areas that have interior border checkpoints. In January 2018, a UC Berkeley student was driving home after a visit with his girlfriend. He missed his turn and found himself at a border checkpoint.<sup>26</sup> U.S. Border Patrol detained him for several days before he was transferred to ICE custody.<sup>27</sup> The student ultimately spent two weeks in federal detention before he was released on bond.<sup>28</sup>

## **B. ID Requirements for Entrance Exams (GRE, GMAT, LSAT, MCAT, DAT)**

One of the most significant barriers some undocumented students face when registering for graduate entrance exams is the requirement of current, government issued identification. If a student has been undocumented in the U.S. for an extended period of time, obtaining an official passport or consulate papers poses a substantial financial and physical hurdle. This issue can be further exacerbated when tests require *U.S.* government issued identification to apply.

Most standardized tests require a government issued ID during the application stage, as well on the actual test day in order to confirm each test taker's identity and reduce instances of cheating. For undocumented students, some testing administrators do allow prospective test takers to call and request accommodation or partial waiver of the ID requirements.

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<sup>23</sup> *Id.*

<sup>24</sup> *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976)

<sup>25</sup> *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975)

<sup>26</sup> Kate Morrissey, UC Berkeley student arrested by Border Patrol while visiting girlfriend, *Los Angeles Times* (2018), <http://www.latimes.com/local/lanow/la-me-berkeley-student-20180104-story.html> (last visited May 12, 2018).

<sup>27</sup> Luis Mora donates \$8.5K for release of 3 immigrant detainees, *The Daily Californian* (2018), <http://www.dailycal.org/2018/02/05/formerly-detained-uc-berkeley-junior-luis-mora-donates-8-5k-release-3-immigrant-detainees/> (last visited May 12, 2018).

<sup>28</sup> *Id.*

## 1. GRE

The Graduate Records Examination (GRE) is the required test for most graduate programs. The GRE requires test takers to have identification that meets the following criteria:

An applicant's ID must:

- be an original document; photocopied documents are not accepted
- be a government-issued national/state/province identity card that is recognized by the country in which you are a citizen or permanent resident
- be valid; expired documents (bearing expiration dates that have passed) are not acceptable
- bear your full name exactly (excluding accents) as it was when registering for the test
- include a recent, recognizable photograph
- include your signature (the name and signature on the ID document must match)<sup>29</sup>

Examples of acceptable identification may include a US [driver's license](#) or passport.

### a) GRE Identification Document Waiver/Accommodation

The GRE does allow students who cannot meet the identification requirement to request an accommodation, waiver, or workaround. To request accommodation an applicant must contact the ETS Office of Testing Integrity (OTI) at least seven days before registering for the GRE and the applicant must receive approval from the OTI before being permitted to register.<sup>30</sup>

An applicant should also be prepared to submit any requested documents to OTI for review prior to receiving approval. If an applicant does not contact OTI before he or she registers, and as a result is not permitted to test or has his or her test scores withheld, the applicant's test fees will not be refunded.

OTI Contact Information:

ETS Office of Testing Integrity (OTI)

Email: [TSReturns@ets.org](mailto:TSReturns@ets.org)

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<sup>29</sup> *Identification Requirements for the GRE® General Test*, ETS, [https://www.ets.org/gre/revised\\_general/register/id](https://www.ets.org/gre/revised_general/register/id) (last visited May 2, 2018).

<sup>30</sup> *Id.*

Phone:

1-800-750-6991 (United States, U.S. Territories and Canada)

1-609-406-5430 (all other locations)

Monday–Friday 7:30 a.m.–5:30 p.m. ET

Fax:

1-609-406-9709

## 2. GMAT

The Graduate Management Admissions Test (GMAT) is typically required for business programs like a Master’s in Business Administration (MBA). For non-US citizens, the GMAT requires test takers to present a valid passport that lists their name exactly how it is spelled on the test registration application (including applicable accents such as ñ or ù).<sup>31</sup>

### a) GMAT Identification Document Waiver/Accommodation

If an applicant does not possess a valid passport, the GMAT may accommodate the applicant’s request to provide alternative identification.<sup>32</sup> An applicant can contact the GMAT anonymously through email or phone and see if the testing administrators are able to waive the passport requirement in light of an applicant’s undocumented status.

See GMAT’s contact information below:

Email: GMATCandidateServicesAmericas@pearson.com

Telephone (toll-free): +1 (800) 717-GMAT (4628), 7 a.m. to 7 p.m. CT

Telephone: +1 (952) 681-3680, 7:00 a.m. to 7:00 p.m. CT

Fax: +1 (952) 681-3681

## 3. LSAT

The Law School Admissions Test (LSAT) is required to apply to nearly every law school in the US.<sup>33</sup> To take the LSAT, an applicant must present a valid ID that includes<sup>34</sup>:

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<sup>31</sup> *Presenting Proper Identification*, Graduate Management Admissions Counsel, <https://www.mba.com/us/the-gmat-exam/prepare-for-the-gmat-exam/plan-for-test-day/presenting-proper-identification.aspx> (last visited May 2, 2018).

<sup>32</sup> *Id.*

<sup>33</sup> Some schools like Harvard, Georgetown, and the University of Arizona allow students to take the GRE or GMAT in lieu of the LSAT

<sup>34</sup> *LSAT ID Requirements*, LSAC, <https://www.lsac.org/jd/lsat/day-of-test/acceptable-id> (last visited May 1, 2018)

- A recent and recognizable photo
- The applicant's first and last name (Must match the name on the LSAT registration application)
- The applicant's date of birth

Examples of acceptable ID include:

- passport book
- passport card
- driver's license
- state or province-issued ID card
- US military ID card (Common Access Card, or CAC)
- US Permanent Resident Card (Green Card)
- Canadian Permanent Resident Card
- national ID card
- consular ID card

### a) LSAT Identification Document Waiver/Accommodation

For questions about LSAT's ID requirements or to request a waiver applicants must contact the Law School Admissions Council (LSAC) at least **fourteen days before the applicant's registered test date**.<sup>35</sup> If possible, it is best to contact the LSAC before even registering for the LSAT as there are currently no LSAT fee waivers publically available for undocumented students.

The LSAT website states "Candidates testing at North American test centers who are ineligible to obtain the required government-issued ID may request LSAC's approval of alternate identification documents. To request an exception, you must contact LSAC prior to the [registration deadline](#) associated with your registered test date. Please contact LSAC by emailing LSACinfo@LSAC.org or by calling 215.968.1001 and choosing option 0 to speak to an LSAC candidate representative. Requests received after the registration deadline will not be accepted, and exceptions will not be made at the testing center on the day of the test."<sup>36</sup>

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<sup>35</sup> *LSAT Test Dates and Deadlines*, LSAC, <https://www.lsac.org/jd/lsat/day-of-test/acceptable-id> (last visited May 1, 2018)

<sup>36</sup> *Candidate Info Sheet*, LSAC, <https://www.lsac.org/jd/lsat/day-of-test/acceptable-id> (last visited May 1, 2018)

## 4. MCAT

The Medical College Admissions Test (MCAT) is required by virtually all US medical schools. Note, the MCAT application asks for a social security number (SSN) to issue each applicant an MCAT ID number. If a student does not have DACA/SSN, he or she can contact the Association of American Medical Colleges (AAMC), which administers the MCAT to request an alternative ID number he or she can use in lieu of the SSN. An applicant does not need to disclose their status in order to receive this ID number.

### a) MCAT Identification Document Waiver/Accommodation

Generally, the MCAT has the same ID requirements as the LSAT and GRE. However, the AAMC has gone further and provided a checklist to determine whether an applicant's ID is acceptable for the purposes of taking the MCAT:

You will be admitted to the MCAT® exam on testing day only if your identity document meets the necessary requirements. To ensure that it does, please complete the checklist below.

Identification Requirements	Yes	No
The names on your ID match the first and last names on your MCAT exam registration EXACTLY. (Middle names or initials are not required on the MCAT registration, even if they appear on your ID.) → If they don't match exactly, you must update your name through the <a href="#">MCAT Registration System</a> system by the <a href="#">BRONZE ZONE deadline</a> associated with your test date. → If your ID has your initials in place of your first and/or last name, you must contact AAMC Services (202-828-0600) for instructions before the <a href="#">SILVER ZONE deadline</a> associated with your test date.	<input type="checkbox"/>	<input type="checkbox"/>
The ID was issued by a government agency.	<input type="checkbox"/>	<input type="checkbox"/>
The ID's expiration date is printed on the ID and is not extended by a sticker or similar mechanism.	<input type="checkbox"/>	<input type="checkbox"/>
The ID will not expire before your exam date.	<input type="checkbox"/>	<input type="checkbox"/>
The ID is not a temporary ID. → Paper IDs or ID application receipts of any quality are not valid forms of identification.	<input type="checkbox"/>	<input type="checkbox"/>
The ID contains a photo that can be used to positively identify you.	<input type="checkbox"/>	<input type="checkbox"/>
The ID includes your signature, which you will be asked to duplicate on test day.	<input type="checkbox"/>	<input type="checkbox"/>
The ID is whole with no evidence of tampering (clipped corners, holes, etc.).	<input type="checkbox"/>	<input type="checkbox"/>
The ID is in English.	<input type="checkbox"/>	<input type="checkbox"/>
If you answered "no" to any of the requirements, please obtain an ID that fulfills all the requirements or adjust your registration details.		
If you answered "yes" to <b>ALL</b> these requirements, CONGRATULATIONS! You are ready for exam day!		
If you have any questions about test day identification requirements, please refer to <a href="#">MCAT® Essentials</a> or contact AAMC Services at 202-828-0600 or <a href="mailto:mcataamc.org">mcataamc.org</a> .		

Figure 5: MCAT ID Checklist, 2017 by the Association of American Medical Colleges<sup>37</sup>

<sup>37</sup> *Valid Identification for MCAT Examinees*, Association of American Medical Colleges, <https://students-residents.aamc.org/applying-medical-school/article/valid-identification-mcat-examinees/> (last visited May 1, 2018)

## 5. DAT

The Dental Admissions Test (DAT) is used to apply to dental school. The DAT requires two forms of ID. One must be a government issued ID with an applicant's picture and name. The name on the ID must match **exactly** with the applicant's name on the application. The second form of ID must include the applicant's signature.

Accepted forms of government issued ID include a passport or driver's license. DAT has also confirmed that the second form of ID can be a debit card or library card.<sup>38</sup>

### a) DAT Identification Document Waiver/Accommodation

For questions about DAT's ID requirements, contact the Department of Testing Centers at 800.232.2162.

