



July 17, 2020

Secretary Betsy DeVos  
US Education Department  
Office of Postsecondary Education  
400 Maryland Avenue SW  
Washington, D.C. 20202-2241

Submitted electronically via: <http://regulations.gov>

**Re. Comments on Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; Docket ID ED-2020-OPE-0078.**

Dear Secretary DeVos,

On behalf of the 55 undersigned organizations, we urge the Department of Education to withdraw its interim final rule imposing student eligibility limitations on higher education emergency funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The interim final rule infringes on the Congressional intent to provide more than \$6 billion in wide scale relief quickly to students through the Higher Education Emergency Relief Fund (HEERF). By requiring students to demonstrate eligibility for Title IV federal financial aid dollars, the Department is excluding large numbers of students. Below, we elaborate on why the agency must withdraw this interim final rule.

**1. The Department's justifications to superimpose Title IV student eligibility requirements to HEERF emergency funds are erroneous.**

Nowhere in the CARES Act subsection related to HEERF emergency funds does the statute mention restrictions on types of students eligible for aid. Nor are the funds described as federal financial aid akin to Title IV programs such as Pell Grants or student loans. The Secretary of Education seemingly agreed with this by stating that HEERF emergency funds are not considered part of the federal financial aid programs in the funding agreement letter colleges have to sign.<sup>1</sup> Yet, the Education Department chooses to treat these funds as requiring eligibility for federal financial aid. This conclusion is not well supported. One piece of evidence cited in the interim final rule is the fact that the

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<sup>1</sup> U.S. Department of Education, Recipient's Funding Certification and Agreement Emergency Financial Aid Grants to Students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, available at <https://www2.ed.gov/about/offices/list/ope/heerfstudentcertificationagreement42020.pdf>

CARES Act requires funds to flow through the same federal aid channels used to distribute Pell Grants. This was clearly included as a mechanism to ensure dollars were distributed quickly by relying on an existing system. This can be seen in a memo from the American Council on Education, where the idea of utilizing the Pell channel for rapid disbursement to institutions originated.<sup>2</sup>

Secondly, the Department claims the use of “cost of attendance” in the statute as a reason for invoking Title IV student eligibility requirements. But these are widely recognized terms of art that do not harken back to the federal aid programs only. As described in a ruling by a California court on this matter, cost of attendance is used to describe a subset of expenses related to the disruption of campus operations due to coronavirus.<sup>3</sup> Court rulings in California and Washington found the Department’s reasoning for this interim final rule so weak that they have partially or fully exempted many of their colleges from enforcing it.

## **2. Multiple standards of emergency aid guidance has created uncertainty, causing delays in providing relief.**

Even if these additional restrictions were a good idea, which they are not, the decision to implement them months after the funds became available will only add to the confusion for colleges. For example, on April 9th, Secretary DeVos initially said colleges would have discretion over their funds. The agency released new guidance on April 21, only to be deemed legally unenforceable by the Department a month later. This has amounted to confusion and uncertainty among college administrators, 80 percent of whom said disbursement of emergency aid has been somewhat or greatly delayed as a result.<sup>4</sup> A recent GAO report similarly found that 5 out of 7 higher education associations said these multiple standards caused delays.<sup>5</sup>

## **3. The interim final rule will create unnecessary and arduous administrative burdens for colleges.**

The completion of a Free Application for Federal Student Aid (FAFSA) is the most straightforward mechanism for students to demonstrate eligibility for federal aid to their colleges--a fact the agency’s interim final rule acknowledges. Colleges will now have to find ways to determine if students who have not applied for financial aid are eligible for HEERF emergency aid. Public institutions may also be adversely affected as they may enroll a larger share of students who are not eligible for federal aid because they are

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<sup>2</sup> American Council on Education, Supplemental Summary Memo, (March 19, 2020), available at <https://www.acenet.edu/Documents/Higher-Education-Supplemental-Summary-Memo-031920.pdf>

<sup>3</sup> *Eloy Ortiz Oakley vs. Betsy DeVos*, Case 4:20-cv-03215-YGR (June 17, 2020), available at [https://www.nasfaa.org/uploads/documents/CCC\\_CARES\\_Decision.pdf](https://www.nasfaa.org/uploads/documents/CCC_CARES_Decision.pdf)

