

Congress of the United States

Washington, DC 20510

May 1, 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 harmful and unauthorized guidance that significantly restricts the flexibility for emergency financial aid to students provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136. The federal resources provided in the CARES Act are critical to institutions of higher education (“institutions”) and students dealing with the coronavirus disease (COVID-19) pandemic. Unfortunately, your decision could deny CARES Act relief to more than 7.5 million students in higher education.

Of the \$12.6 billion allocated by formula under the Higher Education Emergency Relief Fund (HEERF) of the CARES Act, no less than 50 percent was designated for emergency financial aid to support students’ cost of attendance. Students across the country are facing severe disruptions of their programs of study. They are under incredible financial strain and need additional support to continue their education while protecting their health and caring for their families.

Unfortunately, the U.S. Department of Education (“Department”) released guidance 12 days after announcing emergency financial aid allocations under the CARES Act that imposed new and unwarranted restrictions limiting which students can receive funding. The barriers created by the Department do not exist in the CARES Act, will prevent emergency financial aid from reaching many students with financial need that Congress intended to support, and add substantial burden to implementation of the law.

First, the Department asserts that all emergency financial aid recipients under the CARES Act must be eligible for assistance under Title IV of the Higher Education Act of 1965 (HEA). This limitation excludes students who do not meet academic progress standards, students who have not registered for the Selective Service, students with some types of drug convictions, certain students in adult basic education and dual enrollment programs who do not have a high school diploma, international students, and students who are not U.S. citizens or permanent residents, including all Dreamers, Deferred Action for Childhood Arrival (DACA) recipients, and other undocumented students.

The Department’s requirement that emergency financial aid recipients have “demonstrated eligibility to participate in programs under Section 484 of the HEA” also effectively requires that students fill out a Free Application for Federal Student Aid (FAFSA). There is no other reliable or efficient way for an institution to determine and verify the extensive eligibility requirements of Title IV. A significant number of students enrolled in higher education—particularly low-

income students—have not filled out the FAFSA. It is unreasonable to ask current students who are working to finish their terms to fill out a detailed form to receive emergency financial aid. According to the most recent estimates of FAFSA filing rates for 2015-16 from the National Postsecondary Student Aid Study, more than 7.5 million undergraduate and graduate students do not file a FAFSA. Thus, the Department’s unjustified decision to restrict emergency financial aid grants to Title IV eligible students will deny support to a vast number of working families.

The Department’s decision to restrict eligibility for emergency financial aid based on Title IV of the HEA is also plainly inconsistent with prior Department documentation. In the official “Certification and Agreement” form that institutions must sign to receive funding, the Department clearly states that, “*The Secretary does not consider these individual emergency financial aid grants to constitute Federal financial aid under Title IV of the HEA.*” It is unclear how the Department can impose federal financial aid requirements on funds it does not consider to be federal financial aid. The Department also emphasized in a cover letter to institutions the flexibility of emergency financial aid and discretion to institutions afforded under the CARES Act, stating that “the only statutory requirement is that the funds be used to cover expenses related to the disruption of campus operations due to coronavirus...” The Department’s subsequent guidance significantly limited this flexibility.

The Department’s inconsistency continues with its consideration of the 90/10 rule under Title IV of the HEA. While the Department managed to apply federal financial aid requirements based on the HEA to students, it chose to exempt funds under the CARES Act from counting as revenues considered in determining whether for-profit institutions meet the requirement to derive not less than ten percent of revenues from non-federal financial aid sources. The guidance indicates that “Funds paid directly to institutions by the Department through the HEERF will not be included as revenue for 90/10 purposes.” Once again, the Department has chosen to interpret the law selectively in a manner that harms vulnerable students and supports for-profit institutions.

Like the Department’s initial guidance documents, the CARES Act imposes no restrictions on student eligibility for emergency aid and makes no reference to the eligibility requirements associated with Title IV of the HEA. When we drafted emergency legislation in response to the COVID-19 pandemic, Congress did not place limitations on which students could or should get emergency aid—we simply directed the Secretary and institutions to make funds available to students. The extreme eligibility restrictions, which were added by the Department without any directive from Congress and without any statutory basis, represent an unconscionable response to the virus that does not discriminate against which students are impacted by it.

Additionally, the Department’s prohibition on allowing students to directly apply emergency financial aid to relevant institutional charges may disproportionately impact vulnerable students. The CARES Act clearly makes funding available to satisfy the cost of attendance, which includes tuition, fees, and institutionally-provided food, and housing. Many students rely on their institutions to meet basic needs. For example, a number of campuses that have restricted campus operations during COVID-19 still operate limited food and housing facilities for students—such as homeless students, former foster youth, and others with no “home” to return to. While we appreciate that the Department has appropriately prohibited institutions from using emergency financial aid dollars to reimburse themselves for operational expenses (in accordance with

Section 18004(c) of the CARES Act), there is no reason to create obstacles for students who may not have access to a bank account and who may want to proactively elect to apply emergency grant aid to cover the cost of institutionally-provided services. The Department should allow and encourage institutions to disburse emergency financial aid as quickly, equitably, and seamlessly as possible. It is unreasonable that a student could not satisfy new institutional charges incurred after March 27, 2020, if they provide authorization to the institution to apply their emergency aid funds to such amounts.

Finally, the Department declared that “students who were enrolled exclusively in an online program on March 13, 2020... are not eligible for emergency financial aid grants.” The CARES Act does not state that individual students who were enrolled exclusively online could not receive emergency financial aid. Such decisions were intentionally left up to each institution so that campuses could make decisions that fit the unique needs of each student. The Department was again inconsistent with its guidance, as it afforded institutions discretion in the case of incarcerated students (as Congress intended) yet not with students enrolled exclusively online. Instead, the Department’s decision to prohibit support for fully-online students, and restrict the flexibility afforded by the CARES Act, will add additional burden to students and institutions.

We are deeply disappointed with your unauthorized decision to restrict eligibility for emergency financial aid to students during this difficult time for our country and in violation of Congressional intent. Accordingly, we urge you to reverse your decision to limit students’ access to emergency financial aid and block students from using funds for institutional charges. During this national emergency, it is essential to provide resources that meet the diverse needs of all our students and institutions of higher education. Thank you for your attention to this urgent matter.

Sincerely,



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