## C. Disclosing One's Status on a Graduate Application

There are no federal laws requiring proof of citizenship to apply for graduate school. Some graduate school applications, like the application system for the University of California, allow students to input "No Selection" for questions on citizenship and immigration status. However, some students may struggle with the choice to divulge their undocumented status in their admission essay or whilst applying at schools with less undocu-friendly application options.

Choosing to fully disclose one's immigration status is an extremely personal decision. In today's turbulent political and enforcement climate, an undocumented student may not feel comfortable disclosing his or her status to close friends, let alone to an anonymous admissions panel. However, similar to the process for applying for an undergraduate degree, the question of disclosing one's immigration status is typically unavoidable. Graduate school applications almost always contain questions about a student's country of origin and current immigration status. These questions are used to consider financial aid and to gauge the diversity of the matriculating student body.

Applicants who are unsure about their emotional readiness to disclose their immigration status can benefit from consulting with his or her college counselor or a local organization or support group. A list of potential resources is provided at the [end of this guide](#).

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<sup>38</sup> *DAT ID Requirements*, American Dental Association, [https://www.prometric.com/en-us/clients/ada/pages/dat\\_checklist.aspx](https://www.prometric.com/en-us/clients/ada/pages/dat_checklist.aspx) (last visited May 1, 2018)

## 1. FERPA and Legal Considerations for Disclosing One's Status

In general, schools cannot disclose a student's personal information without their express permission unless certain exceptions apply.<sup>39</sup> Many school counselors and some legal scholars have interpreted "personal information" to include a student's immigration status and cite an applicant's rights under the Federal Education Rights and Privacy Act (FERPA) as a safeguard against information about one's status being exposed without their consent.<sup>40</sup>

Under FERPA schools are generally only allowed to disclose a student's information for three purposes. The first is in response or accordance with a court order (e.g. subpoenas, grand jury requests, or **judicially-issued** warrants).<sup>41</sup> We emphasize the words judicially-issued because not all warrants are issued by a court or a judge. In some instances a student may be shown an "administrative warrant." An administrative warrant can be a document signed by an ICE agent, stating that a person is being designated for potential deportation proceedings or arrest. This is in contrast with a judicial warrant, which is an official court document that typically specifies the name of the court and is signed by a judge or neutral magistrate.

For a visual comparison, a judicial warrant may appear as follows:

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<sup>39</sup> [34 CFR § 99.31](#)

<sup>40</sup> Michael Wald, William S. Koski, Jonathan Berry-Smith, Sarah Brim, Carolyn Hite & Ray Li, *Protecting Undocumented and Vulnerable Students*, Stanford Law School Law and Policy Lab & Stanford Law School Youth and Education Law Project (2017) (on behalf of the California Charter Schools Association).

<sup>41</sup> See [34 CFR § 99.31\(9\)\(i\)](#)



File No. \_\_\_\_\_  
Date: \_\_\_\_\_

**To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that \_\_\_\_\_ is removable from the United States. This determination is based upon:

This warrant is directed at federal immigration officers, not local law enforcement. Federal regulations only provide authority to ICE agents to execute an immigration warrant.

Since a charging document is also prepared and issued by ICE agents, its existence does not show that any neutral party has found probable cause that the person is subject to deportation.

the execution of a charging document to initiate removal proceedings against the subject;

the pendency of ongoing removal proceedings against the subject;

the failure to establish admissibility subsequent to deferred inspection;

biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

None of these checkboxes indicate that there is probable cause of a crime for which a person could be arrested by local law enforcement officers.

**YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

\_\_\_\_\_  
(Signature of Authorized Immigration Officer)

\_\_\_\_\_  
(Printed Name and Title of Authorized Immigration Officer)

No judge or neutral magistrate is involved in the issuance of an ICE warrant. This warrant does not meet the basic constitutional standard for being a warrant, which is review by a judge.

**Certificate of Service**

I hereby certify that the Warrant for Arrest of Alien was served by me at \_\_\_\_\_  
(Location)

on \_\_\_\_\_ on \_\_\_\_\_, and the contents of this  
(Name of Alien) (Date of Service)

notice were read to him or her in the \_\_\_\_\_ language.  
(Language)

\_\_\_\_\_  
Name and Signature of Officer

\_\_\_\_\_  
Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

Figure 7: Sample ICE Warrant with Annotations from the Immigrant Legal Resource Center (2016)<sup>43</sup>

As the ILRC notes, ICE warrants do not involve a judge or neutral magistrate. Further, since the warrant is typically issued by ICE or the agent him or herself, it likely does not meet the definition of a court order. In short, undocumented students should know that FERPA applies to court orders that need to meet basic constitutional standards and the language of FERPA does not include so called “ICE warrants” or “administrative warrants.”

<sup>43</sup> *ICE Warrants Basics*, Immigrant Legal Resource Center (2017), <https://www.ilrc.org/ice-warrants-basics> (last visited May 2, 2018).

The second type of information schools can disclose is information relating to “legitimate educational interests.” This includes providing a student’s grades and transcripts to another school which the student intends on transferring to. Similarly, schools are permitted to provide a student’s information to school officials for audit or evaluation purposes, such as determining academic probation or whether a student is eligible for the Dean’s List.

The Education Department has provided the following list of specific examples:

1. Other schools to which a student is transferring;
2. Specified officials for audit or evaluation purposes;
3. Appropriate parties in connection with financial aid to a student;
4. Organizations conducting certain studies for or on behalf of the school;
5. Accrediting organizations;
6. To comply with a judicial order or lawfully issued subpoena;
7. Appropriate officials in cases of health and safety emergencies;
8. State and local authorities, within a juvenile justice system, pursuant to specific State law.<sup>44</sup>

The third type of information schools may disclose is “directory” information. FERPA defines this as information that students would generally not deem harmful or an invasion of privacy.<sup>45</sup> This is generally the type of public information one would find in a school yearbook, club program, or other school directories.

<b>-Student’s name</b>	<b>-Participation in officially</b>
<b>-Address</b>	<b>recognized activities and sports</b>
<b>-Telephone listing</b>	<b>-Weight and height of members of</b>
<b>-Electronic mail address</b>	<b>athletic teams</b>
<b>-Photograph</b>	<b>-Degrees, honors, and awards</b>
<b>-Date and place of birth</b>	<b>received</b>
<b>-Major field of study</b>	<b>-The most recent educational agency or</b>
<b>-Dates of attendance</b>	<b>institution attended</b>
<b>-Grade level</b>	<b>-Student ID number, user ID, or other unique</b>
	<b>personal identifier used to communicate in electronic</b>
	<b>systems that cannot be used to access education</b>
	<b>records without a PIN, password, etc.</b>

Figure 8: Examples of “Directory Information” from the Department of Education (2016)<sup>46</sup>

Note, this does include place of birth and nationality. For instance, if a student joined an international club or was highlighted as part of a scholarship fund for diverse students, the school

<sup>44</sup> *Family Educational Rights and Privacy Act (FERPA)*, U.S. DEP’T OF EDU., <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last updated Jun. 8, 2016).

<sup>45</sup> Id.

<sup>46</sup> Id.

could disclose a student's country of origin as part of the "directory information." However, some schools allow students to "opt out" of most disclosures of directory information. For example, the University of Florida has a "Student Privacy Request Form" that allows students to opt out of having their name, photograph, and other "directory information" released.<sup>47</sup>

Students have the right to privacy and schools are not permitted, absent a specific court order, to disclose students' personal records. While disclosing one's status may always come with a slight risk, many undocumented students have disclosed their status on their graduate school applications. In fact, some students have leveraged their experiences as an undocumented student to highlight their unique perspectives and exemplify their perseverance in light of the adversity they may have faced.

## 2. Reasons to Disclose Immigration Status

For further context of the risks and potential rewards of disclosing one's status, consider this response from SeattleU graduate, and undocumented student Carlos Rodriguez in an interview with *BestColleges.com*:

"Hiding in the shadows won't really help anyone. For me, I reached a point in my life where I felt safe and comfortable sharing my story. While it has been difficult with the political climate, many people have reached out and have asked how they can help or if they're undocumented, they ask about resources and how to make it through college. I knew speaking out was a risk (I became a victim of assault, a hate crime, and extortion right after I did) but for me, I think that being a beacon of resources has helped more people which makes it worth it. The first person to reach out was a high school student and their high school counselor and I was able to help get them accepted to SeattleU. I was very glad to see someone like me get the help I wished I would've had. If it meant only helping one person that was fine with me, but as more time went by, so many people reached out about how they could get into college, pay for it, and even be involved in changing systems that prevent undocumented students from becoming successful."<sup>48</sup>

Carlos' statements echo many of the fears some undocumented students have expressed about disclosing their status to the student body at large. However, he also highlights how disclosing one's status, helps open a dialogue and allows undocumented students to connect to others who can assist them or provide support.

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<sup>47</sup> *Student Records Management Manual*, University of South Florida Office of the Registrar(2013), [http://www.registrar.usf.edu/forms/StudentRecordsManual2013-12-11\\_16\\_34\\_01.pdf](http://www.registrar.usf.edu/forms/StudentRecordsManual2013-12-11_16_34_01.pdf) (last visited May 1, 2018).

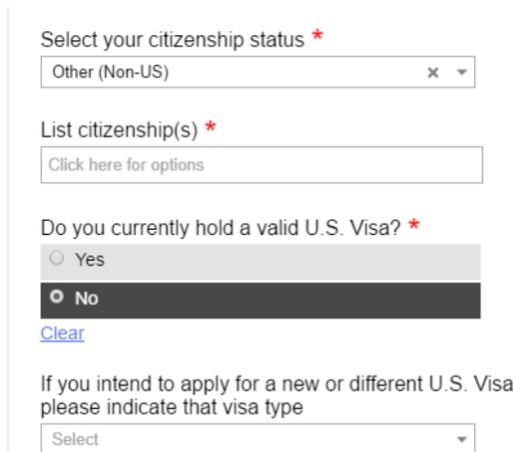
<sup>48</sup> *College Guide for Undocumented Students*, Best Colleges (2018), <http://www.bestcolleges.com/resources/undocumented-students-guide/> (last visited May 1, 2018).

If an undocumented student is still unsure of whether to disclose his or her status, another factor to consider is the school itself. Andrea Gaytan, director of the AB540 and Undocumented Student Center at the University of Davis, advises applicants to check if a school has centers similar to the one at Davis, that is specifically geared towards undocumented students.<sup>49</sup> These centers are becoming increasingly common as more visibility is paid towards undocumented students and their issues.

