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Chapter 754: The Next Stepping Stone in the Path Toward a California Dream

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**Chapter 754: The Next Stepping Stone in the Path Toward
a California Dream**

Courtney S. Hoyland

Code Sections Affected

Education Code §§ 70030–70039 (new).
SB 1210 (Lara); 2014 STAT. Ch. 754.

TABLE OF CONTENTS

I. INTRODUCTION	322
II. LEGAL BACKGROUND	323
A. <i>Federal Law</i>	323
B. <i>DACA</i>	324
C. <i>Varying State Laws</i>	325
D. <i>California Law Before Chapter 754</i>	325
III. CHAPTER 754	326
IV. ANALYSIS.....	328
A. <i>Financial Issues</i>	329
1. <i>Costs to the State</i>	329
2. <i>Costs for Schools</i>	330
3. <i>How Will Undocumented Students Repay DREAM Loans?</i>	331
B. <i>Policy Issues</i>	332
1. <i>Does Chapter 754 Encourage Further Undocumented Immigration?</i>	333
2. <i>Securing a Return on State Investment</i>	333
V. CONCLUSION.....	334

I. INTRODUCTION

Undocumented students¹ brought to the United States as children are often punished for their parents's decisions.² In recent years, Congress has been unwilling to pass the Federal Development, Relief, and Education for Alien Minors (DREAM) Act, which would create a path to citizenship for certain undocumented immigrants brought to the United States as children and make federal financial aid available to those seeking a higher education.³ In response to the uncertain legal standing of these students, the Obama Administration authorized the Deferred Action for Childhood Arrivals (DACA) program in 2012, which allows undocumented immigrants to obtain work permits and temporary waivers of deportation proceedings.⁴ Individual states have also taken action to resolve the uncertainty by creating piecemeal legislation that varies dramatically from state to state.⁵ California continues to address the unclear future of these young undocumented immigrants with the passage of Chapter 754, which creates the California DREAM Loan Program to fill the gap in financial aid packages for those seeking to attend California public universities.⁶ This article will provide legal background regarding undocumented immigrant eligibility for financial aid, detail legal changes enacted by Chapter 754, and analyze the financial and policy issues raised by the new law.

1. Vocabulary differs widely concerning immigrants living in the United States without proper legal status. See Jose Antonio Vargas, *Immigration Debate: The Problem with the Word Illegal*, TIME (Sept. 21, 2012), <http://ideas.time.com/2012/09/21/immigration-debate-the-problem-with-the-word-illegal/print/> (on file with the *McGeorge Law Review*) (advocating for the use of “undocumented” in lieu of “illegal”). While “illegal immigrants” and “illegal aliens” are common terms, this article will use the terms “undocumented immigrants” and “undocumented students.”

2. Press Release, M. Jodi Rell, Conn. Governor, Governor Rell Vetoes Bill to Provide In-State Tuition to Illegal Aliens (June 26, 2007), available at www.ct.gov/GovernorRell/cwp/view.asp?A=2791&Q=385102 (on file with the *McGeorge Law Review*) (“I understand these students are not responsible for their undocumented status, having come to the United States with their parents The fact remains, however, that these students and their parents are here illegally and neither sympathy nor good intentions can ameliorate that fact.”).

3. *Financial Aid and Scholarships for Undocumented Students*, FINAID, <http://www.finaid.org/otheraid/undocumented.phtml> (last visited July 15, 2014) [hereinafter FINAID] (on file with the *McGeorge Law Review*) (describing some of the different pieces of Federal DREAM Act legislation introduced in Congress in recent years which failed to pass).

4. Press Release, U.S. Dep't of Homeland Sec., Secretary Napolitano Announces Deferred Action Process for Young People Who Are Low Enforcement Priorities (June 15, 2012), available at <https://www.dhs.gov/news/2012/06/15/secretary-napolitano-announces-deferred-action-process-young-people-who-are-low> (on file with the *McGeorge Law Review*); see *infra* Part II.B (detailing the requirements for DACA eligibility).

5. See *infra* Part II.C (describing some of the various state legislation addressing undocumented student issues).

6. ASSEMBLY COMMITTEE ON HIGHER EDUCATION, COMMITTEE ANALYSIS OF SB 1210, at 4 (June 24, 2014).

II. LEGAL BACKGROUND

While there are numerous federal laws restricting services and benefits available to undocumented immigrants, many states have taken action to build upon these restrictions or counteract them. Part A of this section discusses current federal law, setting the stage for Chapter 754. Part B explains the DACA program as it relates to students who would receive loans under the California DREAM Loan Program. Part C provides insight into how other states have handled undocumented students seeking a higher education. Part D describes California law regarding undocumented students seeking a higher education prior to Chapter 754.

