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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE**

STATE OF WASHINGTON,  
  
Plaintiff,

v.

BETSY DeVOS, in her official  
capacity as Secretary of the United  
States Department of Education, and  
the UNITED STATES  
DEPARTMENT OF EDUCATION, a  
federal agency,  
  
Defendants.

NO.

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

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1 **I. INTRODUCTION**

2 1. This suit challenges the United States Department of Education’s  
3 (the Department) unilateral denial of emergency COVID-19 relief to tens of  
4 thousands of Washington higher education students made eligible by Congress  
5 and who are in desperate need of help. In the Coronavirus Aid, Relief, and  
6 Economic Security Act (CARES Act), Congress directed the Department to  
7 distribute over \$100 million to colleges and universities in Washington to provide  
8 emergency financial aid grants to higher education students whose lives and  
9 educations were disrupted by COVID-19. Without Congressional authorization,  
10 the Department grafted its own limit on Congress’s directive, requiring students  
11 to meet the eligibility requirements for federal financial aid under a different  
12 statute. The Department did so despite its express recognition that CARES Act  
13 emergency grants are not federal financial aid, Congress gave institutions—not  
14 the Department—“significant discretion” to decide which students need urgent  
15 financial help, and the Department lacked authority to impose additional  
16 restrictions on the eligibility criteria dictated by Congress.

17 2. As a result of the Department’s unauthorized eligibility restriction,  
18 over 85,000 Washington higher education students who desperately need  
19 financial assistance have been excluded from federal help. These students are  
20 among those whose financial survival and lifeline to higher education is most  
21 threatened by COVID-19, because they worked part-time to pay for tuition,  
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1 healthcare, and childcare, they did not have high school diplomas, or they had  
2 missed payments on federal student loans. They include, for example, 24,364  
3 basic adult education students at Washington’s 34 community and technical  
4 colleges who are acquiring reading, writing, math, and language skills to leverage  
5 a job, college degree, or trade certification; 28,451 high school-aged students in  
6 Running Start Programs; and many of Washington’s approximately 17,000  
7 “Dreamers,” individuals brought to the country at an early age, educated by  
8 Washington secondary schools, and protected under the Deferred Action for  
9 Childhood Arrivals program.

10 3. The Department’s unauthorized eligibility restriction violates the  
11 Administrative Procedure Act, separation of powers, and the Spending Clause in  
12 the United States Constitution. The CARES Act does not delegate to the  
13 Department authority to interpret its eligibility requirements. Thus, the  
14 Department’s action is entitled to no or minimal deference. In this case, the  
15 applicable CARES Act provision provides no support for engrafting the  
16 eligibility requirements from a different statute onto students’ ability to qualify  
17 for emergency grants to respond to a sudden pandemic. Further, the Department’s  
18 eligibility restriction is arbitrary and capricious because, among many reasons, it  
19 denies emergency aid to college students who most need pandemic assistance to  
20 continue their higher education. Finally, separation of powers principles and the  
21 Spending Clause prevent the Department from asserting “[the] unilateral  
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1 authority” to “thwart congressional will by canceling appropriations passed by  
2 Congress.” *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1232 (9th Cir.  
3 2018) (internal quotation marks and citations omitted).

4 4. To avert irreparable injury to the State and its residents, Washington  
5 brings this suit to declare unlawful and enjoin the Department’s restriction on  
6 student eligibility for coronavirus emergency financial aid grants.

## 7 II. JURISDICTION AND VENUE

8 5. This Court has personal jurisdiction over the Defendants pursuant to  
9 28 U.S.C. § 1391(e) because Defendants are agencies and officers of the United  
10 States.

11 6. This Court has jurisdiction over the subject matter of this lawsuit  
12 pursuant to 28 U.S.C. § 1331 because this action arises under federal law.

13 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)  
14 because this is a judicial district in which Plaintiff State of Washington resides,  
15 the Department’s interpretation of the CARES Act will adversely affect the  
16 health and welfare of residents in this district, and the finances of the State, and  
17 this action seeks relief against a federal agency and its official acting in her  
18 official capacity.

