

# Congress of the United States

Washington, DC 20510

May 20, 2020

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear Secretary DeVos:

We urge you to reverse your unauthorized decision to provide institutions of higher education, regardless of need, at least \$500,000 of taxpayer funds from the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136. The limited federal resources made available under the CARES Act are essential to help colleges and universities, including those that are historically under-resourced, respond to the significant needs created by the coronavirus disease (COVID-19) pandemic. Your decision to allocate more than 90 percent of the approximately \$350 million in reserved funds to nearly 1,000 institutions of higher education (“institutions”), regardless of the impact of COVID-19 on those campuses, threatens to eliminate the benefit of these critical funds and is inconsistent with the plain language of the CARES Act and Congress’ intent. This decision is unacceptable and will be detrimental to students at institutions significantly impacted by COVID-19, many of which are in desperate need of relief. We urge you to revoke your allocation announcement immediately and provide a simple application process to distribute funds according to institutional needs.

Section 18004(a)(3) of the CARES Act clearly states that funds under part B of title VII of the Higher Education Act shall be reserved for institutions “that the **Secretary determines have the greatest unmet needs** related to coronavirus” (emphasis added). Section 18004(c) directs the Secretary to “give priority to any institution of higher education that is not otherwise eligible for...at least \$500,000 **and demonstrates significant unmet needs** related to expenses associated with coronavirus” (emphasis added). Your determination that institutions receiving less than \$500,000 from other provisions of the Higher Education Emergency Relief Fund of the CARES Act have demonstrated significant unmet needs related to COVID-19, and that all such institutions have “priority,” is in clear violation of the law. If Congress had wanted institutions to receive at least \$500,000 from the CARES Act, the law would have clearly specified a minimum grant award. It did not do so.

The Department’s decision essentially re-wrote the underlying allocation formula Congress specified under section 18004(a)(1) of the CARES Act for the 90 percent portion of the Higher Education Emergency Relief Fund. For example, institutions that have been allocated an unwarranted “top off” would be eligible for more than twice as much funding per full-time equivalent (FTE) student as those institutions that were funded by the formula. The schools receiving a “top off” could receive an estimated \$1,692 per FTE, compared to \$831 per FTE at institutions that cannot get this unauthorized funding. Indeed, media reports have noted disbelief

and bewilderment among some tiny colleges upon news of the receipt of this unauthorized money that they did not need and, in some cases, represents many times their annual revenue.

The Department's decision is in stark contrast to its previous claims that, when it aligns to the Administration's political goals, it is simply bound by the statute. This is exemplified by your previous decision to deny emergency financial aid to students who are not also eligible for Title IV aid under the Higher Education Act—even though no such directive exists in the Higher Education Emergency Relief Fund of the CARES Act. With this latest action, the Department is ignoring an explicit requirement in the CARES Act to assess the needs of applicants when, in other instances, it has invented provisions that have no basis in law. This makes clear the Department is willing to impose significant barriers for students, but not for certain institutions. The Department also has made a public show of asking wealthy institutions that “do not need or deserve additional taxpayer funds” to decline CARES Act money. Yet, in this case, the Department has elected to provide a much larger giveaway to a number of institutions that do not need additional taxpayer funds to address the costs associated with COVID-19.

In previous emergency scenarios, the Department has had little reservation about assessing institutional needs. After Hurricanes Irma and Maria devastated Puerto Rico in 2017, and Congress provided \$100 million in recovery funding for institutions, the Department developed multiple applications for institutions that had been ravaged by the hurricanes to demonstrate their need, to the point that it created significant barriers for impacted institutions.

The Department's decision to shortchange institutions that have legitimate unmet needs due to COVID-19 is exacerbated by another series of decisions the Department has made in establishing the allocations for funds reserved for minority-serving and under-resourced institutions. Within the 7.5 percent portion of higher education funding, the Department excluded initial funds from going to any minority-serving institution (MSI) that is considered a branch campus of an institution of higher education. Instead, the Department reserved two percent of funds for these branch campuses, but it is not clear that such amount is sufficient. Further, in situations where a college is considered eligible for both an MSI program whose eligibility is based, in part, on meeting a specific minority enrollment and the Strengthening Institutions Program, the Department chose to give the institution the smaller of the two eligible grant awards. The cumulative impact of these decisions is the Department is neglecting to prioritize and appropriately fund a significant number of institutions with substantial unmet needs in its distribution of funds under section 18004(a)(3) of the CARES Act.

We urge the Department to cancel its recent allocation announcement and instead require institutions to demonstrate the impact of COVID-19 on their campuses using a simple application process that captures unmet needs. This process can take the form of an application that asks colleges to indicate their current levels of student enrollment and to describe the unmet needs related to expenses associated with COVID-19—such as transitioning to online education and assisting students in meeting basic needs created by the closures of in-person services. Congress intended for the Department to prioritize funding to those small institutions that have not already received at least \$500,000 under formula funding available in the Higher Education Emergency Relief Fund and that also demonstrate the greatest unmet needs from COVID-19. Even institutions that demonstrate significant need through such an application process should

not automatically receive \$500,000. Instead, these funds should be distributed based on institutional needs.

We understand not all institutions will choose to accept this funding, which the Department has suggested as a solution to providing more resources to small institutions with the greatest unmet need. However, the current “Certification and Agreement” form remains open until August 1, 2020. Therefore, it will be months before the Department can reallocate unused dollars; this timeline will result in a significant and harmful delay in providing additional funds, as Congress intended, to institutions that have been disproportionately affected. Instead, the Department should immediately change course and allocate all funding consistent with Congressional intent and based on the greatest unmet needs related to the COVID-19 pandemic.

Your unauthorized decision to allocate to institutions at least \$500,000 of CARES Act funds is in violation of Congressional intent, as expressed in section 18004(a)(3) of the CARES Act. Further, it is creating severe and unnecessary disparities in the distribution of taxpayer resources. The Department must reverse its decision to allocate funds without regard to need and instead distribute funds equitably and appropriately in accordance with the law. Thank you for your attention to this urgent matter.

Sincerely,



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PATTY MURRAY  
Ranking Member, Subcommittee on Labor,  
Health and Human Services, Education, and  
Related Agencies, Committee on  
Appropriations, U.S. Senate

Ranking Member, Committee on Health,  
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