A. Federal Law

In 1982, the United States Supreme Court struck down a Texas law that denied undocumented immigrant children access to a kindergarten through twelfth grade (K–12) education based on equal protection grounds.⁷ Thus, all states are required to grant undocumented immigrant children access to a public K–12 education.⁸ However, beyond this, undocumented students cannot collect any federal financial aid, including grants, scholarships, student loans, or work-study income to pursue a higher education.⁹ Only United States citizens, legal permanent residents (LPRs), or those with documentation from United States Citizenship and Immigration Services showing they plan to become an LPR or citizen are eligible to receive federal financial aid.¹⁰

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) widened the scope of benefits undocumented immigrants were denied by negating any prior eligibility for state public benefits, including grants, loans, welfare, disability, unemployment, and postsecondary education.¹¹ However, the PRWORA authorized states that wished to offer these state-funded benefits the choice to affirmatively grant them through legislation passed after August of 1996.¹² In 1996, Congress passed additional legislation expressly

7. *Plyler v. Doe*, 457 U.S. 202, 220–21 (1982) (reasoning that such children are not responsible for their undocumented status or the unlawful acts of their parents, and that the court could not ignore the social costs of denying select groups “the means to absorb the values and skills upon which our social order rests”).

8. *Id.*

9. *Undocumented Student Tuition: Overview*, NAT’L CONF. OF STATE LEGISLATURES (May 5, 2014), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (on file with the *McGeorge Law Review*).

10. 20 U.S.C. § 1091(a)(5) (2012). The Immigration and Naturalization Service is now called the United States Citizenship and Immigration Services under the Department of Homeland Security. *See Our History*, U.S. DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERV., www.uscis.gov/history-and-genealogy/our-history/our-history (last updated July 7, 2014) (on file with the *McGeorge Law Review*) (describing how the Homeland Security Act of 2002 removed the INS and created the USCIS).

11. 8 U.S.C. § 1621(a), (c)(1)(A)–(B) (2012).

12. *Id.* § 1621(d).

denying undocumented students eligibility for state-funded benefits for college based on in-state residency, unless non-resident citizens and nationals would be eligible for the same benefits.¹³

B. DACA¹⁴

DACA authorizes undocumented immigrants to work and temporarily protects them from deportation for a two year term, which is renewable while the program is still in place.¹⁵ It does not offer a path to becoming an LPR or United States citizen as Federal DREAM Act legislation might, if passed.¹⁶ DACA is available to undocumented youth between the ages of fifteen and thirty, who arrived in the United States before the age of sixteen and have lived in the country continuously for at least five years before June 15, 2012.¹⁷ Further, they must (1) not have any serious criminal background and (2) either be “in school, have graduated from high school, have obtained a general education development certificate,” or have been honorably discharged from the Armed Forces or Coast Guard.¹⁸ DACA applicants are ineligible if they have been “convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety.”¹⁹

13. *Id.* § 1623 (effectively denying in-state tuition rates based on residency where out-of-state citizens would be ineligible); *see infra* notes 26–28 and accompanying text (addressing California’s circumvention of federal law on this point).

14. In November 2014, the Department of Homeland Security announced an expansion of the DACA program that would eliminate the upper age limit, open eligibility to those who arrived before January 1, 2010, extend the program’s benefits from two years to three years, and provide similar benefits to the parents of U.S. citizen and LPR children. U.S. Dept. of Homeland Sec., *Fact Sheet: Fixing Our Broken Immigration System Through Executive Action* (Nov. 21, 2014), <http://www.dhs.gov/news/2014/11/21/fact-sheet-fixing-our-broken-immigration-system-through-executive-action>. In February 2015, a Texas federal district court stopped this expansion from taking effect, but the injunction has no impact on the existing DACA program. U.S. Dept. of Homeland Sec., *Statement by Secretary Jeh C. Johnson Concerning the District Court’s Ruling Concerning DAPA and DACA* (Feb. 17, 2015), <http://www.dhs.gov/news/2015/02/17/statement-secretary-jeh-c-johnson-concerning-district-courts-ruling-concerning-dapa>. This article will continue to discuss DACA as it stands without the potential expansions.

15. Katherine Mangan, *Amnesty Program Opens Job Market, 2 Years at a Time*, CHRON. OF HIGHER EDUC. (June 9, 2014), <http://www.chronicle.com/article/Amnesty-Program-Opens-Job/146967/> (on file with the *McGeorge Law Review*). *But see infra* Part IV.A.3 (discussing issues related to the uncertain future of the DACA program).

16. Compare Mangan, *supra* note 15 (stating that DACA “doesn’t make anyone a legal citizen” or guarantee that status will be renewed), with FINAID, *supra* note 3 (describing the broader goals of DREAM Act legislation).