For schools that have the resources to assist undocumented students, disclosing one's status is a way to allow the institutions to connect students with the resources and support they may need during their graduate program. If a student is still unsure on a school's policy towards undocumented student, he or she can contact the school or seek guidance from a counselor to determine how a specific school may handle an application from an undocumented student.

### 3. How to Disclose Immigration Status on the Application

While a few schools have policies against undocumented students attending their institutions, legally, there is no federal or state law that prohibits undocumented students from attending graduate school. Applications and processes vary based on the state and even the school a student is applying to, however, in general, when asked to select a citizenship potential options to choose from include "No citizenship" or "Other-Non-US." In the "Common Application", for citizenship, the drop down menu allows student to select "non-US [other]" this is the recommended selection for undocumented students.



The image shows a screenshot of the Common Application citizenship questions. It includes a dropdown menu for "Select your citizenship status" with "Other (Non-US)" selected. Below it is a text box for "List citizenship(s)" with a link "Click here for options". The next question is "Do you currently hold a valid U.S. Visa?" with radio buttons for "Yes" and "No", where "No" is selected. There is a "Clear" link below the radio buttons. The final question is "If you intend to apply for a new or different U.S. Visa, please indicate that visa type" with a dropdown menu set to "Select".

Figure 9: Common Application Citizenship Questions, 2018<sup>50</sup>

<sup>49</sup> AB540 and Undocumented Student Center, University of California- Davis, <http://undocumented.ucdavis.edu/> (last visited May 1, 2018).

<sup>50</sup> Welcome The Common Application (2017), <http://www.commonapp.org/> (last visited May 18, 2018).

If neither of those are an option, an applicant’s original country of citizenship can be selected.

Undocumented students may then be asked if they have a valid visa and the applicant can select “No.” Remember, being truthful not only means the applicant is notifying the school of resources they may need as an undocumented student, but lying about having a valid visa can make the applicant ineligible for in-state tuition in some states or otherwise drastically affect the student’s application. Schools can rescind their offer if they find out an application was filled out untruthfully.

For undocumented students that have a social security number through DACA, they should be sure to include their SSN in the application if asked. If the student does not have an SSN, many forms allow students to instead list their [Individual Taxpayer Identification Number](#) (ITIN) as a substitute. See our section on [paying taxes](#) for more information on the ITIN.

### III. Financial Issues

A comprehensive report surveying nearly a thousand undocumented university students found that the cost of college was one of the biggest factors in deciding where to attend. Financial issues are further exacerbated for undocumented students who wish to attend graduate school because they are generally ineligible for federal aid such as Pell Grants or Federal scholarships.<sup>51</sup>

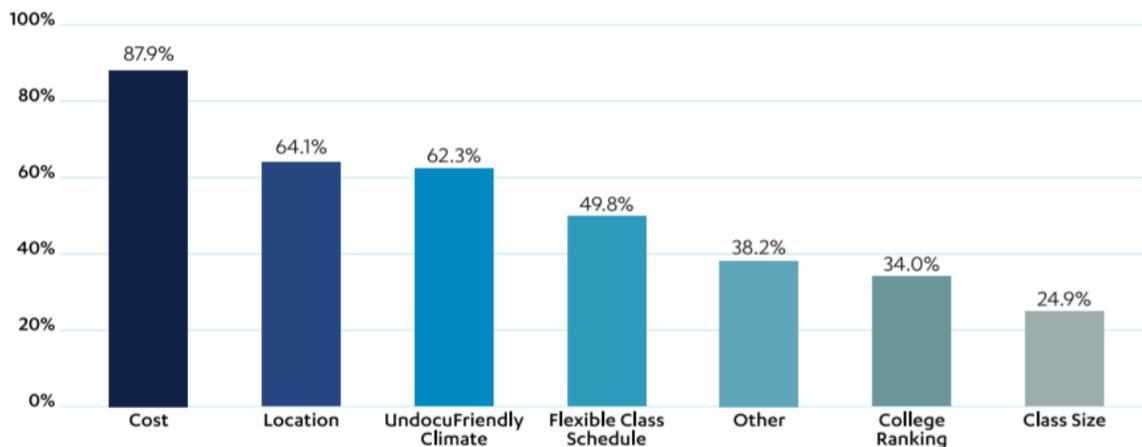


Figure 10: Factors that Contributed to Student’s Decision to Attend their College, UndocuScholars Project (2015)<sup>52</sup>

<sup>51</sup> UCLA UndocuScholars Project (2015). *In the Shadows of the Ivory Tower*, <https://static1.squarespace.com/static/5aa69f8e8f51307aa7d7cdbc/t/5aa6c5718165f57981de21d6/1520878966718/undocuscholarsreport2015.pdf>.

<sup>52</sup> *Id.*

## A. Funding an Education as an Undocumented Student

There are some students who are fortunate enough to receive a full ride scholarships at private universities based on their grades or test scores. Some counselors advise applying for graduate school as early in the admissions cycle as possible, to maximize one’s chance of getting financial aid. Waiting too late can mean that all of the potential scholarships have already been divvied out for the year and an applicant’s only choice may be to pay out of pocket. For those who have not received full ride scholarships, there are other alternatives to paying for their graduate education. Before deciding how to pay for graduate school however, the first question a student should answer is, how much will graduate school cost?

### 1. Tuition Rates

For undocumented students, the cost of graduate tuition can vary greatly depending on how the school decides to classify them. Some schools treat undocumented students like international students and charge international tuition rates, others treat undocumented students like out-of-state residents. However, schools in at least 18 states grant undocumented students in-state tuition rates if they satisfy certain requirements, such as attending high school within the state.

Having access to in-state tuition can make a huge difference in the cost of attending graduate school, especially if a student wishes to attend a public university. Below is a chart of some of the current state policies regarding in-state tuition and their requirements.

#### a) States that Offer Undocumented Students In-State Tuition

State	Policy	In-State Tuition Eligibility Requirements	Additional Notes
California	<a href="#">AB540</a> <a href="#">AB130 &amp; AB131</a> (see additional notes)	<ul style="list-style-type: none"> <li>• Must have attended a California high school for at least three academic years;</li> <li>• Must have graduated from a California high school, attained a G.E.D., or received a passing mark on the California High School Proficiency Exam (CHSPE);</li> <li>• Must enroll at an accredited institution of public higher education in California;</li> <li>• If required by the individual institution, must file or plan to file an affidavit stating that the student will apply for legal residency as soon as possible.</li> </ul>	Per AB130 & 131, students who qualify for in-state tuition under AB540 are also eligible for state-funded financial aid.

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Colorado	<a href="#">SB13-033</a>	<ul style="list-style-type: none"> <li>• Must have attended a public or private high school in Colorado for at least three years immediately preceding graduation</li> <li>• Must have been admitted to or already attend a public college or university in Colorado within 12 months of graduating or completing a GED</li> <li>• Must sign affidavit stating that they have applied for lawful presence or will apply as soon as they are able</li> </ul>	
Connecticut	<a href="#">HB6844</a>	<ul style="list-style-type: none"> <li>• Must be a permanent resident in Connecticut.</li> <li>• Must have attended at least two years of high school in the state of Connecticut</li> <li>• Graduated from a high school or received the equivalent of a high school diploma in Connecticut</li> <li>• Register as an entering student, or be enrolled at a public university in Connecticut</li> <li>• Must file an affidavit with the institution of higher education stating that the student has filed an application for legal immigration status, or will file an application when eligible to do so</li> </ul>	
Florida	<a href="#">HB851</a>	<p>The bill grants undocumented students out-of-state fee waivers if they meet the following criteria:</p> <ul style="list-style-type: none"> <li>• Attended a Florida secondary school for 3 consecutive years immediately before graduating from a Florida high school</li> <li>• Applied for enrollment in an institution of higher education within 24 months after high school graduation</li> <li>• Submitted an official Florida high school transcript as evidence of attendance and graduation</li> </ul>	<p>Note, students granted an out-of-state fee waiver are still considered “non-residents” for the purposes of in-state tuition. This bill merely alleviates some of the costs of out-of-state tuition.</p>

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Illinois	<a href="#">SB2185</a>	<ul style="list-style-type: none"> <li>● Resided with his or her parent or guardian while attending a public or private high school in Illinois;</li> <li>● Graduated from a public or private high school or received the equivalent of a high school diploma in Illinois;</li> <li>● Attended school in Illinois for at least 3 years as of the date of graduating from high school or receiving the equivalent of a high school diploma;</li> <li>● Registers as an entering student in the University not earlier than the 2003 fall semester;</li> <li>● Provides the University with an affidavit stating that the individual will file an application to become a permanent resident of the United States at the earliest opportunity the individual is eligible to do so.</li> </ul>	
Kansas	<a href="#">HB2145</a>	<ul style="list-style-type: none"> <li>● Attended an accredited Kansas high school for at least three years</li> <li>● Graduated from either an accredited Kansas high school or earned a general educational development (GED) certificate issued within Kansas</li> <li>● Has filed an affidavit stating he/she will apply for legal residency when eligible</li> </ul>	