## 19 III. PARTIES

20 8. The State of Washington represented by its Attorney General is a  
21 sovereign state of the United States of America.

22

1           9. Plaintiff State of Washington is represented by its Attorney General,  
2 who is the State's chief legal advisor. The powers and duties of the Attorney  
3 General include acting in federal court on matters of public concern to the State.

4           10. The State of Washington brings this action to redress harms to its  
5 sovereign, proprietary, and quasi-sovereign interests and its interests as *parens*  
6 *patriae* in protecting the health and well-being of their residents. The State of  
7 Washington is affected by Department's interpretation of the CARES Act, is  
8 directly injured by it, and the relief requested will redress its injuries.

9           11. Washington's institutions of higher education are current recipients  
10 of CARES Act emergency grant funds. Accordingly, Washington is directly  
11 affected by the Department's unlawful interpretation of section 18004 of the  
12 CARES Act. Washington institutions are forced to change their behavior because  
13 of the Department's unlawful guidance.

14           12. Washington has a proprietary interest in maintaining the enrollment  
15 of students in its institutions of higher education. The Department's guidance  
16 harms this interest because it denies emergency assistance to students who need  
17 it to remain in school. Washington colleges and universities have experienced  
18 harm in the form of loss of enrollment due to students' recent financial insecurity  
19 and expect continued loss of enrollment because of the Department's restriction.

20           13. Washington has a quasi-sovereign interest in protecting the health,  
21 safety, and well-being of its residents. The Department's interpretation severely  
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1 limits the use of emergency funding that Congress intended to broadly assist  
2 higher education students affected by COVID-19. It therefore jeopardizes the  
3 health, housing, nutrition, and well-being of students in the State of Washington.

4 14. The State of Washington and its higher education students will  
5 suffer significant and irreparable harm if the Department's interpretation is  
6 allowed to stand.

7 15. Defendant Betsy DeVos is the Secretary of the Department of  
8 Education. She is sued in her official capacity.

9 16. Defendant United States Department of Education is an executive  
10 agency with responsibility for distributing Higher Education Emergency Relief  
11 Act funds to Washington institutions of higher education in compliance with  
12 section 18004 of the Cares Act.

#### 13 **IV. RELEVANT FACTS**

##### 14 **A. The COVID-19 Pandemic**

15 17. A novel coronavirus is a new coronavirus that has not been  
16 previously identified. According to Johns Hopkins University & Medicine  
17 Coronavirus Resource Center, on December 29, 2019, the Wuhan City  
18 government, in Hubei Province, China, started to trace cases of a coronavirus. On  
19 January 4, 2020, a Shanghai lab detected a coronavirus similar to severe acute  
20 respiratory syndrome (SARS). On January 6, 2020, a Wuhan doctor and  
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1 13 nurses were infected after operating on infected patient, and the next day the  
2 pathogen was identified as a novel coronavirus.

3 18. On January 30, 2020, the World Health Organization (WHO)  
4 declared the novel coronavirus outbreak a Public Health Emergency of  
5 International Concern. On February 11, 2020, it announced an official name for  
6 the disease causing the 2019 outbreak, coronavirus disease 2019, abbreviated as  
7 COVID-19. (In COVID-19, ‘CO’ stands for ‘corona,’ ‘VI’ for ‘virus,’ and ‘D’  
8 for ‘disease.’ Formerly, this disease was referred to as “2019 novel coronavirus”  
9 or “2019-nCoV.”)

10 19. Coronaviruses are a large family of viruses that are common in  
11 people and may affect different species of animals, including camels, cattle, cats,  
12 and bats. The exact source of the COVID-19 virus is unknown.

13 20. The virus that causes COVID-19 is thought to spread mainly from  
14 person to person. It is spreading very easily and sustainably between people.  
15 Information from the ongoing COVID-19 pandemic indicates this virus spreads  
16 more efficiently than influenza.