17. Press Release, U.S. Dep’t of Homeland Sec., *supra* note 4.

18. *Id.*

19. *Id.*

C. *Varying State Laws*

While the Equal Protection Clause guarantees undocumented students a K–12 education, no such right to a college education exists.²⁰ As of May 2014, eighteen states offer undocumented students in-state tuition rates, five states offer financial aid, three states expressly deny in-state tuition rates, and two states—Alabama and South Carolina—outright deny undocumented students the right to enroll in public postsecondary schools.²¹ In some states, public schools will accept undocumented students but make them ineligible for financial aid and in-state tuition rates by classifying them as foreign non-immigrant students.²²

D. *California Law Before Chapter 754*

In 1977, California began requiring out-of-state students to pay a higher non-resident tuition rate at public institutions of higher education.²³ The Regents and Trustees of California’s public universities defended the higher tuition rate, arguing that families of resident students pay taxes within the state that help fund the school system.²⁴ California courts have validated the practice by reasoning that the higher rate helps “to distribute more evenly the cost of operating and supporting the University of California between residents and nonresidents attending the university.”²⁵

In April 2002, California law began allowing undocumented students living in California to qualify for an exemption from paying these non-resident tuition rates.²⁶ To be eligible for this exemption, such students must: (1) have attended high school within the state for at least three years; (2) have graduated from a high school within the state or received the equivalent of a high school diploma; and (3) be registered as an entering or currently enrolled student at an accredited

20. *Undocumented Student Tuition: Overview*, *supra* note 9.

21. *Id.* Minnesota makes a higher education more accessible to all through the SELF Loan Program, which is open to all students with no regard to immigration status. *Resources for Undocumented Students*, MINN. OFFICE OF HIGHER EDUC., <http://www.ohe.state.mn.us/mPg.cfm?pageID=1586> (last visited June 16, 2014) (on file with the *McGeorge Law Review*). However, it requires a United States citizen or LPR to co-sign loans for undocumented students, which may be difficult depending on each student’s situation. *Id.*

22. *Undocumented Student Tuition: Overview*, *supra* note 9. Foreign students studying in the United States on a non-immigrant visa are ineligible for federal financial aid and must rely on other forms, such as family assistance, aid from their home countries, institutional aid, and private scholarships or loans. *Sources of Financial Aid*, EDUPASS, <http://www.edupass.org/finaid/sources.phtml> (last visited July 19, 2013) (on file with the *McGeorge Law Review*).

23. CAL. EDUC. CODE § 68050 (West 2012).

24. *Kirk v. Bd. of Regents of Univ. of Cal.*, 273 Cal. App. 2d 430, 443–44 (1969).

25. *Id.* at 444.

26. EDUC. § 68130.5. Some states, including California, have circumvented federal law regarding benefits for undocumented immigrants by basing in-state tuition rate eligibility on high school attendance within the state rather than on state of residency. FINAID, *supra* note 3. These states claim that such rates are not a monetary benefit, but instead only a discount because payments are not made to the students. *Id.*

institution within the state.²⁷ Under this exception, students without a lawful immigration status must also file an affidavit with the school stating that they either have applied to change their immigration status or will do so when they become eligible.²⁸

In 2012, the California legislature enacted law establishing that undocumented students who qualified for non-resident tuition exemptions were also eligible for non-state scholarship funds from schools within the California Community Colleges, University of California (UC), and California State University (CSU) systems.²⁹ In 2013, the California legislature further expanded financial resources available to students exempted from non-resident tuition rates, allowing full participation in state financial aid programs.³⁰

III. CHAPTER 754

Beginning in the 2015–2016 academic year, Chapter 754 creates the California DREAM Loan Program, which gives undocumented students in California, who are otherwise ineligible for federal financial aid, access to student loans.³¹ To participate in the program, students must: (1) qualify for in-state tuition rates; (2) complete the DREAM Act Application; (3) attend a Cal Grant eligible program no less than half-time; (4) maintain acceptable academic progress; (5) require financial assistance as determined by the school; and (6) not be incarcerated or in default on any other state, federal, UC, or CSU student loans.³²

Administratively, the Student Aid Commission (SAC) must work with participating schools to ensure students meet all requirements before issuing

27. EDUC. § 68130.5(a)(1)–(3).

28. *Id.* § 68130.5(a)(4). *See generally* IMMIGRANT LEGAL RESOURCE CENTER, IMMIGRATION OPTIONS FOR UNDOCUMENTED IMMIGRANT CHILDREN (July 2013), available at <http://www.ilrc.org/files/documents/ilrc-immig-options-undoc-children-2013-07.pdf> (on file with the *McGeorge Law Review*) (describing some of the limited pathways to legal status available to family members who have been abused by a U.S. citizen or LPR, those abused or neglected by parents and now in the care of the juvenile court system, victims of certain crimes or certain types of human trafficking, persons claiming asylum from persecution in their home country, persons from one of the designated countries listed for Temporary Protected Status because of a natural disaster or civil unrest, specified immediate relatives of U.S. citizens or LPRs, and those who qualify for DACA).