<p>Maryland</p>	<p><a href="#">SB167</a></p>	<p>Eligibility requirements for receiving in-state tuition at a community college:</p> <ul style="list-style-type: none"> <li>● Must have attended a secondary school in Maryland for at least three years</li> <li>● Must have graduated from a high school in Maryland or received the equivalent of a high school diploma in Maryland</li> <li>● Must provide documentation that the individual or the individual’s parent or legal guardian has filed a Maryland income tax return annually for the three years while the individual attended a high school in the State, during any period between high school graduation and registration at a community college, and during the period of attendance at the community college</li> <li>● Must register at a community college within four years of high school graduation</li> </ul> <p>To then be eligible to receive in-state tuition at a four-year college, the student:</p> <ul style="list-style-type: none"> <li>● Must have met the requirements for an exemption from paying the out-of-state tuition rate at a community college</li> <li>● Must have attained an associate’s degree or achieved 60 credits at a community college in Maryland</li> <li>● Must provide the institution a copy of the affidavit stating that the individual will file an application to become a permanent resident within 30 days after becoming eligible to do so</li> <li>● Must provide documentation that the individual or the individual’s parent or legal guardian has filed a Maryland income tax return annually while the individual attended a community college, during any period between graduation from or achieving 60 credits at a community college and registration at a public four-year institution, and during the period of attendance at an institution</li> <li>● Must register at a public four-year institution within four years of graduating from or achieving 60 credits at a community college</li> </ul>	<p>Students must first attend a community college in order to be eligible for in-state tuition at a four-year institution.</p>
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Minnesota	<a href="#">SF1236</a>	<ul style="list-style-type: none"> <li>● Must have attended a high school in the state for at least 3 years, or</li> <li>● Graduated from a Minnesota high school or earned a GED, and registered with the U.S. Selective Service (males 18 to 25 years old).</li> </ul>	Students who qualify for in-state tuition under SF1236 are also eligible for state-funded financial aid.
Nebraska	<a href="#">LB239</a>	<ul style="list-style-type: none"> <li>● Reside in Nebraska for at least three years prior to high school graduation/obtaining a GED</li> <li>● Graduate from a Nebraska public or private high school or obtain a GED</li> <li>● Live with a parent or guardian while attending high school</li> <li>● Be registered as an entering college student not earlier than the 2006 fall semester</li> <li>● Provide an affidavit stating intention to become a permanent resident at their earliest opportunity. If the parent ceases to reside in Nebraska, the student can retain resident status if the student has a bona fide intention to reside in Nebraska</li> </ul>	
New Jersey	<a href="#">SB2479</a>	<ul style="list-style-type: none"> <li>● Attend high school in New Jersey for three or more years</li> <li>● Graduate from a high school in New Jersey or receive the equivalent of a high school diploma</li> <li>● Register as an entering student or currently enrolled in a public institution of higher education not earlier than the fall semester of the 2013-2014 academic year</li> <li>● File an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status or will file an application as soon as eligible to do so</li> <li>● Meet the Department of Homeland Security's eligibility criteria and has applied for or received Deferred Action for Childhood Arrivals (DACA) status.</li> </ul>	Generally eligible for state scholarships and other state sponsored financial aid
New Mexico	<a href="#">SB582</a>	<ul style="list-style-type: none"> <li>● Attended New Mexico middle or high school for at least one year</li> <li>● Graduated from a high school or received their GED in the state of New Mexico</li> </ul>	

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New York	<a href="#">SB7784</a>	<ul style="list-style-type: none"> <li>● Attend at least two years of high school in New York</li> <li>● Graduate from a New York high school or receive GED</li> <li>● Apply for attendance at an institution within 5 years of receiving a diploma</li> <li>● Show proof of residence</li> <li>● File affidavit declaring that you will file for legal status when able</li> </ul>	
Oregon	<a href="#">HB2787</a>	<ul style="list-style-type: none"> <li>● Demonstrate three years of attendance at an Oregon primary and secondary school prior to receiving a high school diploma or equivalent;</li> <li>● Enroll in a public university in Oregon within three years of earning a high school diploma or equivalent in Oregon;</li> <li>● Shows intention to become a citizen or lawful permanent resident in the United States;</li> </ul>	Students who qualify for in-state tuition under HB2787 are also eligible for state-funded financial aid.
Texas	<a href="#">SB1403</a>	<ul style="list-style-type: none"> <li>● Graduated from a public or private high school or received the equivalent of a high school diploma in Texas</li> <li>● Resided in Texas for at least three years as of the date the person graduated from high school or received the equivalent of a high school diploma</li> <li>● Register as an entering student in an institution of higher education not earlier than the 2001 fall semester</li> <li>● Provide an affidavit stating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so.</li> </ul>	Students who qualify for in-state tuition under SB1528 are also eligible for state-funded financial aid.
Utah	<a href="#">HB144</a>	<ul style="list-style-type: none"> <li>● Attend a high school in Utah for three or more years</li> <li>● Graduate from a Utah high school or received the equivalent of a high school diploma (GED) before the start of the school term</li> <li>● Cannot have registered for classes prior to the 2002-2003 academic year</li> <li>● File an application to legalize immigration status, or be willing to file an application when eligible</li> <li>● Universities will likely require an HB 144 Tuition Waiver Request and will only consider applicants that cannot hold a non-</li> </ul>	

		immigrant visa	
Washington	<a href="#">HB1079</a>	<ul style="list-style-type: none"> <li>• Earned a diploma or equivalent (GED) from a Washington high school</li> <li>• Resided in Washington for at least three consecutive years as of the date the person received a diploma or GED</li> <li>• Continually lived in Washington since receiving a diploma or GED</li> <li>• Filed an affidavit verifying that he or she qualifies to pay resident tuition and will seek legal permanent residency when legally permitted to do so.</li> </ul>	Per SB6523, students who qualify for in-state tuition under HB1079 are also eligible for state-funded financial aid.

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## 2. States Offering Grants and other Education Financing

Once a student has a general idea of the probable tuition rate, the first step in finding a scholarship will be to search for state specific or school specific grants and scholarships open to undocumented students.

States with specific laws allowing undocumented students to receive state grants include:

- California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Texas, Utah, and Washington.<sup>54</sup>

For states without laws regarding state grants, students can seek private scholarships or contact their financial aid office for fee waivers, tuition reductions, reimbursements, or similar discounts. Website like [scholarships.com](#) have resources and suggestions specifically for undocumented graduate students. Also see the [resource repository](#) for organizations students can reach out to for assistance in finding scholarships.

### B. Managing Non-tuition Finances

Generally, undocumented students face the same struggles managing finances as any other graduate student. All students struggle with whether to rent books or buy them outright, whether they should “treat” themselves to take out or consume cheaper alternatives like instant noodles,

<sup>53</sup> See also *Policy Environment*, uLEADNet.org, <https://uleadnet.org/> (last visited May 2, 2018).

<sup>54</sup> *Basic Facts About In-State Tuition*, National Immigration Law Center, <https://www.nilc.org/issues/education/basic-facts-instate/> (last visited May 1, 2018).

or how to budget in case of an emergency. For general advice on managing finances, students should contact their financial aid office, a financial advisor, and/or utilize the array of free financial applications available such as *Mint*<sup>55</sup>, *You Need a Budget*<sup>56</sup>, or GradSense.org's Budget Calculator.<sup>57</sup>

For advice specific to undocumented students, the things that are particularly pertinent to know include how and why an undocumented person should open a bank account, how to apply for a credit card, and how to apply for a personal loan.

## 1. Opening a Bank Account

Having a bank account is important for saving, keeping finances safe from theft, accessing scholarship funds, direct deposit, developing a credit history, and most importantly for establishing a record of residence and financial transactions in the event that path to citizenship opens up.

United We Dream Co-Founder and undocumented advocate, Julieta Garibay, recounted a predicament many undocumented students may empathize with. In her youth, Julieta was under the assumption that it was not possible to open a bank account as an undocumented person. In an interview with *NerdWallet* Julieta admitted that she did not open her first bank account until she was 20.<sup>58</sup> Before then, she had kept her money in a paper bag under the fridge. However, as she started college and as her fridge began to leak she decided having a bank account was a safer alternative.

The first step to opening up a bank account is providing identification. For those unsure what proof of ID is needed or those worried about what information the banks may request, the [CIP \(Customer Identification Program\)](#) may help alleviate such concerns. The CIP was created under the [US Patriot Act](#) and requires all banks to provide customers with an explicit list of the banks' ID requirements for opening a bank account. Further, most banks need only confirm the following under the CIP:

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<sup>55</sup> *Money, Bill Pay, Credit Score & Investing*, Mint, <https://www.mint.com/> (last visited May 1, 2018).

<sup>56</sup> Budget LLC, YNAB (You Need A Budget) on the App Store (2015), <https://itunes.apple.com/us/app/ynab-you-need-a-budget/id1010865877?mt=8> (last visited May 1, 2018). (iPhone) or *YNAB - Budget, Personal Finance - Apps on Google Play*, Google, <https://play.google.com/store/apps/details?id=com.youneedabudget.evergreen.app&hl=en> (last visited May 1, 2018). (Android)

<sup>57</sup> *GradSense Budget Calculator*, <http://gradsense.org/gradsense/budget-calculator> (last visited May 1, 2018).

<sup>58</sup> Kelsey Sheehy, *How Undocumented Immigrants Can Get Bank Accounts*, NerdWallet (2018), <https://www.nerdwallet.com/blog/banking/undocumented-immigrants-bank-accounts/> (last visited May 1, 2018).

- Name
- Date of birth for individuals
- Address
- Identification number

The first two bullet points can generally must shown by providing a(n):

- Unexpired passport
- Government-issued driver's license (including foreign licenses)
- Consular ID card
- Birth certificate

Further, for proof of address, most banks will accept a copy of a lease, a driver's license or a utility bill that has the applicant's name and address listed. For providing an identification number, applicants will need either a social security number or an ITIN. Please see the [paying taxes](#) section below for more information on how to obtain an ITIN.

### C. Paying Taxes

Pew research estimates that there were approximately 8 million undocumented immigrants in the workforce in 2014.<sup>59</sup> Actual figures may be higher as Pew's poll only accounts for self-reported data and the recent economic upturn has resulted in higher employment numbers across nearly all demographics.<sup>60</sup> In addition, it is estimated that 3.4 million undocumented immigrants pay into some tax scheme, be it income tax, social security, or medicare at the state and federal level.<sup>61</sup> In light of this data, undocumented students may wonder if one is undocumented why pay taxes? What are the benefits and costs of paying taxes? This is what we hope to address in this section so undocumented individuals can make an informed decision on the issue of paying taxes.

#### 1. Cost/Benefit Analysis for Paying Taxes

There are some inherent costs that come with doing taxes, such as hiring a professional to assist in the filing process. This service is recommended for an undocumented immigrant filing taxes because there are some nuances that would apply that typical tax software or instruction

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<sup>59</sup> Jens Manuel Krogstad, Jeffrey S. Passel & D'Vera Cohn, *5 facts about illegal immigration in the U.S.*, Pew Research Center (April 27, 2017), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>

<sup>60</sup> *Unemployment rates by age, sex, race, and Hispanic or Latino ethnicity*, U.S. Bureau of Labor Statistics (last updated April 6, 2018), [https://www.bls.gov/web/empsit/cpsee\\_e16.htm](https://www.bls.gov/web/empsit/cpsee_e16.htm)

<sup>61</sup> Jeffrey S. Passel & D'Vera Cohn, *Size of U.S. Unauthorized Immigrant Workforce Stable After the Great Recession*, Pew Research Center's Hispanic Trends Project (Nov. 3, 2016), <http://www.pewhispanic.org/2016/11/03/size-of-u-s-unauthorized-immigrant-workforce-stable-after-the-great-recession/>

documentation does not cover. For example, how to file taxes without having a social security number. The cost of hiring a professional should not hinder one's ability to file their taxes, especially considering that there are a significant number of local tax clinics designed to help low income individuals. A list of some of these services can be found on the [IRS website](#).<sup>62</sup>

In addition to the cost of paying a professional to prepare taxes, there is the cost of the taxes themselves. Some undocumented immigrants file their tax returns not to receive a monetary return, but instead to pay both state and federal taxes which can be accomplished through the tax return process.<sup>63</sup> This is an added cost, especially since undocumented immigrants do not qualify for certain tax credits and public benefits that are the result of paying taxes, such as, the Earned Income Tax Credit.<sup>64</sup> However, an undocumented immigrant can claim their children if the children are U.S. citizens.<sup>65</sup>

There are some potential long-term benefits associated with undocumented immigrants filing taxes. First and foremost, should the United States change its immigration policy in the future, it would likely do so based on residency and proof of good citizenship.<sup>66</sup> Both of these qualities can be deduced from a consistent history of filing ones taxes at both the state and federal level.<sup>67</sup> If an undocumented immigrant chose to files taxes, they would have documentation to show their economic contribution to the United States and their residency in the state and country.