<sup>4</sup> National Association of Student Financial Aid Administrators, Membership Survey: CARES Act Distribution, (May 18, 2020) available at [https://www.nasfaa.org/inconsistent\\_guidance\\_delays\\_emergency\\_grants](https://www.nasfaa.org/inconsistent_guidance_delays_emergency_grants)

<sup>5</sup> Governmental Accountability Office, “COVID-19: Opportunities to Improve Federal Response and Recovery Efforts,” (June 25, 2020) available at [https://www.gao.gov/reports/GAO-20-625/#TOC\\_Letter\\_Findings](https://www.gao.gov/reports/GAO-20-625/#TOC_Letter_Findings)

generally a more affordable option. Colleges will need to spend time and resources chasing down FAFSAs for any funds that were disbursed after the rule was published and moving forward.

**4. Large numbers of students will be grimly excluded, including many historically marginalized students.**

Requiring students to demonstrate eligibility for federal financial aid will outright exclude many students and throw up roadblocks for hundreds of thousands. For instance, the nearly half a million undocumented students in college should not be purposefully excluded from this aid, both on moral grounds and because they are already included in the CARES Act HEERF allocation formula. The Department claims it did not want to take the time to collect more data in creating the formula, and now it is placing that burden on colleges. Of grave concern is also the fact that the interim final rule will make it very difficult for veteran students who are eligible for federal aid, but have not completed a FAFSA because of the use of GI Bill education benefits, to obtain any relief. Illustrating these combined factors is the suit filed against the Department by the California Community Colleges estimating as many as 800,000 students--38 percent of its enrollment-- could be excluded from relief.<sup>6</sup>

In conclusion, the vast majority of the HEERF funds have already gone out the door, and changing course now will only harm students and cause administrative and moral challenges for postsecondary institutions. The Department's handling of emergency aid has been negligent and cruel. The implementation of this interim final rule will disproportionately harm the most vulnerable students. We therefore urge the Department to withdraw its interim final rule.

Academic Success Program Dallas  
Achieve Atlanta  
Alabama Possible  
Alianza Nacional de Campesinas  
American Association of University Women (AAUW)  
American Federation of Teachers  
Arizona College Access Network  
Center for American Progress  
CLASP  
Coalition for Humane Immigrant Rights (CHIRLA)  
College Bound St. Louis  
College Horizons, Inc.  
College Success Foundation  
East Bay Community Law Center

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<sup>6</sup> The California Community Colleges, California Community Colleges File Federal Lawsuit over Implementation of Emergency COVID-19 Student Assistance, Press release, May 12, 2020, available at <https://www.cccco.edu/About-Us/News-and-Media/Press-Releases/2020-DOE-LIT-PR>

EDGE Consulting Partners  
Excelencia in Education  
Generation Progress  
Higher Learning Advocates  
Houston Migrant Outreach Coalition  
Institute for Higher Education Policy (IHEP)  
Japanese American Citizens League  
Las Americas Immigrant Advocacy Center  
Lumina Foundation  
Mano Amiga  
Multicultural Efforts to end Sexual Assault (MESA)  
National Association for College Admission Counseling  
National Association of Secondary School Principals  
National Black Justice Coalition  
National College Attainment Network  
National Council of Jewish Women  
National Latina Institute for Reproductive Justice  
National Network for Immigrant & Refugee Rights  
NETWORK Lobby for Catholic Social Justice  
New America Higher Education Program  
OCA-Greater Houston  
Operation Jump Start  
Peter Granville, Senior Policy Associate, The Century Foundation  
SchoolHouse Connection  
Service Employees International Union (SEIU)  
Service Employees International Union (SEIU)  
SoCal CAN  
Sojourners  
Southeast Asia Resource Action Center (SEARAC)  
Student U  
Teach For America  
The Education Trust  
The Institute of College Access and Success  
U.S. Public Interest Research Group (PIRG)  
uAspire  
UnidosUS  
United Friends of the Children  
United We Dream Network  
Workers Center of Central NY  
Young Center for Immigrant Children's Rights  
Young Invincibles