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I.6a Policy on Gender or Ethnicity Restrictions

****DRAFT – CURRENTLY IN REVIEW****

Strict Judicial Scrutiny of Race and Ethnicity Conscious Student Financial Aid

The basic legal principles in the 2003 U.S. Supreme Court decisions in the University of Michigan cases apply to race-conscious financial aid programs as well as admissions. Under the Equal Protection Clause of the Fourteenth Amendment (which applies to public institutions), as well as Title VI of the Civil Rights Act of 1964 (which applies to programs and activities at public and private colleges and universities that receive federal financial assistance), any consideration of race, color or national origin is subject to strict judicial scrutiny--i.e., the university must have a "compelling interest" to justify the consideration of race, and the race-conscious program must be "narrowly tailored" to meet that interest. In light of the factors set forth by the Supreme Court in the Michigan cases, race-exclusive financial aid and scholarship programs pose a more difficult set of challenges than do programs that use race simply as a "plus" factor.

Federal courts have indicated that private donors may also be subject to strict judicial scrutiny when they make or enforce contracts (which may include scholarships) that discriminate based on race or ethnicity. The College Board recommends that private funders use the same standards as universities to evaluate their race- or ethnicity-conscious scholarships. Race-exclusive scholarship programs --i.e. programs that are limited to members of specific groups based on race, color or national origin -- are a focus of challenges by certain advocacy and public interest groups. The university is reviewing its scholarship policies in order to verify that they are structured to best achieve the university's goals and minimize legal risks.

The College Board's publication, "Federal Law and Financial Aid: A Framework for Evaluating Diversity-Related Programs" describes the law applicable to race-and ethnicity-conscious financial aid.

http://www.collegeboard.com/prod_downloads/diversitycollaborative/diversity_manual.pdf

There is a potential equal protection issue whenever a government entity gives different treatment to people who are similarly situated, whether on the basis of race, religion, age, etc. The courts review these issues based on the classification or interest involved. The federal courts use three levels of scrutiny (Alaska uses a sliding scale):

1. Strict scrutiny (the highest), requires a *compelling* state interest, and the classification must be *necessary* to serve that interest; this applies to race, national origin, religion, and fundamental rights.
2. Middle tier (intermediate) scrutiny, requires an *important* state interest, and the classification must be *substantially related* to serving that interest; this applies to gender.
3. Minimum scrutiny requires that the classification is *rationally related* to serving a *legitimate* state interest

This document is located at: <http://www.alaska.edu/foundation/>

Operations: Policies and Procedures >> Foundation Manuals >> Gift Acceptance >> I. Gifts for the Benefit of the University of Alaska



The University of Alaska and the UA Foundation must demonstrate an "exceedingly persuasive justification" for any gender based scholarship to ensure that it serves an important interest and that the classification is substantially related to serving that interest. The only difference between the race and gender based scholarships is that the required justification is somewhat greater for race-based than for gender-based. **While the University and the Foundation document this demonstration, scholarships restricted on the terms of gender or ethnicity may not be finalized. Preferences will be accepted until the process has been finalized.**