## 2. Concerns with Being Undocumented and Filing Taxes

The biggest concern echoed across various forums, is that the IRS will report undocumented individuals to ICE or another enforcement agency due for being an undocumented immigrant or utilizing a fake social security number to obtain employment. However, at this time, this concern is thankfully not a reality.

The Internal Revenue Code Section 6103 covers the confidentiality and disclosure of tax returns and return information. This section prohibits the IRS from releasing taxpayer information to any

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<sup>62</sup> *Find a Location for Free Tax Help*, Internal Revenue Service (last updated Mar. 27, 2018), <https://www.irs.gov/individuals/find-a-location-for-free-tax-prep>

<sup>63</sup> Octavio Blanco, *Why undocumented immigrants pay taxes*, CNNMoney (April 19, 2017), <http://money.cnn.com/2017/04/19/news/economy/undocumented-immigrant-taxes/index.html>

<sup>64</sup> Alexia Fernández Campbell, *Undocumented immigrants pay taxes too. Here's how they do it.*, Vox (April 17, 2017), <https://www.vox.com/policy-and-politics/2017/4/17/15290950/undocumented-immigrants-file-tax-returns>

<sup>65</sup> *Filing income taxes as an undocumented immigrant*, Illinois Legal Aid Online, <https://www.illinoislegalaid.org/legal-information/filing-income-taxes-undocumented-immigrant> (last visited May 1, 2018) See for information on how to tell if your child qualifies and other information on filing taxes as an undocumented immigrant

<sup>66</sup> *Paying taxes as an undocumented immigrant*, Illinois Legal Aid Online, <https://www.illinoislegalaid.org/legal-information/paying-taxes-undocumented-immigrant-0> (last visited May 1, 2018)

<sup>67</sup> *Id.*

other government agencies (including ICE), with two exceptions for a) providing information to the Treasury Department for investigations and b) by court order for other non-tax criminal investigations.<sup>68</sup>

The “by court order “for other non-tax criminal investigation portion is often also an area of concern. Specifically, those who use a fake social security number worry about this issue. The IRS confirmed in its Chief Counsel Memorandum POSTN-122111-10 from June 21, 2010, that using a fake social security number was not a violation of Internal Revenue Laws.<sup>69</sup> In addition, in *Flores-Figueroa v. U.S.*, the Supreme Court found that use of a fake set of social security numbers alone is not sufficient to show criminal identity theft.<sup>70</sup> It must be noted that this only applies to fake social security numbers, ones where the numbers are completely made up. One is not permitted to knowingly use someone else's identifying information for this purpose, that is no longer a “fake” identification but instead a stolen identification.

While these concerns are valid, undocumented individuals must also evaluate the risk based on their individual circumstance, especially if they have chosen to utilize a false security number, fake or otherwise. For the purpose of establishing residency and providing a paper trail for future use should congress take action and enact immigration reform, it is beneficial and suggested to file a tax return each year. Please note however, that the IRS may amend their disclosure policies or the courts or congress could redefine identity theft, at which point a reevaluation of the risks and benefits would be required.

### 3. How to File Taxes as an Undocumented Immigrant

When an undocumented immigrant decides that filing taxes is the best decision for them, the big question is how to do so. In order to file taxes, an undocumented immigrant will need to obtain an Individual Taxpayer Identification Number (ITIN).<sup>71</sup> This number is utilized in place of a social security number when filing a tax return. In order to obtain an ITIN one must file an IRS Form W-7, provide verification of foreign status, and a send in a completed tax return.<sup>72</sup> The IRS

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<sup>68</sup> *Disclosure Laws*, Internal Revenue Service (last updated Dec. 29, 2017), <https://www.irs.gov/government-entities/federal-state-local-governments/disclosure-laws>

<sup>69</sup> Memorandum from the Office of Chief Counsel, Internal Revenue Service (June 21, 2010) (IRS file POSTN-122111-10) available at [https://www.irs.gov/pub/lanoa/pmta\\_2010-21.pdf](https://www.irs.gov/pub/lanoa/pmta_2010-21.pdf) and *Immigration and Taxation*, TaxForum, IRS Nationwide (2014), <https://www.irs.gov/pub/irs-utl/20-Immigration%20and%20Taxation.pdf>

<sup>70</sup> *Flores-Figueroa v. United States*, 556 U.S. 646 (2009)

<sup>71</sup> *Individual Taxpayer Identification Number*, Internal Revenue Service (April 18, 2018), <https://www.irs.gov/individuals/individual-taxpayer-identification-number>

<sup>72</sup> *Id.*

Form W-7 will ask for personal identifying information, including but not limited to birth date, address of residence, birth country, and citizenship information.<sup>73</sup>

In addition to IRS Form W-7 undocumented immigrants will be required to provide original documentation verifying their foreign status. These verification documents can be a current foreign national identification card, foreign voter registration, foreign birth certificate, and other less applicable forms of U.S. issued identification.<sup>74</sup> These documents may be difficult or impossible for some undocumented immigrants to obtain, however, there currently is no workaround provided in obtaining a ITIN without them.

An ITIN will have to be renewed every five years. It is worth noting that the longer an undocumented individual goes without attempting to obtain an ITIN the more difficult it may be to produce original and current foreign status documentation. Additionally, if an ITIN has not been used in three years, it is determined to be inactive and will need to be renewed early, which is why it is recommended that once an ITIN is obtained a tax return is filed each subsequent year.<sup>75</sup>

When an undocumented immigrant files subsequent tax returns they will utilize their ITIN in place of a social security number. If an individual had used a fake social security number in obtaining employment it is likely that their W-2 will issue under that social security number. When this occurs they are still required to use their ITIN on the tax return and cite the W-2 with the fake social security number. This utilization of two numbers will create what the IRS calls a “miss match” within their system.<sup>76</sup>

Up until recently mismatched numbers could only be filed by mailing in the return, however, recently the system has been updated to accept electronic submissions of mismatched numbers - allowing easier access for those with ITIN and social security mismatches.<sup>77</sup> This mismatch gets

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<sup>73</sup> *About Form W-7, Application for IRS Individual Taxpayer Identification Number*, Internal Revenue Service (last updated Dec. 14 2017), <https://www.irs.gov/forms-pubs/about-form-w7>; *Form W-7, Application for IRS Individual Taxpayer Identification Number*, Internal Revenue Service (Rev. Sept. 2016), <https://www.irs.gov/pub/irs-pdf/fw7.pdf>; and *Instructions for Form W-7*, Internal Revenue Service (Rev. Oct. 2017), <https://www.irs.gov/pub/irs-pdf/iw7.pdf>

<sup>74</sup> *Revised Application Standards for ITINs*, Internal Revenue Service (last updated Feb. 27, 2018), <https://www.irs.gov/individuals/revised-application-standards-for-itins>

<sup>75</sup> *ITIN Expiration Frequently Asked Questions*, Internal Revenue Service (last updated Dec. 08 2017), <https://www.irs.gov/individuals/itin-expiration-faqs>

<sup>76</sup> *Individual Taxpayer Identification Number (ITIN) Reminders for Tax Professionals*, Internal Revenue Service (last updated April 18, 2018), <https://www.irs.gov/individuals/international-taxpayers/individual-taxpayer-identification-number-itin-reminders-for-tax-professionals>

<sup>77</sup> Id.

recorded within the IRS database should it be need to prove later on that an undocumented individual was the person who filed the return and paid the appropriate taxes.<sup>78</sup>

## IV. Transportation

As a graduate student or a recent graduate getting to and from work, school and other obligations can quickly become a primary concern if not planned out for in advance. Graduate students will likely need to get to campus for classes, attend off campus school related events, attend on and off campus educational and career opportunities and potentially even attend conferences.

### A. Applying for a Driver's License

For many individuals, a personal vehicle might be a preferred mode of transportation. In all 50 states driving a car requires that the driver a) be able to afford a car, b) be able to afford insurance and c) most importantly, be able to obtain a driver's license. While a) applies to all drivers, b) and c) pose unique barriers to the undocumented community.

As of 2018 only twelve states, as well as Puerto Rico and Washington D.C. allow undocumented immigrants to obtain a driver's license or permit for driving privileges. These states include California<sup>79</sup>, Colorado<sup>80</sup>, Connecticut<sup>81</sup>, Delaware<sup>82</sup>, Hawaii<sup>83</sup>, Illinois<sup>84</sup>, Maryland<sup>85</sup>, New Mexico<sup>86</sup>, Nevada<sup>87</sup>, Utah<sup>88</sup> and Washington<sup>89</sup>. \*\*\* Please Note: The drivers licenses issued by

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<sup>78</sup> Id.

