Via Federal eRulemaking Portal (www.regulations.gov)

July 17, 2020

Gaby Watts
U.S. Department of Education
400 Maryland Ave. SW, Room 258-02
Washington, DC 20202

Re: Docket ID ED-2020-OPE-0078; RIN:1840-ZA04, Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Dear Ms. Watts:

On behalf of the University of California (UC), thank you for the opportunity to comment on the U.S. Department of Education’s interim final rule Eligibility of Students at Institutions of Higher Education (IHE) 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). I write to communicate UC’s strong 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.

Section 18004 of the CARES Act established the Higher Education Emergency Relief Fund (HEERF) to assist students at IHEs adversely affected by COVID-19. The CARES Act requires the Secretary to allocate and distribute money from the HEERF to IHEs according to complex statutory formulae, which IHEs may then use for specified purposes.

Of the amount received by each institution, at least 50 percent must be used “to provide emergency financial aid grants to students for 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).”
While the CARES Act defined the distribution, use of funds and reporting requirements, it did not define who was an eligible student for the HEERF. Section 18004(c) does not explicitly grant any authority to the Secretary or the Department to make such determinations. While Congress could have chosen to delegate authority to the Department to set eligibility criteria, as done in other section of the CARES Act, it did not. The Department cannot ignore Congressional action.

Nearly all UC students ineligible for Title IV funding and not on a student visa are undocumented, low-income students already struggling to meet the costs of education, including meeting the basic needs of food and housing before the pandemic struck. These are students whom the State of California and UC have invested in to ensure their academic success. It serves the University, the State, and the nation to have them graduate and contribute to the workforce. Providing them with emergency aid will help ensure they will succeed.

While all students are facing the challenges of the COVID-19 pandemic, those students who are undocumented and low-income are disproportionately affected by the pandemic. Many of these students are first generation students, living in multigenerational households and often working as essential workers outside the home to help contribute to their families. Low-income and minority communities are also suffering disproportionate health effects from COVID-19 and higher levels of unemployment.

Undocumented Californians, including the thousands who currently attend or have graduated from UC, are integral members of our communities. They are our classmates, colleagues, friends and family members. The vast majority of UC’s undocumented students have lived in California for most of their lives and attended high school here. They earned admission to UC based on the same rigorous academic criteria as their classmates. Yet many face challenges that their peers do not, including the ability to access financial aid, study abroad, work legally and pursue graduate and professional degrees. These challenges are magnified during the current global pandemic, and they have earned and deserve the aid that Congress approved.

Finally, the administrative burden, both for institutions and for students who did not file a Free Application for Federal Student Aid (FAFSA), to prove that they are otherwise Title IV eligible is very high. At UC, this includes three-quarters of our nearly 37,000 graduate academic students. The vast majority of domestic graduate students would be Title IV-eligible, but have not filed a FAFSA. Nevertheless, many of them are parents, low-income and are facing the same challenges as their undergraduate peers.

UC strongly opposes the exclusion of students ineligible for Title IV from receiving emergency relief from the CARES Act. It is clear that Congress did not delegate authority to the Department of Education to exclude this population from receiving aid. It is also abundantly clear that undocumented students are disproportionately impacted
by the health and financial challenges presented by this unprecedented global pandemic. For these reasons, the Department should withdraw this interim final rule.

Yours very truly,

Janet Napolitano
President
University of California

cc: Chancellors
UC Provost Michael Brown
UC Senior Vice President for External Affairs Claire Holmes
UC Associate Vice President for Federal Governmental Relations Chris Harrington
U.S. Secretary of Education Betsy DeVos