29. EDUC. § 66021.7. An example of non-state scholarship funds would be private scholarship awards offered by the individual institution. *CA DREAM Act*, LATINO POLICY COAL., <http://www.latinopolicycoalition.org/projects/proyecto-oportunidad/ca-dream-act/> (last visited June 15, 2014) (on file with the *McGeorge Law Review*).

30. EDUC. § 69508.5(a), (c). The only exception is that of Competitive Cal Grant awards unless leftover funds exist after all other eligible California students have received such awards. *Id.* § 69508.5(c).

31. *Id.* §§ 70031, 70033 (enacted by Chapter 754). The original name of the California DREAM Loan Program was the California State Education Access Loan (SEAL) Program. SB 1210, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on Apr. 22, 2014, but not enacted). It was changed to the DREAM Loan Act, presumably to align it with similar DREAM Act legislation within the state and throughout the country. *See FINAID*, *supra* note 3 (describing various pieces of DREAM Act legislation).

32. EDUC. § 70033(a) (enacted by Chapter 754).

DREAM loans.³³ Loans may not equal more than the student's expected financial need or exceed \$4,000 per school year.³⁴ The total amount a student may borrow from a single participating school cannot exceed \$20,000.³⁵ DREAM Loan interest rates will mirror those for similar loans issued by the William D. Ford Federal Direct Loan Program (Direct Loan Program).³⁶ Repayment policies for DREAM loans will also mirror the Direct Loan Program with a ten-year standard repayment plan and six-month grace period after the student graduates or the student falls below half-time enrollment.³⁷ DREAM loans will not accrue interest during the six-month grace period, and participating schools are required to oversee the loan deferment program following the structure of the Direct Loan Program.³⁸

The California Legislature intends for the state's annual budget to provide funding to schools for the DREAM Loan Program in amounts determined by the number of undocumented students who applied for state financial aid the previous year.³⁹ Schools must create a revolving DREAM loan fund into which they will deposit repayments and from which they will disburse new loans.⁴⁰ For each year of participation, school contributions and repayments into the revolving fund must match or exceed state contributions.⁴¹ Participating schools cannot receive state contributions that would reduce school contributions and student repayments below the required percentage.⁴² As students begin repaying DREAM loans, participating schools must "make DREAM loan repayment revenue available to offset state and institutional contributions to the DREAM loan program so that . . . the respective annual costs to the state and to participating institutions shall be reduced equally."⁴³ If schools discontinue participation in the program, they must continue to service DREAM loans and collect payments until borrowers repay all outstanding loans.⁴⁴

33. *Id.* § 70033(c) (enacted by Chapter 754); *see also id.* § 70032(i) (enacted by Chapter 754) (defining participating institutions as "any campus of the California State University or the University of California that elects to participate in the DREAM Program pursuant to the requirements specified for a qualifying institution as set forth in this article").

34. *Id.* § 70034(a)(1)–(2) (enacted by Chapter 754).

35. *Id.* § 70034(a)(3) (enacted by Chapter 754).

36. *Id.* § 70034(b) (enacted by Chapter 754).

37. *Id.* § 70034(c) (enacted by Chapter 754).

38. *Id.* § 70034(d)–(e) (enacted by Chapter 754); *see generally* 20 U.S.C. 1087e(b)(2), (f) (2012) (outlining Direct Loan payment plans, deferment eligibility requirements, and the process for determining interest rates).

39. EDUC. § 70035(a)–(b) (enacted by Chapter 754).

40. *Id.* § 70035(c)(1) (enacted by Chapter 754).

41. *Id.* § 70035(d) (enacted by Chapter 754).

42. *Id.* § 70035(e) (enacted by Chapter 754).

43. *Id.* § 70035(c)(2) (enacted by Chapter 754).

44. *Id.* § 70035(f)(1) (enacted by Chapter 754).