<sup>79</sup> *AB 60 Driver License*, State of California Department of Motor Vehicles, <https://www.dmv.ca.gov/portal/dmv/detail/ab60> (last visited May 1, 2018)

<sup>80</sup> *SB 13-251 Driver's License in Colorado*, DMV.ORG, <https://www.dmv.org/co-colorado/undocumented-resident-license.php> (last visited May 1, 2018)

<sup>81</sup> *Drive Only License Licensing Process*, State of Connecticut Department of Motor Vehicles, <http://www.ct.gov/dmv/cwp/view.asp?a=805&q=547214> (last visited May 1, 2018)

<sup>82</sup> *Delaware Driving Privilege Card - Begins December 27, 2015*, State of Delaware Department of Motor Vehicles, [https://www.dmv.de.gov/services/driver\\_services/drivers\\_license/dpc/index.shtml](https://www.dmv.de.gov/services/driver_services/drivers_license/dpc/index.shtml) (last visited May 1, 2018)

<sup>83</sup> *About Hawaii's Limited Purpose Instruction Permit, Limited Purpose Provisional Driver's License and Limited Purpose Driver's License*, State of Hawaii, <http://hidot.hawaii.gov/highways/files/2015/12/mvso-Limited-Purpose-DL-Pamphlet-Frequently-Asked-Questions-12-02-15.pdf> (last visited May 1, 2018)

<sup>84</sup> *Temporary Visitor Driver's License (TVDL) For Undocumented (Non-Visa Status) Individuals*, Office of the Illinois Secretary of State, <http://www.cyberdriveillinois.com/departments/drivers/TVDL/home.html> (last visited May 1, 2018)

<sup>85</sup> *Driver Licensing Information*, Maryland Department of Transportation, <http://www.mva.maryland.gov/drivers/apply/renewing-your-license-info.htm> (last visited May 1, 2018)

<sup>86</sup> *Apply for a new Driving Credential*, MVD New Mexico, <http://www.mvd.newmexico.gov/apply-for-new-driver-s-license.aspx> (last visited May 1, 2018)

<sup>87</sup> *Driver Authorization Cards*, State of Nevada Department of Motor Vehicles, <http://www.dmvnv.com/dac.htm> (last visited May 1, 2018)

<sup>88</sup> *Licensing/Permits/ID Cards*, Utah Department of Public Safety, <https://dld.utah.gov/licensingid-cards/> (last visited May 1, 2018)

these states will not be viable for travel on an airplane within the United States based on the enactment and implementation of the Real ID Act.<sup>90</sup>

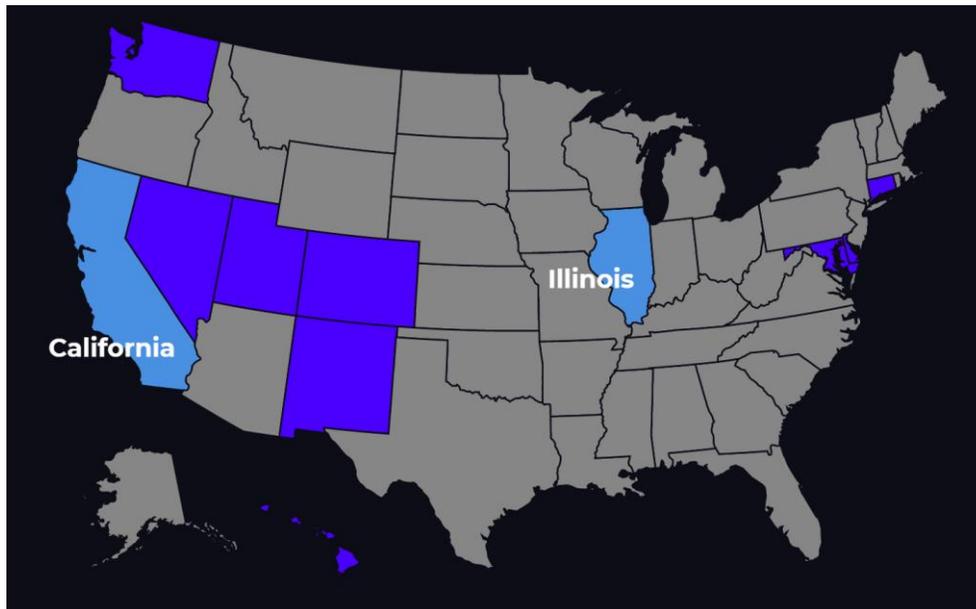


Figure 11: Depiction of States that Allow Undocumented Immigrants to Obtain Driver's Licenses or Permits, Lighter Colors Indicate Overlap of States Identified as Ones with more Inclusive Opportunities for Undocumented Students<sup>91</sup>

In order to provide more concise and applicable information we will discuss in depth the requirements for California and Illinois, which as discussed above and below are more appealing to graduate level students based on the state's overall political climate towards immigration and its policies on granting professional licenses. However, when looking into a specific state's requirements always check the website as changes to these requirements may have occurred.

The overlap in areas that have a positive political climate towards immigration and have some professional licensing for undocumented immigrants permitted are California and Illinois. Both of these states have similar requirements to the other states that permit undocumented immigrants to obtain driver's licenses. Most states require on a basic level that an individual prove residency, provide identification information, pass a written and road test, provide proof of insurance, and pay any applicable fees (typically \$30).

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<sup>89</sup> *Steps to getting your first license: 18 and over*, Washington State Department of Licensing <http://www.dol.wa.gov/driverslicense/18over.html> (last visited May 1, 2018)

<sup>90</sup> *REAL ID*, Department of Homeland Security (last updated Jan. 25, 2018), <https://www.dhs.gov/real-id>

<sup>91</sup> Chart made using Piktochart

## 1. Proving Residency

Most states require that an undocumented immigrant be a resident of the state for a year or more before applying for a driver's license/permit. In California there are a wide array of documents that can prove residency, including but not limited to, utility bills, rental agreements, tax returns and court documents.<sup>92</sup> In Illinois only bank statements, certified school transcripts, deeds, credit reports, rental or homeowners insurance and utility bills qualify to prove residency.<sup>93</sup>

## 2. Identification Documentation

Additionally, all states who offer driver's licenses and permits to undocumented immigrants require proof of identification. Most states will accept the following documents to provide a positive identification: non-expired passport, consular ID, birth certificate, adoption records and in California an Electoral ID Card.<sup>94</sup> As an undocumented immigrant, access to these types of official documents are likely to cause some issues when attempting to obtain a driver's license.

It should be noted that California is the only state that provides an alternative work around solution to providing these documents. If an applicant is unable to produce the applicable identification documents California regulations permit a secondary review process of applicants without the required proof of identification. This second review consists of an interview process with a DMV investigative staff member who will attempt to verify the applicant's identity by other means.<sup>95</sup>

## 3. Written and Road Tests

This requirement is standard for obtaining a driver's license and does not pose any unique issues for undocumented immigrants other than learning the "rules of the road." The primary concern that many undocumented immigrants may have is a potential issue as a non-native speaker - while we expect the graduate level education population to be not concerned with this issue, some family members may have stronger reading skills in their native language.

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<sup>92</sup> *California Residency Requirement for New Driver License (DL) and Identification Card (ID) Applicants*, State of California Department of Motor Vehicles, [https://www.dmv.ca.gov/portal/dmv/detail/dl/residency\\_requirement](https://www.dmv.ca.gov/portal/dmv/detail/dl/residency_requirement) (last visited May 1, 2018)

<sup>93</sup> *Documents Required to Obtain a Driver's License/State ID Card*, Office of the Illinois Secretary of State (Oct. 2017), [https://www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_x173.pdf](https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_x173.pdf)

<sup>94</sup> *AB 60 User Friendly Guide to Document Options to Obtain a California Driver License*, State of California Department of Motor Vehicles (last revised Feb. 7, 2018), [https://www.dmv.ca.gov/portal/wcm/connect/11a86d62-f848-4012-bc7d-4192bdef4f00/doc\\_req\\_matrix.pdf?MOD=AJPERES](https://www.dmv.ca.gov/portal/wcm/connect/11a86d62-f848-4012-bc7d-4192bdef4f00/doc_req_matrix.pdf?MOD=AJPERES)

<sup>95</sup> *Driver License Secondary Review Referral Process (FFDL 3)*, State of California Department of Motor Vehicles (last revised June 2017), [https://www.dmv.ca.gov/portal/dmv/detail/pubs/brochures/fast\\_facts/ffdl03S](https://www.dmv.ca.gov/portal/dmv/detail/pubs/brochures/fast_facts/ffdl03S)

Most states offer the written portion of their drivers tests in other languages, specifically, Illinois offers it in 3 languages and California offers their test in 32 languages.<sup>96</sup> If an undocumented individual takes the test in another language the state may also have some additional requirements, such as, a test to evaluate comprehension of road signs.<sup>97</sup>

#### 4. Proof of Insurance

Proof of insurance provides two potential barriers, one more specific to undocumented individuals than others. Insurance can often be an expensive expenditure but various bargain vendors exist - and typically those whose primary place of business is online instead of a physical location tend to be cheaper. However, typically most auto insurance agencies, especially those online, require a social security number to provide a quote.

The reason that auto insurance companies ask for an applicant's social security number is two-fold: it can better help prove identification and driving record and (2) it allows the insurance companies to pull credit scores which have been shown to be a good indicator of an individual's potential to file a claim. As such, those with no credit history or no social security number could pay higher premiums (rates) than those who provide social security numbers and have good credit history.<sup>98</sup> However, California, Massachusetts and Hawaii do not permit auto insurance providers to utilize credit scores to determine an individual's insurance rates.<sup>99</sup>

#### B. Other Factors that May Influence Transportation

In addition to successfully purchasing a car, obtaining car insurance and securing a driver's license, undocumented students should look into school and local policies associated with car ownership. Items to consider when determining if a car is the preferred or best mode of transportation should include:

- Checking the school's parking policies
  - What are the daily, semester or yearly parking fees on the on campus garages?
  - Is there ample street parking near the school that can be utilized for free or cheaper than the parking on campus?

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<sup>96</sup> *Languages Used for Driver's License Exams*, DMV Exam, [https://www.dmv.ca.gov/portal/dmv/detail/pubs/brochures/fast\\_facts/ffd103S](https://www.dmv.ca.gov/portal/dmv/detail/pubs/brochures/fast_facts/ffd103S) (last visited May 1, 2017)

<sup>97</sup> *Written Tests*, State of California Department of Motor Vehicles, <https://www.dmv.ca.gov/portal/dmv/detail/about/senior/driverlicense/written> (last visited May 1, 2018)

<sup>98</sup> Penny Gusner, *Do all car insurance companies ask for your social security number?* Carinsurance.com (Oct. 11, 2011), <https://www.carinsurance.com/kb/do-all-car-insurance-companies-ask-for-social-security-number>

<sup>99</sup> *Id.*

- Do you live on campus, if so what restrictions does the school put on resident parking?
- 
- Checking the parking policies of where you live
  - Do you live in a complex that restricts or regulates parking?
  - Do you have to pay for a parking permit (public or private)?

## 1. Alternative Transportation Options

Sometimes it is impractical or impossible to obtain a driver's license and car. As such, individuals in graduate school and recent graduates will need to carefully plan their schedules and living situations accordingly. There are various options that have their benefits and costs, these include, but are not limited to, living close to campus, riding a bike, using public transit and utilizing rideshare apps. One potential obstacle to undocumented individuals is that ride share apps and some local municipalities will require that individuals pay for their ride (either rideshare or public transportation) fares with a credit card or debit card. For obtaining a debit card please see the section above about opening a [bank account](#).

