



July 17, 2020

Submitted via www.regulations.gov

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Docket ID ED-2020-OPE-0078, Comments in Response to Interim Final Rule on Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Dear Secretary DeVos:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 29 undersigned organizations, we are submitting this comment letter in response to the U.S. Department of Education's (Department) interim final rule on the *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), published June 17, 2020.¹ **We write to express our opposition to the exclusion of those who do not qualify for Title IV assistance from receiving emergency financial aid under the CARES Act. We particularly oppose the rule's exclusion of students participating in the Deferred Action for Childhood Arrivals (DACA) program and undocumented students who are enrolled in institutions of higher education.**

In these unprecedented times, Congress recognized the need for substantial support for postsecondary students during the coronavirus pandemic by passing the CARES Act, which designated more than \$6 billion to institutions for emergency grants to help students pay for housing, food, child care, and other expenses stemming from the current health crisis.² However, the Department seeks to limit participation in the emergency aid even though Congress clearly excluded only those students participating in online-only programs. This additional exclusion is unnecessary, rooted in xenophobia, and outright cruel. This rule should be withdrawn immediately for the following reasons:

The interim final rule has acute negative effects on students enrolled in higher education who are ineligible for Title IV assistance.

The Department estimates that its Title-IV-eligibility requirement would "exclu[de]" more than 1.12 million noncitizens from receiving emergency financial aid, to say nothing of the

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¹ [Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), 85 Fed. Reg. 36,494. June 17, 2020.

² [Coronavirus Aid, Relief, and Economic Security Act](#). January 2020.

many other students who are ineligible for Title IV assistance on different grounds.³ Separately, the Department has acknowledged the “urgent economic challenges facing many students as a result of the crisis.”⁴ Many students who are not eligible for Title IV benefits are experiencing these urgent economic challenges particularly intensely, as evidenced by the 80 percent of respondents to a DREAM.US survey who have experienced some form of lost income ranging from reduced hours to permanent loss of jobs.⁵

For the 1.12 million undocumented or DACAmented students this rule excludes, the Department has erected its very own wall to postsecondary completion by denying students the funds they need to survive this crisis and return to their studies with as minimal a disruption as possible. By abandoning these students in a time of extraordinary economic vulnerability, the Department could prevent these students from returning to and completing their education, while putting their very lives at risk.

There are students enrolled at 2- and 4-year institutions across the country who no longer have ways to meet their basic needs such as rent and food, and these emergency funds are intended to fill that gap. However, because of criteria beyond their control, they are being told to starve and go homeless. This overwhelming stress has had a negative impact on mental health and wellbeing, resulting in 58 percent of DREAM.US scholars reporting the need for mental health supports.⁶

The interim final rule has substantial negative effects on students who are eligible for Title IV assistance.

The Department also declines to consider the interim final rule’s effects on students who are, in fact, eligible for Title IV assistance, but who have not yet confirmed their Title IV eligibility. Millions of students do not have documentation in place that establishes their eligibility.⁷ As the Department recognizes, many such students “lack the necessary information or familiarity with the financial aid process to have information in place already.”⁸ The Department acknowledges that this is due to the FAFSA’s “complexity” and the “lack of counseling” options available to students.⁹

Requiring more burdens of proof from students (who may be confronting illness or death in their family and community) that institutions did not already require creates barriers to needed aid, even for students the Department seeks to ensure are eligible. This rule would have a chilling effect on those students who may not have the familiarity or wherewithal to complete even more forms.

³ 85 Fed. Reg. at 36,499-50. The Department declines to estimate, as it must, how many students overall are ineligible for Title IV assistance. *See id.* at 36,497 n.2; *id.* at 35,499-50; Exec. Order 13,563.

⁴ 85 Fed. Reg. at 36,498.

⁵ The DREAM.US, [In Their Own Words the Impact of Covid19 on DREAMers](#). March 2020.