Each year, the UC and CSU systems will have to report the number and amounts of DREAM loan awards to the Legislature.⁴⁵ All participating schools must file an annual report including the total balance of the revolving fund, the total state contribution to the fund, the school's total contribution, and the total administrative costs of maintaining the program.⁴⁶

Participating schools may withdraw an annual administrative allowance from the revolving fund equal to 5% of the amount distributed through the DREAM Loan Program.⁴⁷ If withdrawn, the schools must use the allowance to counterbalance the added costs of administering the program.⁴⁸ Schools must cover any additional costs incurred beyond the amount provided by the administrative allowance.⁴⁹

Schools that participate in the program will determine student eligibility, award loans to students, provide entrance and exit loan counseling, service loans, and collect repayments pursuant to the requirements of the Fair Credit Reporting Act.⁵⁰ The CSU and UC systems must create guidelines for situations in which student borrowers default on loans awarded through the DREAM program.⁵¹ In such situations, Chapter 754 allows schools to withhold student grades, transcripts, and diplomas, among other services, unless the loan is disputed or a student is making reasonable progress toward paying off the balance.⁵² Chapter 754 does not allow a school to withhold a student's ability to register for classes because of a default.⁵³ These default requirements will not apply to the UC system without a resolution by the UC Regents.⁵⁴

IV. ANALYSIS

Enactment of Chapter 754 raises several important political and financial concerns. Part A examines financial issues relating to the implementation and maintenance of the California DREAM Loan Program. Part B identifies and

45. *Id.* § 70035(g)(1) (enacted by Chapter 754).

46. *Id.* § 70035(g)(2) (enacted by Chapter 754).

47. *Id.* § 70038(a)–(c) (enacted by Chapter 754).

48. *Id.* § 70038(d) (enacted by Chapter 754).

49. *Id.* § 70038(e) (enacted by Chapter 754). *But see infra* Part IV.A.2 (discussing potential costs for schools and the expectation that costs will not exceed the administrative allowance).

50. EDUC. § 70036(a)–(d) (enacted by Chapter 754).

51. *Id.* § 70037(a) (enacted by Chapter 754) (requiring that certain services be withheld from the student after written notification that the student loan is in default has been sent to the student's last known address).

52. *Id.* § 70037(b)(1) (enacted by Chapter 754).

53. *Id.* § 70037(b)(2) (enacted by Chapter 754).

54. *Id.* § 70037(d) (enacted by Chapter 754). The UC system is a public trust governed by the UC Regents "with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services." CAL. CONST. art. 9, § 9(a).

discusses important policy issues connected to making a higher education available to more undocumented students within California.

A. *Financial Issues*

Part one of this section analyzes expected state costs in relation to potential economic offsets created by encouraging undocumented students to seek a higher education. Part two addresses costs expected within the CSU and UC systems and the expectation that the program eventually will become self-supporting. Part three considers a borrower's ability to repay loans in light of the limited work authorization options for undocumented immigrants under current federal law.

1. *Costs to the State*

The Senate Appropriations Committee suggests that the cost of the DREAM Loan Program will vary each year depending on the number of campuses and students that choose to participate, but estimates that the first year will cost the state approximately \$4.8 million for UC students and roughly \$2.7 million for CSU students.⁵⁵ Supporters argue that DREAM Act legislation increases future economic productivity,⁵⁶ but critics reason that undocumented students cannot contribute economically since federal law bars them from working.⁵⁷ However, undocumented immigrants in the United States already pay billions of dollars in taxes to all levels of government each year, contributing to the economy and social benefit programs for which they are not eligible.⁵⁸ The Social Security Administration estimates "that earnings by unauthorized immigrants result in a net positive effect on Social Security financial status generally, and that this effect contributed roughly \$12 billion to the cash flow of the program for 2010."⁵⁹ This positive impact produced by contributions from undocumented immigrants is expected to continue in future years.⁶⁰ Undocumented immigrants also

55. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1210, at 2 (Aug. 6, 2014).

56. See e.g., JUAN CARLOS GUZMAN & RAUL C. JARA, CENTER FOR AMERICAN PROGRESS, THE ECONOMIC BENEFITS OF PASSING THE DREAM ACT 1 (Oct. 2012), available at <http://cdn.americanprogress.org/wp-content/uploads/2012/09/DREAMecon-7.pdf> (finding that "passage of the [federal] DREAM Act would add \$329 billion to the US economy and create 1.4 million new jobs by 2030").

57. Tim Donnelly, Op-Ed., *How the DREAM Act May Be a Mirage*, DAILY CAL. (Sept. 13, 2011), <http://www.dailycal.org/2011/09/13/how-the-dream-act-may-be-a-mirage/> (on file with the *McGeorge Law Review*). But see *infra* Part IV.A.3 (regarding DACA and work authorization for certain undocumented immigrants).

58. Travis Loller, *Illegal Immigrants Pay Billions in Taxes*, HOUSTON CHRON. (Apr. 14, 2008), <http://www.chron.com/business/article/Illegal-immigrants-pay-billions-in-taxes-1533192.php> (on file with the *McGeorge Law Review*); Francine J. Lipman, *The "ILLEGAL" Tax*, 11 CONN. PUB. INT. L.J. 93, 96-97, 105.