## V. Employment

### A. Professional Licensing

Many professions require a license in order to practice in the respective field. For example, lawyers cannot practice law without a State Bar license, doctors cannot practice medicine without a medical license, and even hairdressers cannot style hair in certain ways without a cosmetology license.

In general, Congress prohibits undocumented immigrants from obtaining a government-issued professional license unless the state they are requesting it from has specific laws authorizing the issuance of said license.<sup>100</sup>

### 1. Which States Grant Undocumented Immigrants Professional Licenses?

#### a) California

In 2016, the California Legislature amended the state's Business and Professional Code allowing certain immigrants, including undocumented immigrants, the ability to obtain any of the 40

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<sup>100</sup> [8 U.S.C. § 1621\(c\)\(1\)\(a\)](#)

enumerated professional licenses offered in the state, including licenses in professions such as law, teaching, medicine, cosmetology, and dentistry.

All individuals seeking a professional license can now provide either a federal [Individual Taxpayer Identification Number \(ITIN\)](#) or Social Security number (SSN). Any person regardless of their status in the U.S. can apply for and receive a professional license, provided he or she fulfills all other requirements from the applicable issuing agency.<sup>101</sup>

### **b) Florida**

The State of Florida currently has one law addressing the ability for undocumented immigrants to obtain a professional license. Unlike California, Florida's law, [HB 755](#) only applies to those seeking a license to practice law. Under HB 755 undocumented immigrants may be admitted to the Florida State Bar if they arrived in the U.S. as a minor, have been present in the U.S. for more than 10 years, have employment authorization from the United States Citizenship and Immigration Services (USCIS), has a Social Security number (not an ITIN) and, if male, has registered for Selective Service.

Effectively, Florida's law only allows undocumented immigrants who have received DACA, and thus have a social security number, to practice law in the state.<sup>102</sup>

### **c) Illinois**

In 2015 the Illinois state senate passed a bill allowing DACA recipients who have work authorization from the USCIS and who have fulfilled all other requirements necessary to receive a license to practice law in the state of Illinois.<sup>103</sup>

### **d) Nebraska**

In 2016, Nebraska passed a bill authorizing DACA recipients to receive state-issued professional licenses for over 170 professions.<sup>104</sup>

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<sup>101</sup> Cal. Bus. & Prof. Code § 4938

<sup>102</sup> Jerome R. Stockfisch, *Undocumented Immigrant Beats Legal Maze to Practice Law in Florida*, Tampa Bay Times, November 29, 2014, <http://www.tbo.com/news/crime/undocumented-immigrant-beats-legal-maze-to-practice-law-in-florida-20141129/>

<sup>103</sup> 705 Ill. Comp. Stat. Ann. 205/2

<sup>104</sup> [LB 947](#)

### e) New York

In 2016, the New York Board of Regents authorized DACA recipients to obtain a professional license and certain teacher certifications if they have met all other requirements for licensure except for their citizenship status.<sup>105</sup>

### f) Nevada

Nevada passed a bill allowing DACA recipients to obtain a teaching license in the state.

### g) Other States and Future Proposals

While the list of states granting professional licenses to undocumented immigrants is relatively small, many of these laws have been passed within the past few years and are the result of relentless advocacy. The [American Bar Association](#), the [American Medical Association](#), and other professional groups have given their support for granting licenses to undocumented individuals. Hopefully this list will continue to grow as more people push to support bills that support the undocumented population and their ability to seek professional licenses.

## B. Becoming Employable

### 1. Federal Prohibition on Undocumented Employment

A traditional employer-employee relationship, where an individual is the employee of a company or organization is not a viable option for undocumented immigrants. The 1986 Immigration Reform and Control Act (IRCA) prohibits employers from knowingly “hiring, recruiting or referring for a fee any” undocumented individual.<sup>106</sup> The result of this law was that all employers were then required to verify the identities and employment eligibility of all regular, temporary employees, temporary agency personnel and student employees hired after November 6, 1986 using the INS I-9 form.<sup>107</sup>

In order to alleviate some of the burden on employers in verifying identities, the E-verify system was created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). E-verify is a free service verifies information collected on the INS I-9 form to verify

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<sup>105</sup> Liz Robbins, *For Undocumented Immigrants, a License to Teach*, New York Times, May 13, 2016, <https://www.nytimes.com/2016/06/01/nyregion/new-freedom-to-advance-for-a-new-york-teacher-born-abroad.html> (last visited May 1, 2018).

<sup>106</sup> INA § 274A(a)(1), 8 U.S.C. 1324a

<sup>107</sup> *Form I-9 Federal Statutes and Regulations*, USCIS (last updated Nov. 14, 2016), <https://www.uscis.gov/i-9-central/about-form-i-9/statutes-and-regulations>

employment eligibility.<sup>108</sup> However, not every single employer is required to use e-verify.<sup>109</sup> In addition, there are several state specific laws that place requirements, additional protections on or limitations to the use of the e-verify system.<sup>110</sup>

Should employers fail to conduct I-9 verification for all new employees and are subsequently found to have knowingly employed undocumented immigrants, they are subject to both legal and non-legal consequences. Notably, these consequences fall on the employer, not the undocumented potential employee. Nevertheless, we include this information so that undocumented individuals understand the liability issues that would likely prevent them from working in a typical employee-employer environment.

Potential legal consequences consist of criminal or civil actions resulting in fines or even jail time. The fines incurred would increase with each offense, ranging from \$250 to \$10,000 per undocumented immigrant employed. In addition to fines, if ICE identifies the organization has a pattern of knowingly employing undocumented immigrants, the organization and its executives can be charged with additional fines and face up to 6 months in jail.<sup>111</sup>

In addition to the legal consequences, employers face non-legal consequences of their decision to knowingly employ undocumented immigrants. Depending on the political climate of where the employer conducts business, the negative press of hiring undocumented individuals might damage their business reputation.<sup>112</sup> An open legal investigation, regardless of outcome, can negatively affect customers' perception of the business. Even a temporary suspension of a business' license could negatively impact customer loyalty.<sup>113</sup>

The business could also face the need to replace various individuals throughout all levels of the organization. Not only would they need to fill the roles previously occupied by the undocumented immigrants, but they may be forced to hire various levels of management. This could be a result of individuals serving jail time or a response to the consumer base in order to reconcile the violations of the managers. This level of instability, especially in a small or medium size business could result in major reorganization or failure of a business entity.

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<sup>108</sup> *About E-Verify*, USCIS, <https://www.uscis.gov/e-verify> (last visited May 1, 2018)

<sup>109</sup> Daniel A. Kaplan, *E-Verify — Am I Required to Use It?*, Immigration, Nationality & Consular Law, Foley & Lardner LLP (June 6, 2013), <https://www.laboremploymentperspectives.com/2013/06/03/e-verify-am-i-required-to-use-it/>

<sup>110</sup> Allison Johnston, Ann Morse, *E-Verify*, National Conference of State Legislatures (Last Revised Dec 18, 2012), <http://www.ncsl.org/research/immigration/everify-faq.aspx>

<sup>111</sup> *I-9 Penalties*, USCIS, <https://www.uscis.gov/i-9-central/penalties> (last visited May 1, 2018)

<sup>112</sup> Jose Rivera, *Consequences of Hiring Undocumented Immigrants* *Consequences of Hiring Undocumented Immigrants*, LegalMatch Law Library (Mar. 6, 2018), <https://www.legalmatch.com/law-library/article/consequences-of-hiring-undocumented-immigrants.html>

<sup>113</sup> *Id.*

## 2. Gaining Experiential Learning

While the IRCA prohibits employers from “knowingly hiring, recruiting or referring for a fee” any undocumented individual, the IRCA also defines these individuals as those who are regular, temporary employees, temporary agency personnel and student employees.<sup>114</sup> This terminology may be concerning for individuals in graduate school who are looking to participate in experiential learning opportunities such as internships or externships.

This language does not mean that undocumented individuals are unable to participate in such programs, it just means they are unable to participate in the programs for any sort of compensation. Finding such types of internships at the graduate level may at times prove difficult. Undocumented immigrants may also apply for paid internships and upon receiving an offer request that your internship be unpaid.<sup>115</sup>

This process also will require undocumented immigrants to determine if they want to disclose their status to the potential organizations they will intern with. Ultimately what an individual decides to disclose and to whom is their own decision, however there are some factors to consider. Some organizations may want to know why an individual does not want to be compensated and as more and more schools and programs are allowing students to take on internships for both experimental units and monetary compensation, this may be more difficult to explain. Alternatively, it should be noted that should an undocumented immigrant choose to disclose their status to the organization that they are interning for, they will not be able to contract with them later as an independent contractor based on their knowledge of the undocumented status.

## 3. Becoming and Independent Contractor

It is not recommended that any individual, undocumented or not utilize fake or stolen identities and documentation. However, it is advisable that undocumented professionals become independent contractors within their field. In accordance with IRCA, 8 U.S. Code § 1324a, businesses are not obligated to confirm the work authorization for those who they hire as an independent contractor.<sup>116</sup>

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<sup>114</sup> *Who Needs the Form I-9?*, USCIS (last updated Oct. 25, 2017), <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/who-needs-form-i-9>

<sup>115</sup> *What's it really like to be an intern?*, ProPublica #ProjectIntern, <http://theinterneconomy.tumblr.com/post/63651879243/as-an-undocumented-student-you-cant-apply-for> (last viewed May 1, 2018)

<sup>116</sup> Deborah Dyson, *Legal Pitfalls of Hiring Undocumented Immigrants*, NOLO, <https://www.nolo.com/legal-encyclopedia/legal-pitfalls-hiring-undocumented-immigrants.html> (last viewed May 1, 2018)

Because organizations are not required to confirm or even request the work authorization of independent contractors this creates less liability for the businesses with which the undocumented immigrants contracts with. While being an independent contractor is still not a pathway to true legal employment, it does circumvent many of the requirements established by IRCA. Additionally, becoming an independent contractor poses less of a probability of being denied work based off of immigration status since less due diligence is required on the part of the business.

One key component of the independent contractor exception to IRCA, 8 U.S. Code § 1324a is that employers may still not knowingly contract with individuals who are undocumented immigrants.<sup>117</sup> While the standard of knowing for employees expands from actual knowledge to constructive knowledge, the knowledge standard of independent contractors is suggested by current legal standards to require actual knowledge.<sup>118</sup> As such, we must strongly advise that you do not disclose your status to those who contract for your services.

Should a business find out their independent contractor does not hold valid work authorization they must immediately terminate the independent contractor relationship or be held liable in the same way an employer would in accordance with INA 274A (as discussed above).<sup>119</sup> As such, undocumented immigrants should not disclose their status when acting as an independent contractor either through direct verbal advisement of their status nor through actions that may suggest their status.

