

July 17th, 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 Foundation for California Community Colleges (FoundationCCC), I submit this comment letter in response to the U.S. Department of Education's (Department) interim final rule *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 Coronavirus Aid, Relief, and Economic Security (CARES) Act.** We particularly oppose the rule's exclusion of Deferred Action for Childhood Arrivals (DACA) and undocumented students enrolled in institutions of higher education.

The FoundationCCC was incorporated in 1998 and its mission is to benefit, support, and enhance the missions of the California Community College system, the largest higher education system in the nation. Our alignment with the California Community Colleges Chancellor's Office and the Board of Governors allows us to support students, colleges, college foundations, and the entire system, helping to improve higher education opportunities throughout the state. FoundationCCC's budget is \$71 million from earned income and grants. The Chancellor's Office and FoundationCCC are co-located in Sacramento. Our presence is in all 114 colleges and 72 districts in the California Community College system.

As a system that welcomes and supports all students, California Community Colleges continue to demonstrate unwavering support for our undocumented students as well as those who come from mixed status families. Undocumented students bring a tremendous amount of resiliency, courage, and diversity to our campuses across the state. With an estimated 50,000-70,000 undocumented students enrolled at CCCs, the FoundationCCC and CCC Chancellor's office have partnered to create initiatives to advocate for undocumented students across the state and in the nation. One of the initiatives is the Dreamers Project Report. This report was a collaborative effort between the Chancellor's Office, the Foundation for California Community Colleges and Immigrants Rising. The Dreamers Project Report reveals the most pressing needs for

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), <https://www.federalregister.gov/documents/2020/06/17/2020-12965/eligibility-of-students-at-institutions-of-higher-education-for-funds-under-the-coronavirus-aid>.

undocumented students are financial aid, legal services, and mental and emotional health supports.

The Dreamers Project report highlights the importance of access to financial aid for undocumented students even before the COVID-19 crisis. This student population is experiencing health and economic hurdles like every other student, but often at disparate levels. In the current crisis the need for financial aid has become a pressing concern for undocumented students and other low income or marginalized populations. Undocumented students, many of whom are DACAmented, are currently struggling to prioritize higher education when their families cannot even meet their basic needs. Many of our students and their parents have lost their jobs at colleges and in industries that have been required to close due to the pandemic.

The resources and aid available to support undocumented students is already limited. For this reason, the FoundationCCC opposes to the Department of Education's interim final rule that would exclude undocumented students, DACA program recipients, and others from pandemic relief funds. Continuing to add restrictions on aid to support undocumented students will affect the number of students enrolled in our campuses. We want to advocate for the CARES Act funding because we understand this is an opportunity for undocumented students to be able to meet their higher education goals.

In early April, the FoundationCCC sent a survey to CCC students, faculty and staff to identify significant challenges students face as a result of COVID-19. The survey was use as a platform for students to share their stories to help us determine what resources were needed. Financial instability, homelessness, and food insecurity were mentioned by students among other basic needs. Quotes from students will be shared in this letter to highlight the importance of the CARES Act funding for undocumented students in the California Community Colleges.

“I have to drop my classes because I can't do my school work without a computer and internet access.” - Student, Bakersfield College

THE INTERIM FINAL RULE HAS SUBSTANTIAL NEGATIVE EFFECTS ON STUDENTS AT OUR INSTITUTION 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 many other students who are ineligible for Title IV assistance on different grounds.² Separately, the Department has acknowledged the “urgent economic challenges facing many students as a result of the crisis.”³ Many students who are not eligible for Title IV benefits are experiencing those challenges particularly acutely. But the Department does not consider the economic and non-economic costs of excluding more than 1.12 million students from access to emergency financial aid during this national emergency.

The interim final rule attempt would exclude as many as 800,000 California community college students from receiving emergency assistance that Congress approved to mitigate the effects of the pandemic. Among those who have been harmed by the guidance issued by the Department of

² 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.

³ 85 Fed. Reg. at 36,498.

Education are veterans, citizens who have not completed a federal financial aid application, and non-citizens, including undocumented students and those with DACA status.