⁶ *Ibid.*

⁷ *FAFSA Volume Reports*, U.S. Dep’t of Educ., Office of Fed. Student Aid (last visited July 1, 2020), <https://studentaid.gov/data-center/student/application-volume/fafsa-school-state/> (“FAFSA Data by Demographic Characteristics”; Department finding that 10.72 million Pell-eligible students filed the FAFSA in the most recent available application year); 85 Fed. Reg. at 36,499-50 & tbl. 1 (Department estimating that 19.75 students are eligible to receive emergency financial aid); *see* Laura Owen & Erik Westlund, *Increasing College Opportunity: School Counselors and FAFSA Completion*, 2 J. of Coll. Access 12 tbl. 1 (2016) (cited at 85 Fed. Reg. at 36,500; showing that 55 percent of studied students did not complete the FAFSA); Steven Bahr et al., U.S. Dep’t of Educ., NCES 2018–061, [Why Didn’t Students Complete a Free Application for Federal Student Aid \(FAFSA\)? A Detailed Look](#) 20 app. A (2018),

⁸ 85 Fed. Reg. at 36,500.

⁹ *Ibid.*

Those students who decide to follow the unnecessarily arduous process of confirming their eligibility will bear an unfair burden in so doing. It is unconscionable to deny students access to emergency aid merely because the additional forms are not complete. The only information an institution should require of a student is proof of enrollment, which is easily accessible in the student information system. If additional processes add time to this procedure to confirm eligibility, this can very well lead to missed meals, bills, and/or eviction.

The Department failed to consider the rule's effects on all other eligible students who will be forced to undergo the time-intensive process of confirming their eligibility.

CARES Act emergency aid roll-out has been unclear and unfair.

On March 27, 2020, the CARES Act was signed into law. Almost one month passed between the enactment of the CARES Act and the issuance of the first guidance regarding student eligibility from the Department on April 21.¹⁰ During this nearly one month period without official Department guidance, colleges and universities were able to submit applications for emergency aid and distribute the aid based on an intentionally broad criterion of “students with greatest need.” However, once the Department issued official guidance, colleges and universities were instructed to restrict access to aid to only those students who were Title IV-eligible, even though the CARES Act made no such distinction. In response to push-back from students and institutions, the Department rightly reversed course on May 21 and changed the guidance to state they would not enforce the Title IV-eligibility criterion.

During this confusing time, which only compounds the stress and uncertainty already present in a crisis, students received unclear and contradictory information about their aid eligibility and status. This creates an untenable scenario where students – who are already in stressful situations – cannot even rely on the information from their institution because the Department is constantly opposing itself. The process by which guidance and rules were issued was so bad, the Department even failed to successfully defend its guidance in the U.S. District Court for the Northern District of California, where a judge enjoined the rule stating that student grants under the Higher Education Emergency Relief Fund were not federal public benefits under 8 USC § 1611 of Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The court also found the Department “manufactured ambiguity” over the term “student,” since Congress was explicit about eligibility status by excluding those students who are enrolled 100 percent in remote courses. Moreover, the court found that using students in the funding formula, but not allowing those students access to the funds, “makes little sense and violates fundamental tenants of statutory interpretation.”¹¹ It is once again unnecessarily cruel to count a student toward money for an institution while deeming that very same student ineligible for the funds that will allow them to eat for another day.

The statutory text is clear.

¹⁰ [CARES Act Higher Education Emergency Relief Fund Timeline](#). NASFAA (Last updated June 17th, 2020).

¹¹ [Oakley v. DeVos, et al.](#), 2020 WL 3268661 (N.D.Cal. 2020).

The Department argues that the CARES Act contains a “critical ambiguity” because the word “students” is not defined.¹² The statutory text, however, is unambiguous. Reading the CARES Act in the context of a global health crisis upending an academic term, the term student means a person enrolled at an institution. The intentionally created ambiguity by the Department was merely a pretext to justify this Department’s and this administration’s advancement of a xenophobic rule.

For the reasons provided above, the Department should promptly withdraw this interim final rule. The Department has abandoned students in higher education and must correct that injustice immediately. Non-Title IV eligible students must be able to receive emergency aid from their institutions during this emergency as Congress intended. The eligibility requirement is cruel policy and would do great harm to students across the country, especially to undocumented and DACA students. Moreover, the rule is unlawful as a matter of both substance and procedure.

If you have any questions or need additional information, please contact CJ Powell, higher education program analyst at The Leadership Conference, at powell@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
ACCESS
Achieve Atlanta
American Association of Colleges for Teacher Education
American Association of University Women (AAUW)
American Federation of Teachers
Arizona College Access Network
Augustus F. Hawkins Foundation
Center for Responsible Lending
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¹² 85 Fed. Reg. at 36,495.

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