59. STEPHEN GOSS ET AL., SOCIAL SEC. ADMIN., ACTUARIAL NOTE NO. 151, EFFECTS OF UNAUTHORIZED IMMIGRATION ON THE ACTUARIAL STATUS OF THE SOCIAL SECURITY TRUST FUNDS 3 (April 2013).

60. *Id.*

contribute locally through sales and property taxes.⁶¹ They often pay higher tax rates than non-immigrants because they do not qualify for refundable tax credits or fail to file a return requesting a refund.⁶² Because there is a causal relationship between a college education and potential lifetime earning capacity, helping undocumented immigrants obtain college educations may lead to increased tax revenue for the state and counteract the costs of Chapter 754.⁶³

2. Costs for Schools

Because schools already have financial aid offices in place to administer federal loans under the Direct Loan Program, schools are unlikely to incur significant additional costs due to administering the DREAM Loan Program.⁶⁴ Chapter 754 requires participating campuses to expend resources to train staff on the new law, create guidelines pertaining to the loan program, and manage the influx of loan packages and increase in loan counseling required by students.⁶⁵ However, the Legislature expects that the 5% administrative allowance provided by Chapter 754 will cover these costs.⁶⁶

Contributions from schools will vary each year depending on whether the school participates and the number of student borrowers.⁶⁷ The Legislature estimates that first-year school contributions will total \$1.5 million for the CSU system and \$3.2 million for the UC system.⁶⁸ While the state and university systems face significant up-front costs in creating the DREAM Loan Program, “once multiple cohorts of borrowers have entered repayment, the annual State and institutional contributions will decline and the program will become self-supporting.”⁶⁹ Further, the fact that both the CSU and the UC systems have voiced support for Chapter 754 indicates that neither university system has been deterred by potential costs created by the program.⁷⁰

61. Lipman, *supra* note 58, at 100–01.

62. *Id.*

63. See William Whaley, *The California DREAM Act: A Dream (Not DREAM) Come True*, 43 MCGEORGE L. REV. 625, 638–39 (2012) (discussing the increase in productivity and tax revenues that college educated undocumented immigrants could provide to California).

64. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1210, at 7 (Aug. 26, 2014).

65. See *supra* notes 50–51 and accompanying text (discussing the requirements the DREAM Loan Program imposes on participating schools).

66. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1210, at 2 (Aug. 6, 2014).

67. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1210, at 6 (May 27, 2014).

68. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1210, at 6 (Aug. 26, 2014) (basing estimations on the current and projected number of students expected to participate).

69. ASSEMBLY COMMITTEE ON HIGHER EDUCATION, COMMITTEE ANALYSIS OF SB 1210, at 4 (June 24, 2014).

70. See *id.* at 5 (listing the CSU and UC systems’ registered support for the DREAM Loan Program).

3. *How Will Undocumented Students Repay DREAM Loans?*

Chapter 754 relies in part on the DACA program and other potential immigration reforms to ensure repayment of DREAM loans because federal law currently bars employers from hiring undocumented immigrants.⁷¹ The long-term stability and survival of the DREAM Loan Program could depend on future immigration reform as President Obama works to expand immigration reform in favor of undocumented immigrants and Republicans in Congress work to reverse DACA and tighten current immigration enforcement.⁷²

For example, approximately 300 undocumented students currently attend UC Berkeley.⁷³ Of the forty-four undocumented UC Berkeley graduates in 2014, only half have work authorization through DACA.⁷⁴ However, even those who qualify for DACA face the possibility that future Presidents or Congress could terminate the program.⁷⁵ As long as the DACA program continues or similar future reforms ensure work authorization for undocumented immigrants, they should be able to make loan payments as expected.⁷⁶

Some legal experts suggest that a very limited group of DACA recipients may qualify for LPR status via a technical loophole.⁷⁷ DACA recipients can request advanced parole, which provides authorization to leave and re-enter the country after a short period of travel for certain discretionary reasons.⁷⁸ Upon returning with advance parole, DACA recipients are considered applicants for admission, which makes them eligible for an adjustment of legal status. This

71. See 8 U.S.C. § 1324(a) (2012) (prohibiting the employment of undocumented immigrants); see also Whaley, *supra* note 63, at 638–39 (explaining that if DACA is rescinded without further legislation, undocumented students will be unable to work after graduating).

72. Frank Thorp V, *GOP Bill Would Keep Obama from Expanding DACA*, NBC NEWS (July 31, 2014, 8:20 AM), <http://www.nbcnews.com/storyline/immigration-border-crisis/gop-bill-would-keep-obama-expanding-daca-n169541> (on file with the *McGeorge Law Review*) (discussing a bill introduced in Congress to end the DACA program, revoke work authorization for undocumented youth, and prevent future immigration reforms created by the President without the input of Congress).