All students are facing unprecedented economic and non-economic challenges as a result of COVID-19. The United States has had millions of cases of COVID-19.⁴ Meanwhile, unemployment has skyrocketed, leaving many students in dire economic circumstances.⁵ Many students face unique economic challenges: Many students lost their on-campus jobs due to COVID-19, lost their summer internships or jobs, or were ineligible for a Recovery Rebate check under the CARES Act.⁶

“I got in a car accident October 2019, due to the accident I was injured bad and lost a whole semester and my job because my employer didn't allow me to go back to work until weeks later and was giving me 6-12 hours per week. Which was not much because I couldn't save and now due to Covid-19 I lost my job for good and I can't qualify for unemployment benefits due to my Immigration Status. The only things that give me hope to keep going is my classes online and my internship as an Ambassador for Census 2020 but I won't get paid until June but still makes me happy to know I have money coming soon. What scares me is that I don't have money to pay my rent right now and fear my landlord might ask me to leave the complex.” - Student, San Diego Mesa College

The Department previously “encourage[d]” institutions of higher education to prioritize “students with the greatest need” in awarding emergency financial aid.⁷ We agree. And we note that many students who are not eligible for Title IV assistance are among those with the “greatest need.”

Many immigrant students ineligible for Title IV assistance face unique challenges. For one, many ineligible students (and their families) do not have health insurance.⁸ Those same populations of students are suffering disproportionate health effects as a result of this pandemic.⁹

⁴ *Coronavirus Disease 2019, Cases in the US*, Ctrs. for Disease Control & Prevention (last updated July 1, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁵ *Labor Force Statistics*, U.S. Bureau of Labor Statistics (last visited July 1, 2020), <https://data.bls.gov/timeseries/LNS14000000>.

⁶ *E.g.*, David Yaffe-Bellany, *Another Casualty of the Coronavirus: Summer Internships*, N.Y. Times (May 27, 2020), <https://www.nytimes.com/2020/05/22/business/coronavirus-summer-internships.html>; Sara Goldrick-Rab et al., *New Evidence on Basic Needs Insecurity and Student Well-Being*, Hope Ctr., 2 (June 2020), https://hope4college.com/wp-content/uploads/2020/06/Hopecenter_RealCollegeDuringthePandemic.pdf; Hao Liu, *Most College Students Won't Get Stimulus Checks—But They Should*, Fortune (May 5, 2020), <https://fortune.com/2020/05/05/stimulus-checks-college-students-debt/>.

⁷ Letter from Betsy DeVos to College and University Presidents (Apr. 9, 2020), <https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf>.

⁸ *Health Coverage of Immigrants*, Kaiser Family Found. (Mar. 18, 2020), <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/>; NYS Health Found., *Connecting Undocumented New Yorkers to Coverage 2* (2018), https://nyshealthfoundation.org/wp-content/uploads/2018/08/Connecting-Undocumented-New-Yorkers-to-Coverage_final.pdf; *Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals (DACA) Program*, Kaiser Family Found. (Feb. 1, 2018), <https://www.kff.org/disparities-policy/fact-sheet/key-facts-on-individuals-eligible-for-the-deferred-action-for-childhood-arrivals-daca-program/>.

⁹ *See, e.g.*, Ctrs. for Disease Control & Prevention, *supra* note XX; *QuickFacts*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/RH1725219> (last visited July 1, 2020); *see also COVID-19 in Racial and Ethnic Minority Groups*, Ctrs. for Disease Control & Prevention (updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>; Maria Godoy & Daniel Woods, *What Do Coronavirus Racial Disparities Look Like State by State?*, NPR (May 30, 2020), <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

“There are students that their families live paycheck to paycheck and came to me asking if I knew where they can go to get help to get food. As many of us, we live with our families including elders and kids. Most of them are afraid that they won’t have access to healthcare if any of their family members would get sick because of our status.”

