

United States Senate
WASHINGTON, DC 20510-0609

April 27, 2020

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

Dear Secretary DeVos:

We write to express our serious concerns regarding the U.S. Department of Education's ("Department") decision to prohibit institutions of higher education (IHE) from granting emergency assistance provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act to undocumented students, including tens of thousands of students who are Deferred Action for Childhood Arrivals (DACA) recipients. This decision unnecessarily harms students in need, and contradicts clear Congressional intent and the plain language of the CARES Act. We expect you to comply with the intent of the CARES Act and reverse this unauthorized decision immediately.

DACA recipients came to this country as children and make extraordinary contributions to our communities and our economy. During this Coronavirus Disease 2019 (COVID-19) pandemic, DACA recipients attending institutions of higher education across the country face challenges like other students, many with the added burden of supporting their parents and siblings or being the first in their families to attend college. These students should not be excluded from critical emergency financial aid. Indeed, those who are especially vulnerable to economic hardship are exactly whom these funds were designed to help.

The CARES Act allocated \$14 billion to the Higher Education Emergency Relief Fund, with more than \$6 billion of these funds required to go directly to students through emergency financial aid. The statutory text of the CARES Act allows DACA recipients to receive emergency financial aid and establishes broad flexibility to each institution of higher education to meet the unique needs of their students. While the bill uses existing mechanisms to physically distribute funding, the Department, itself, has stated that "the Secretary does not consider these individual emergency financial aid grants to constitute Federal financial aid under Title IV of the HEA"¹ for which undocumented students would be ineligible. What's more, the CARES Act lays out the authorized uses for the funding, which fall outside of the scope of any existing federal student aid program. Because the CARES Act is not title IV funding, it cannot carry the restrictions of title IV funding, and does not prohibit DACA recipients from receiving support.

In fact, your April 9th letter to institutions of higher education announcing the availability of CARES Act funding for students states that:

¹ <https://www2.ed.gov/about/offices/list/ope/heerfstudentscertificationagreement42020.pdf>

“Each institution may develop its own system and process for determining how to allocate these funds, which may include distributing the funds to all students or only to students who demonstrate significant need. The only statutory requirement is that the funds be used to cover expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).”²

This letter accurately describing the CARES Act directly contradicts the guidance the Department subsequently produced, which established unauthorized requirements and restrictions on students and institutions of higher education.

Additionally, when asked about the changing guidance, a spokesperson for your Department stated that the exclusion of DACA recipients “...is consistently echoed throughout the law.”² While some sections of the CARES Act contain explicit requirements that result in undocumented individuals being deemed ineligible for various aspects of non-education related relief, neither the Education Stabilization Fund nor the Higher Education Emergency Relief Fund contain such prohibitions, making it clear that eligibility for these funds should be at the discretion of each institution. The Department cannot project a specific prohibition from one section of the law to an unrelated and independent section of the law where Congress made no such prohibition.

Lastly, it is in the public interest to provide students with emergency financial aid and other educational supports. Ensuring that all students have secure housing, food, and health care during a time of economic turmoil is a key part of keeping families safe and indoors and to ending the COVID-19 pandemic. Furthermore, we have seen disturbing data on how COVID-19 has disproportionately affected communities of color.³ Blocking support for DACA recipients will only worsen this crisis and harm our families and communities.

As students and families across the country struggle to deal with the public health and economic consequences of the COVID-19 emergency, we must work together to help all students in need, regardless of immigration status. We, again, urge you to immediately reverse your decision to exclude DACA recipients from CARES Act emergency financial aid grants to students.

Thank you for your attention to this important matter.

Sincerely,

/s/Michael F. Bennet
United States Senator

/s/Robert Menendez
United States Senator

² <https://www2.ed.gov/about/offices/list/oep/caresactgrantfundingcoverletterfinal.pdf>

² <https://www.politico.com/news/2020/04/21/betsy-devos-undocumented-college-students-aid-199465>

³ <https://www.theatlantic.com/ideas/archive/2020/04/coronavirus-exposing-our-racial-divides/609526/>

/s/Richard J. Durbin
United States Senator

/s/Kamala D. Harris
United States Senator

/s/Chris Van Hollen
United States Senator

/s/Sheldon Whitehouse
United States Senator

/s/Mazie Hirono
United States Senator

/s/Tammy Baldwin
United States Senator

/s/Richard Blumenthal
United States Senator

/s/Jack Reed
United States Senator

/s/Jacky Rosen
United States Senator

/s/Dianne Feinstein
United States Senator

/s/Martin Heinrich
United States Senator

/s/Amy Klobuchar
United States Senator

/s/Edward J. Markey
United States Senator

/s/Christopher A. Coons
United States Senator

/s/Benjamin L. Cardin
United States Senator

/s/Thomas R. Carper
United States Senator

/s/Bernard Sanders
United States Senator

/s/Tim Kaine
United States Senator

/s/Cory A. Booker
United States Senator

/s/Catherine Cortez Masto
United States Senator

/s/Patty Murray
United States Senator

/s/Elizabeth Warren
United States Senator

/s/Charles E. Schumer
United States Senator

/s/Tom Udall
United States Senator

/s/Jeffery A. Merkley
United States Senator

/s/Christopher S. Murphy
United States Senator