73. Libby Sander, *Berkeley Gives Hope to the Undocumented*, CHRON. OF HIGHER EDUCATION, May 30, 2014, at A5.

74. Mangan, *supra* note 15.

75. *Id.*

76. See *id.* (describing the various employment prospects available to those undocumented immigrants with and without DACA work authorization). But see Thorp, *supra* note 72 (describing the uncertain future of the DACA program and the fight over immigration reform).

77. See, e.g., Jacqueline Shi, *Immigration Benefits for DACA Recipients Who Travel on Advance Parole*, IMMIGRATEFAST (Sept. 17, 2013), <http://www.immigratefast.com/immigration-news/immigration-benefits-for-daca-recipients-who-travel-on-advance-parole/> (on file with the *McGeorge Law Review*) (describing how the advance parole system may operate to allow DACA recipients who are spouses or children of United States citizens to petition for an immediate relative visa); *Adjustment of Status Through Marriage Under DACA*, Maximilian L. Inc., <http://www.maxlawinc.com/adjustment-of-status-through-marriage-under-daca/> (last visited Sept. 11, 2014) (stating “Advance Parole under DACA may provide a loophole” to allow undocumented immigrants to obtain a green card).

78. *Adjustment of Status Through Marriage Under DACA*, *supra* note 77 (explaining that the travel must be for humanitarian, educational, or employment purposes to qualify).

could ultimately free some undocumented immigrants from relying on the uncertain future of DACA to work and remain in the United States.⁷⁹ However, because only a select few will be able to take advantage of this loophole, it will likely have little effect on the overall ability of students to repay DREAM loans.⁸⁰

Students who do not qualify for work authorization through DACA—and all undocumented students if the DACA program is discontinued—must think creatively to make use of their degrees, earn a living, and repay the student loans they receive under Chapter 754.⁸¹ Under current federal law, many undocumented graduates must work under the table in low-paying positions while they wait for future legislation that would allow them to obtain jobs and wages that correspond to their levels of education.⁸² Other students delay entering careers to pursue advanced degrees or start their own companies to circumvent the need for employers to check immigration status.⁸³ Currently, no law bars undocumented immigrants from creating their own businesses or working as independent contractors, and it seems there is an increasing trend of undocumented immigrants doing exactly that to make a living.⁸⁴ Given the employment barriers undocumented immigrants face, it is unknown whether undocumented students will be able to put their degrees to work and repay loans received under the DREAM Loan Program.⁸⁵

B. Policy Issues

This section identifies two significant policy issues that arise with providing DREAM loans to undocumented students. Part One begins with whether the program will cause an increase in future undocumented immigration. Part two looks at the state's interest in seeking a return on its investment after providing a free K–12 education to undocumented immigrants.

79. Shi, *supra* note 77.

80. *See id.* (indicating that advance parole is not available to those “in a preference category . . . who have worked without authorization, or have been in the country without lawful status”).

81. *Illegal Immigrants Find Paths to College, Careers*, USA TODAY (May 26, 2012, 6:30 PM), <http://usatoday30.usatoday.com/news/education/story/2012-05-26/illegal-immigrants-college-careers/55222438/1?fullsite=true> (on file with the *McGeorge Law Review*) (describing the experiences of undocumented students who open their own businesses or work as independent contractors to circumvent federal law requiring businesses to request proof of immigration status when hiring employees).

82. *Id.*

83. *Id.*

84. Cindy Carcamo, *Immigrants Lacking Papers Work Legally—as Their Own Bosses*, L.A. TIMES (Sept. 14, 2013), <http://articles.latimes.com/2013/sep/14/nation/la-na-ff-immigration-business-20130915> (on file with the *McGeorge Law Review*).

85. *See* Thorp, *supra* note 72 (reporting on the intent of Republicans to block the renewal of deferrals under DACA, which may hinder loan recipients from obtaining jobs and repaying their loans).

1. *Does Chapter 754 Encourage Further Undocumented Immigration?*

Critics say current immigration policy encourages more undocumented immigration.⁸⁶ They argue that the Obama administration's immigration policies, including DACA, have done exactly that and are the cause of the current unaccompanied minor humanitarian crisis.⁸⁷ While critics may suggest that Chapter 754 will encourage undocumented immigration by providing such immigrants with additional benefits, recent studies suggest immigration policy plays a much smaller role in the decision to immigrate than has been implied by the media.⁸⁸ Data shows that the recent influx of unaccompanied minors began more than four years before the DACA program was created and that the number of immigrants caught crossing the border actually decreased in the months following its unveiling.⁸⁹ Although advocates for stricter immigration laws use the unaccompanied minor crisis to support their views, statistical analyses suggest violence abroad, rather than our immigration policy, is the driving force behind undocumented immigration.⁹⁰ Assuming this analysis is correct, Chapter 754 would have little impact on the number of immigrants choosing to enter the country.⁹¹