#### **4. Being an Independent Contractor Outside of Your Field of Study**

There are various other methods of earning an income as an independent contractor that, while may not be in the traditional path of others with a similar educational background, offer economic, social and personal development opportunities. Some individuals with higher level educational degrees either supplement their income with or solely provide for income by engaging in speaking events, writing books or creating nonprofits.

Specifically, several noted lawyers who have graduated and passed their state bars have gone on to do public speaking events and are often paid for such services. In addition, individuals may choose to document and publish their experiences as undocumented immigrants who have also experienced and excelled in graduate level education. Similarly, some undocumented individuals have gone on to also engage in the creation, development and running of nonprofit organizations.

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<sup>117</sup> INA§ 274A(a)(4), 8 U.S.C. 1324a

<sup>118</sup> Split Rail Fence Co. v. United States, 852 F.3d 1228 (2017), A.L.L. Masonry Constr. Co. v. Omielan, 2009 U.S. Dist. LEXIS 63767 (2009), and Rosa v. Partners in Progress, Inc., 152 N.H. 6 (2005)

<sup>119</sup> INA§ 274A(a)(4), 8 U.S.C. 1324a

## VI. Resources for Academic Success and Support

### A. Maintaining Good Mental Health

#### 1. Why Mental Health Matters

It is well understood that mental health affects almost every facet of one's life, from sleep to concentration to the ability to perform at one's peak. In addition, graduate students appear to be at a greater risk for mental health issues than the general population. The numbers fluctuate from study to study but approximately 47% of PhD students and 37% of Master's and Professional degree students suffer from depression.<sup>120</sup> An unknown number of graduate students may suffer from other mental health issues including anxiety disorders, obsessive compulsive disorders and eating disorders.

In 2014 U.C. Berkeley ran a Graduate Student Well-Being Report that focused on depression and key indicators for both satisfaction with life and depression. The top predictors identified with a satisfaction for life were one's living conditions, career prospects and financial conference, while the top predictors for depression included sleep, overall health and academic engagement.<sup>121</sup> While these are concerns for graduate students in general, these areas can have a different impact on a student who is an undocumented immigrant and in addition to these undocumented immigrants face stressors and factors that the general population does not on average experience.

#### 2. How Being Undocumented can Affect Mental Health

Being an undocumented immigrant provides for mental health concerns that other students do not experience. A recent UCLA study found that "concerns related to finances, fear of deportation and a sense of isolation weigh heavily on undocumented students." These concerns and fears are a main factor that contributed to an above average percentage of undocumented individuals reporting anxiety that exceeds the cutoff limits for anxiety disorders.<sup>122</sup> Specifically, women undocumented immigrants who are students reported anxiety levels that would qualify for an anxiety disorder at a rate of 36.7%, in comparison to 9% in the general population.<sup>123</sup>

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<sup>120</sup> Graduate Student Happiness & Well-Being Report, The Graduate Assembly, U.C. Berkeley (2014), [http://ga.berkeley.edu/wp-content/uploads/2015/04/wellbeingreport\\_2014.pdf](http://ga.berkeley.edu/wp-content/uploads/2015/04/wellbeingreport_2014.pdf)

<sup>121</sup> Id.

<sup>122</sup> Kandi Mink Salas, *Walking a Tightrope: Tending to the Mental, Emotional, and Spiritual Health of Undocumented Students*, NSAPA (Feb. 12, 2015), <https://www.naspa.org/rpi/posts/walking-a-tightrope>

<sup>123</sup> Id.

In addition, the 2012 Encyclopedia of Diversity in Education by William Perez, notes “emotional concerns for undocumented college students include fear of deportation, loneliness, and depression.” Other organizations, such as the Undocumented Student Program (USP) at U.C. Berkley, have also noticed that the political climate can greatly impact the mental health of the undocumented student population.<sup>124</sup>

The USP, which caters to both DACA recipients and the wider undocumented population as a whole, saw an increase of 90% in undocumented and DACA students seeking mental health services during the end of 2016 and early 2017 as Trump was predicted to go into office and again in late 2017 when Trump discussed rescinding DACA.<sup>125</sup> This increase in services sought highlights the emotional impact that political climate in relation to immigration can have on undocumented populations and can be tumultuous to those trying to achieve an education.

### 3. Accessing Mental Health Services

For undocumented immigrants the typical paths in which people obtain medical insurance that covers both physical and mental health services are not accessible. Most citizens either have medical insurance through their employer or through their parents employers, however employers do not offer these types of benefits to independent contractors. In addition undocumented immigrants are unable to obtain any medical services through federally funded programs. Exceptions typically do apply for emergency and pregnancy services. Additionally, undocumented immigrants are unable to participate in State based health insurance marketplaces, such as Covered California.

As such most undocumented immigrants are forced to pay out of pocket for either insurance coverage or for individual visits. This method is typically cost prohibitive to most individuals, not just undocumented immigrants. In addition, some health insurance programs required social security numbers in order to obtain a quote and sign up for a policy.

There is also the option of utilizing the insurance provided by one’s school. Most schools offer medical insurance plans to their students for a fee and oftentimes this can be expensive but still more cost effective than paying for individual visits. In addition, some schools offer counseling or mental health services for free, however, these are sometimes limited to only a select number of visits. In addition, individuals may also reach out to local clinics and hotlines in the area address their mental health needs, this is done best by researching free local health or mental health clinics in your specific area.

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<sup>124</sup> Malini Ramaiyer, *Undocumented students left reeling by DACA repeal seek out mental health support*, The Daily Californian (Sept. 14, 2017), <http://www.dailycal.org/2017/09/14/undocumented-students-left-reeling-by-daca-repeal-seek-out-mental-health-support/>

<sup>125</sup> Id.

#### **4. Obtaining School Accommodations Based on Mental Health Needs**

Typically programs that have tests or other timed requirements will provide services and opportunities for individuals who are “disabled” and often the term “disability” includes mental disabilities. Examples of the accommodations programs may offer include extra time to take exams, isolated exam experiences, and the ability to obtain notes from others in your courses. In addition sometimes claiming these disability services at the graduate level will allow you to also claim the same accommodation requests and utilize available options and resources for professional licensing examinations (for example the bar exam).

More often than not schools will require documentation of the disability from a healthcare provider in order for a student to receive disability benefits. This is often where most undocumented students may have difficulties. However, as discussed above, is not an impossibility and if an undocumented individual is able to work with their school’s resources there may be enough support to get a diagnosis and have enough documentation to apply for and receive these types of benefits.

## VII. Resource Repository

### A. Financial Resources

- Scholarship Resources:
  - Golden Door Scholars | <https://www.goldendoorscholars.org/>
  - MALDEF | <http://www.maldef.org/leadership/scholarships/>
  - Scholarships.com | Scholarships for Undocumented Students  
<https://www.scholarships.com/financial-aid/college-scholarships/scholarships-by-type/scholarships-for-undocumented-students/>
  - College Greenlight, Scholarships for Undocumented Students |  
<http://blog.collegegreenlight.com/blog/scholarships-for-undocumented-students/>
  - Educations for Fair Consideration Scholarship List |  
[http://e4fc.org/images/E4FC\\_Grad\\_Scholarships.pdf](http://e4fc.org/images/E4FC_Grad_Scholarships.pdf)
  - Cornell University | <http://latino.cornell.edu/scholarship-internship-resources>
- Tax Resources:
  - IRS Resources:
    - ITIN [W-7 Form](#) and [Instructions](#)
  - United Way Tax Filing Resources for Undocumented Individuals |  
<https://www.unitedway.org/myfreetaxes/get-organized/itin-for-immigrants>
  - Catholic Immigration Network <https://cliniclegal.org/tax-preparation-assistance>

### B. Financial Resources

- State DMV Websites - for the 12 applicable states and Washington D.C.
  - California | <https://www.dmv.ca.gov/portal/dmv/detail/ab60>
  - Colorado | <https://www.dmv.org/co-colorado/undocumented-resident-license.php>
  - Connecticut | <http://www.ct.gov/dmv/cwp/view.asp?a=805&q=547214>
  - Delaware |  
[https://www.dmv.de.gov/services/driver\\_services/drivers\\_license/dpc/index.shtml](https://www.dmv.de.gov/services/driver_services/drivers_license/dpc/index.shtml)
  - Hawaii Limited Purpose License Informational Packet |  
<http://hidot.hawaii.gov/highways/files/2015/12/mvso-Limited-Purpose-DL-Pamphlet-Frequently-Asked-Questions-12-02-15.pdf>
  - Illinois Temporary Visitor Driver's License (TVDL) For Undocumented (Non-Visa Status) Individuals |  
<http://www.cyberdriveillinois.com/departments/drivers/TVDL/home.html>
  - Maryland | <http://www.mva.maryland.gov/drivers/apply/renewing-your-license-info.htm>
  - New Mexico | <http://www.mvd.newmexico.gov/apply-for-new-driver-s-license.aspx>

- Nevada | <http://www.dmvnv.com/dac.htm>
- Utah | <https://dld.utah.gov/licensingid-cards/>
- Washington State | <http://www.dol.wa.gov/driverslicense/18over.html>
- Washington D.C. Limited Purpose Driver's License | <https://dmv.dc.gov/service/limited-purpose-driver-license>

## C. Employment Resources

- Legal Aid at Work | <https://legalaidatwork.org/factsheet/undocumented-workers-employment-rights/>

## D. Academic Success and Support Resources

- United We Dream | <https://unitedwedream.org/>
- Undocumented Student Resource: California | <http://undoc.universityofcalifornia.edu/after-uc.html>
- Pre-Health Dreamers | <http://www.phdreamers.org/>

## E. Mental Health Resources

- The National Grad Crisis Line | <http://gradresources.org/crisis/> | 1.877.472.3457
- To locate and identify mental health resources locally or access urgent mental health resources visit <http://www.mentalhealthamerica.net/finding-therapy>
- National Suicide Prevention Lifeline's 24 hour toll-free crisis hotline, 1.800.273.TALK (1.800.273.8255) | <https://suicidepreventionlifeline.org/>
- IAMALive is an online crisis network | <https://www.imalive.org/>
- Crisis Text Line | text 741-741 with the message "START" | <https://www.crisistextline.org/>

## F. Legal Resources

- National Immigration Law Center | [https://www.nilc.org/about-us/what\\_we\\_do/](https://www.nilc.org/about-us/what_we_do/)
- Immigration Advocates Network | <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- Immigration Legal Resource Center | <https://www.ilrc.org/>