- Student, Fullerton College

Moreover, many ineligible students are struggling in the face of record levels of unemployment and resulting difficulties in meeting their most basic needs.¹⁰ The Department’s interim final rule fails to consider its most apparent cost: its cost to students ineligible for Title IV assistance in the midst of these dire circumstances. As the Secretary put it, “there are millions of students, [Title-IV-ineligible] students included, that are struggling.”¹¹ The overwhelming majority—over 80 percent—of undocumented students attend two- and four-year public colleges and universities, and many attend community colleges.¹² While studies show undocumented students at both two- and four-year institutions concerned about financing their education, undocumented students at community colleges are even more likely to face extremely high levels of financial stress, compared to their peers at four-year colleges.¹³

“I work on campus and because I'm just a student worker, I will get laid off. I need a job because even though I live under my parent's roof, I have to support myself and buy the things that I need. I will only be getting paid until May and then after that I won't have a source of income due to other organizations also closing down.” - Anonymous

It is unsound policy to prevent those ineligible students at both two- and four-year institutions from accessing emergency financial aid to meet their most fundamental needs.

We see the harmful effects of the exclusion at our institution. Undocumented Students Center Coordinators, Faculty and Staff have been vocal on how difficult it is for them to support undocumented students when much of the aid available have requirements that undocumented students cannot meet. These types of restrictions create an unequitable division between our students. Students should not be forced to decide between purchasing a book or bringing food to their household.

“Many students do not disclose information about their legal status and do the best that they can. The struggles push the students to new environments that they are not used to nor know how to react to. Just recently, a former student body officer emailed leadership on campus stating that he had been couch surfing and that he was but only one of many

¹⁰ See, e.g., *The Unemployment Situation—May 2020*, U.S. Bureau of Labor Statistics (June 2020), <https://www.bls.gov/news.release/pdf/empst.pdf> (Summary Table A); *In Their Own Words: The Impact of Covid19 on DREAMers*, TheDream.US, 3-4 (Mar. 26, 2020), <https://www.thedream.us/wp-content/uploads/2020/04/TheDream.US-In-Their-Own-Words-Impact-of-Covid-19-on-DREAMers.pdf>.

¹¹ *Education Secretary Betsy DeVos Says CARES Act Funding Will Go To Students*, Full Court Press (Apr. 27, 2020), <https://www.fullcourtgreta.com/video/2020/04/27/education-secretary-betsy-devos-says-cares-act-funding-will-go-students/> (5:26 to 5:39).

¹² Miriam Feldblum et al., New Am. Econ. & Presidents’ Alliance on Higher Educ. & Immigration, *Undocumented Students in Higher Education: How Many Students Are in U.S. Colleges and Universities, and Who Are They?* (Apr. 2020), <https://www.presidentsimmigrationalliance.org/wp-content/uploads/2020/04/2020-04-16-NAE-PA-Report-Undocumented-Students-in-Higher-Education.pdf>.

¹³ Olivia Osei-Twumasi & Guadalupe Lopez Hernandez, *Resilience in the Face of Adversity: Undocumented at Students Community Colleges*, in *Immigrant-Origin Students in Community College: Navigating Risk and Reward in Higher Education* (Carola Suarez-Orozco & Olivia Osei-Twumasi, eds., 2019) (citing Carola Suarez-Orozco et al., *Undocumented Undergraduates on College Campuses: Understanding Their Challenges and Assets and What It Takes to Make an Undocufriendly Campus*, 81 Harv. Educ. Rev. 427, 438-73 (2015)).

undocumented students who did not have the necessary support to make ends meet during this period where work may not be secure (COVID 19).” - Faculty, Cañada College

DACAmented students have an additional cost of four hundred and ninety-five dollars every two years to renew their DACA documentation. This community will be constrained to postpone or forego their higher education as we continue to put barriers on undocumented students by asking them to choose between basic needs, having the safety of a protected immigration status, or education.

“A student shared they lost their job due to COVID-19 and cannot afford to renew their DACA. Another student shared the restaurant she worked for closed and is also trying to find other means of monetary assistance.” - Anonymous

Beyond the substantial economic effects of this interim final rule, the rule will have the non-economic cost of depriving institutions of valuable members of their diverse communities. More than 450,000 students are enrolled in higher education are undocumented immigrants.¹⁴ That amounts to two percent of all students in higher education in the United States.¹⁵ Approximately 216,000 enrolled students are DACA-eligible.¹⁶ If this interim rule goes into effect, 50,000 - 70,000 undocumented students enrolled in the California Community College system will be affected.

