

# PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

Delivered electronically to [phil.rosenfelt@ed.gov](mailto:phil.rosenfelt@ed.gov)

January 29, 2021

The Honorable Phil Rosenfelt  
Acting Secretary of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Acting Secretary Rosenfelt:

We write on behalf of the Presidents' Alliance on Higher Education and Immigration to respectfully request that the U.S. Department of Education (Ed) issue guidance to ensure that the emergency grants distributed through Higher Education Emergency Relief Fund II (HEERF II) remain available to all students who can demonstrate "exceptional need," regardless of immigration status. We also request that you engage in rulemaking to rescind the previous administrations' restrictions on CARES Act emergency financial grants (and through HEERF I), which excluded undocumented students. We are heartened that the guidance released by Ed in the form of department FAQs that explicitly notes previous limitations on emergency funding does not apply;<sup>1</sup> but we encourage you to go further to clarify that HEERF II funds are available to all students.

The nonpartisan, nonprofit Presidents' Alliance on Higher Education and Immigration<sup>2</sup> brings college and university presidents and chancellors together on the immigration issues that impact higher education, our students, campuses, communities and nation. We work to advance just immigration policies and practices at the federal, state, and campus level that are consistent with our heritage as a "nation of immigrants" and the academic values of equity and openness. The Alliance is composed of over 500 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

On December 27, 2020, Congress passed and the President signed the Higher Education Emergency Relief Fund II (HEERF II), which authorized another round of emergency grants for students enrolled in higher education in

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<sup>1</sup> U.S. Department of Education, Higher Education Emergency Relief Fund (HEERF) II Public and Private Nonprofit Institution (a)(1) Programs (CFDAs 84.425E and 84.425F) Frequently Asked Questions (Jan. 14, 2021), *available at* <https://www2.ed.gov/about/offices/list/ope/faqsfora1crsaaherfii.pdf>.

<sup>2</sup> For more information, visit [presidentsalliance.org](http://presidentsalliance.org).

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response to COVID-19.<sup>3</sup> Previously, Congress also enacted the CARES Act, which provided similar emergency grants. Due to the previous administration's rulemaking, however, the funds in the CARES Act were prevented from being allocated to undocumented students or international students in higher education (discussed further below).

Consequently, there is a need for the current administration to clarify that the new round of grants (e.g., from HEERF II) *are* available to undocumented students. In Ed's January 14, 2021, FAQ Question 16, it stated that the limitations in regard to Title IV eligibility do not apply to HEERF II funding, but the FAQ remains silent with regards to undocumented and international students. Thus, in respect to HEERF II, we write to respectfully recommend and request that Ed (which promulgates the guidance and regulations that dictate how the funding is allocated) issue policy guidance (through memorandum, letter, FAQ, or other medium) that ensures that:

1. Grants under HEERF II are available to *all* students that can demonstrate "exceptional need," regardless of their immigration status (or lack thereof). This guidance would serve to clarify that this administration did not intend to adopt the previous administration's policies that emergency grants, e.g., that those grants would be prohibited for "non-qualified alien" students due to the 1996 PROWRA and state<sup>4</sup> or federal<sup>5</sup> "public benefit" statutes;<sup>6</sup> and
2. The application and receipt of grants by immigrant students shall not be considered a negative factor by the U.S. Department of State (e.g., in determining whether to issue or grant a visa); the U.S. Department of Homeland Security (DHS) and its subcomponent agencies (in terms of decisions related to enforcement and benefits, especially in regards to "public charge" determinations or any other discretionary decisions).

Among other guidance, we recommend that the Department of Education update the previously referenced FAQ (particularly question 16 and any other relevant questions): *Higher Education Emergency Relief Fund (HEERF) II Public and Private Nonprofit Institution (a)(1) Programs (CFDAs 84.425E and 84.425F) Frequently Asked Questions*.<sup>7</sup> To address the previous exclusion of emergency grants under the CARES Act, we recommend that the Department of Education engage in rulemaking to rescind the immigrant-status based restrictions in *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).

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<sup>3</sup> For more information, see *CRRSAA: Higher Education Emergency Relief Fund (HEERF II)*, U.S. Dep't of Educ., <https://www2.ed.gov/about/offices/list/ope/crrsaa.html> (last updated Jan. 27, 2021).

<sup>4</sup> 8 U.S.C.A. § 1621 (West 2021).

<sup>5</sup> *Id.* § 1611.

<sup>6</sup> See *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) (Docket ID ED-2020-OPE-0078) for more information.

<sup>7</sup> U.S. Dep't of Educ., *Higher Education Emergency Relief Fund (HEERF) II Public and Private Nonprofit Institution (a)(1) Programs (CFDAs 84.425E and 84.425F) Frequently Asked Questions (2021)*, available at <https://www2.ed.gov/about/offices/list/ope/faqsfora1crrsaaherfii.pdf>.

When calculating the emergency financial grants under the CARES Act and HEERF II, Congress included all students, including the 450,000 undocumented students enrolled in higher education (including the 216,000 DACA-eligible). The enrollment of these students directly contributed to the increase in allocation of funds for higher education. Finally, the CARES Act and HEERF II funding was not meant to be limited by the 1996 immigration laws (e.g., PROWRA) because it was issued on an emergency basis and because nothing in these bills indicated that congress intended to exclude undocumented students. Indeed, in *Oakley vs. DeVos* (litigation in the 9th Circuit over the CARES Act regulations), the district court judge, in his preliminary injunction, specifically held that the 1996 laws did *not* mandate the exclusion of these students.<sup>8</sup>

In light of the above, we strongly urge that the Department of Education promulgate guidance to clarify that HEERF II funding is available to all students with exceptional need, regardless of immigration status, and to rescind previous CARES Act regulations that restrict HEERF I funding.<sup>9</sup> If you have any questions regarding these requests, please contact Jose Magaña-Salgado at [jose@presidentsalliance.org](mailto:jose@presidentsalliance.org) or (480) 678-0040.

Thank you.



Miriam Feldblum  
Executive Director

**Cc:**

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Esther Olavarria, Deputy Assistant to the President and Deputy Director, Immigration for Domestic Policy Council

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<sup>8</sup> *Oakley v. DeVos*, Case No. 20-cv-03215-YGR (N.D. Cal. June 17, 2020).

<sup>9</sup> For more information on this issue, see the Presidents' Alliance comprehensive comment on this issue. <https://www.presidentsalliance.org/presidents-alliance-and-member-comments-on-cares-act-financial-grants/>.