2. *Securing a Return on State Investment*

The United States spends more than \$40 billion each year on K–12 education for undocumented immigrants.⁹² Some question the policy behind denying these students the ability to repay society through employment after such a significant investment in their education.⁹³ While DREAM Act legislation arguably takes

86. See Alicia A. Caldwell, *Experts: Obama Can Do a Lot to Change Immigration*, YAHOO! NEWS (Aug. 2, 2014, 10:51 AM), <http://news.yahoo.com/obama-room-maneuver-immigration-changes-073104450.html?vp=1> (on file with the *McGeorge Law Review*) (describing concern over “the potential for ‘unintended consequences’ of encouraging more illegal immigration”).

87. Thorp, *supra* note 72 (quoting Senator Ted Cruz, who places the blame for the current influx of immigrants on President Obama's immigration policies).

88. Tom K. Wong, *Statistical Analysis Shows That Violence, Not Deferred Action, Is Behind the Surge of Unaccompanied Children Crossing the Border*, CTR. FOR AM. PROGRESS (July 8, 2014), <http://www.americanprogress.org/issues/immigration/news/2014/07/08/93370/statistical-analysis-shows-that-violence-not-deferred-action-is-behind-the-surge-of-unaccompanied-children-crossing-the-border/> (on file with the *McGeorge Law Review*).

89. *Id.*

90. *Id.*

91. See *id.* (providing statistical analyses indicating that levels of violence rather than US policy drive immigration rates).

92. JACK MARTIN & ERIC A. RUARK, FED’N FOR AM. IMMIGRATION REFORM, THE FISCAL BURDEN OF ILLEGAL IMMIGRATION ON UNITED STATES TAXPAYERS 48 (July 2010), available at http://www.fairus.org/site/DocServer/USCostStudy_2010.pdf?docID=4921 (on file with the *McGeorge Law Review*).

93. Shankar Vedantam, *Md. to Weigh Own ‘DREAM’ Tuition Act*, WASH. POST (Dec. 30, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/29/AR2010122904134.html> (on file with the *McGeorge Law Review*) (quoting Maryland State Senator Victor Ramirez: “We’re working backwards . . . We have said, ‘You can go to school for 12 years’ - we have invested in you for 12 years, and when that investment

opportunities and resources from tax-paying citizens,⁹⁴ the federal government does not have adequate resources to deport all undocumented immigrants and thus could gain from allowing them to repay society for the benefits they have received.⁹⁵ Because undocumented immigrants already pay billions of dollars in taxes each year and allowing them to achieve higher levels of education could result in even greater tax revenue, Chapter 754 could create financial benefits for the state.⁹⁶

V. CONCLUSION

After a significant initial investment from the state and participating schools, Chapter 754 has the potential to fiscally benefit the state in the long-term by providing undocumented immigrants greater access to higher education in California, which may ultimately generate higher tax revenues if undocumented graduates are able to join the workforce.⁹⁷ While participating schools anticipate making a large, up-front investment to implement the program, they can also expect the program to eventually become self-supporting.⁹⁸ Some uncertainty remains, however, as there are no guarantees that undocumented DREAM loan recipients will be able to repay the state's investment in them.⁹⁹ As long as the DACA program continues and no other significant immigration reform further restricts the ability of these students to obtain employment, the DREAM Loan Program can be successful.¹⁰⁰

is ripe for the picking, we say, 'No more.'"); see also Elisha Barron, Recent Development, *The Development, Relief, and Education for Alien Minors (DREAM) Act*, 48 HARV. J. ON LEGIS. 623, 646 (2011) (“[B]y depriving them of the opportunity to take the next step and obtain a college education—either by directly excluding them or by refusing to provide financial aid—the United States loses the benefit of its investment at the very time when immigrants’ earning potential and productivity are at a peak.”).

94. Barron, *supra* note 93, at 644.

95. Caldwell, *supra* note 86.

96. Whaley, *supra* note 63, at 638–39 (2012).

97. See *supra* Part IV.B.2 (discussing the potential tax consequences of Chapter 754).

98. See *supra* Part IV.A.2–3 (discussing the costs of the program to schools and repayment terms).

99. Jennifer L. Frum, *Postsecondary Educational Access for Undocumented Students: Opportunities and Constraints*, 3 AM. ACAD. 81, 96 (Jan. 2007) (“There is an apparent policy disconnect between providing tuition benefits to undocumented students while not providing a mechanism that allows either the students themselves or the public to reap the returns of this investment.”).

100. See *supra* Part IV.A.3 (discussing the potential barriers to repayment of DREAM loans).