In addition, our institutions will be forced to ask undocumented students for additional documentation to prove whether they qualify for aid or not. This will continue to trigger the trauma our students face every time they have to disclose their immigration status to a stranger at a Financial Aid window. This is an additional struggle that undocumented students have to face every time they reach out for resources. The questions of whether they have a social security number prevents students from asking for any type of resources. Requiring FAFSA to determine if student qualifies for the CAREs Act, puts a barrier for undocumented students to even ask for aid in any of our institutions.

“Sad, because, many of us come from Foster care system or undocumented students and we don't have families to speak with or qualify for certain federal programs. I'm the few lucky one with parents but it still sucks because I don't qualify for federal programs due to my status and I wish I could go and help my other friends who are former /current foster students and I can't do much.” - Student, San Diego Mesa College

The benefits of diversity to American colleges and universities are well understood. “[S]tudent body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.”¹⁷ “[I]t is not too much to say that the nation’s future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples.”¹⁸ This list of benefits goes on at length.¹⁹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2210 (2016) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003)).

¹⁸ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312-13 (1978) (quotation marks omitted).

¹⁹ *See generally Amici Curiae Br. of 21 Colorful Crimson et al.* (Dkt. 504) at 26-28, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* (Harvard Corp.), No. 14-cv-14176 (D. Mass. Aug. 30, 2018) (surveying academic literature, court opinions, expert testimony, and other materials, and highlighting the benefits of diverse student bodies).

In line with all of the available data, it is unsurprising that institutions like ours broadly recognize the important role that students who are not eligible for Title IV assistance play on campuses across the United States.²⁰ In short, “any actions taken to reduce the numbers of students of color on college and university campuses will have a powerfully negative effect on the opportunity that students have to learn from one another.”²¹ IHEs have a critical responsibility to diverse students to remove obstacles, both in terms of access to higher education and the ability to succeed once such students enroll. This interim final rule will make the playing field more uneven, making it that much more difficult for IHEs to meet their educational and moral obligations to students of color, low-income students, undocumented students, and otherwise-marginalized students.

The Foundation’s equity programs provide quality resources, educational programs, and training for Community Colleges and the students that they serve, especially those who have been historically underrepresented. We are committed to enhancing existing services that assist students who face barriers to pursuing their academic goals, launching careers, maintaining wellness, and becoming active citizens in local communities. Focusing on equity was a key part of the California Community Colleges Student Success Initiative and, subsequently, has resulted in an updated student equity planning process and additional state funding to close achievement gaps in access and success in underrepresented student groups as identified at the local college level. The Foundation’s equity programs are in alignment with the California Community College system priorities.

For the reasons provided above, the Department should promptly withdraw this interim final rule. The Department’s extratextual eligibility requirement is unsound policy and would do great harm to students across the board, and especially to undocumented and DACA students. Moreover, the rule is unlawful as a matter of both substance and procedure. At a minimum, the Department must reissue this rule, allowing for notice and comment, and delaying the effective date.

Please do not hesitate to contact me at iaguilar@foundationccc.org or (916) 325-1858 for further information. Thank you.

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²⁰ *E.g.*, Br. for *Amici Curiae* Insts. of Higher Educ. at 2, 11-13 & n.22, *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, Nos. 18-587, 18-588, 18-589 (U.S. Oct. 4, 2019), https://www.supremecourt.gov/DocketPDF/18/18-587/118076/20191004111332453_18-587%2018-588%2018-589%20Obsac%20Institutions%20of%20Higher%20Education.pdf.

²¹ Jeffrey F. Milem, *The Educational Benefits of Diversity: Evidence from Multiple Sectors* ch. 5 p. 9 (2003), https://web.stanford.edu/~hakuta/www/policy/racial_dynamics/Chapter5.pdf.