17 21. One of the most important ways to measure the burden of  
18 COVID-19 is mortality. Nevertheless, the actual total death toll from COVID-19  
19 is likely to be higher than the number of confirmed deaths, due to limited testing  
20 and problems in the attribution of the cause of death. Countries throughout the  
21 world have reported different case fatality ratios – the number of deaths divided  
22

1 by the number of confirmed cases. Differences in mortality numbers can be  
2 caused by differences in the number of people tested; demographics, because  
3 mortality tends to be higher in older populations, and characteristics of the  
4 healthcare system, because mortality may rise as hospitals become overwhelmed  
5 and have fewer resources.

6 22. The fatality rate of COVID-19 is higher than the fatality rate for a  
7 more familiar disease: the seasonal influenza. Deaths have been concentrated  
8 among older adults, who have weaker immune systems on average than younger  
9 people and have a higher rate of chronic illness. People of all ages with chronic  
10 medical conditions are also at higher risk. Johns Hopkins University & Medicine  
11 Coronavirus Resource Center reports a death rate in the United States of 6%,  
12 which is three times the fatality rate in the United States for people infected with  
13 the flu. Johns Hopkins University & Medicine, *Mortality Analyses*,  
14 <https://coronavirus.jhu.edu/data/mortality> (last visited May 14, 2020). Some  
15 scientists estimate, however, that COVID-19 is up to 20 times more deadly than  
16 the flu. *See, e.g.,* Jeremy Samuel Faust & Carlos del Rio,  
17 *Assessment of Deaths From COVID-19 and From Seasonal*  
18 *Influenza*, JAMA Internal Med., May 14, 2020,  
19 <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2766121>  
20 (last visited May 19, 2020).

1           23. On January 21, 2020, the Washington State Department of Health  
2 confirmed what was believed to be the first case of COVID-19 in the United  
3 States in Snohomish County, Washington. The Centers for Disease Control and  
4 Prevention (CDC) then confirmed as the first-known U.S. case a diagnosis of a  
5 35-year-old man living in Snohomish County, Washington.<sup>1</sup> Since then, as of  
6 May 18, the country has reported 1,500,753 cases and 90,312 deaths. Johns  
7 Hopkins University & Medicine, COVID-19 Dashboard by the Center for  
8 Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU),  
9 <https://coronavirus.jhu.edu/map.html> (last visited May 19, 2020).

10           24. On February 19, 2020, a resident of a Life Care Centers of America  
11 nursing home in Kirkland, Washington, was transferred to a local hospital and  
12 later tested positive for COVID-19. On February 24, a 54-year-old man was  
13 transferred from the Life Care Center of Kirkland to Harborview Medical Center  
14 and died there on February 26. Also on February 26, a woman in her 80s from  
15 the center died at her family home. Both were found to have had COVID-19. On  
16

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17           <sup>1</sup> It was later determined that a woman in California died on February 6  
18 from COVID-19, meaning she likely contracted it in early to mid-January. CNN,  
19 Jason Hanna, et al., *2 Californians died of coronavirus weeks*  
20 *before previously known 1st US death* (Apr. 22, 2020),  
21 <https://www.cnn.com/2020/04/22/us/california-deaths-earliest-in-us/index.html>  
22 (last visited May 19, 2020).

1 February 28, a high school student at Henry M. Jackson High School in  
2 Mill Creek, Washington, was confirmed as having the virus, causing the school  
3 to be closed immediately. The following day, researchers confirmed the  
4 coronavirus strain in the student’s case may be related to the coronavirus strain  
5 in the first confirmed U.S. case from January 21, suggesting that the virus may  
6 have been spreading in the area for up to six weeks.

7 25. Washington State made the first announcement of a death from the  
8 disease in the U.S. on February 29 and later announced that the two deaths on  
9 February 26 were also due to COVID-19. Until mid-March, Washington had the  
10 highest absolute number of confirmed cases and the highest number per capita of  
11 any state in the country, when it was surpassed by New York.

12 26. On February 29, 2020, Washington Governor Jay Inslee declared a  
13 state of emergency in all counties in Washington. In Proclamation 20-05,  
14 Governor Inslee stated that the CDC had identified the potential public health  
15 threat posed by COVID-19 both globally and in the United States as “high.” He  
16 provided that there were 85,688 confirmed cases of COVID-19 worldwide with  
17 66 of those cases in the United States. Governor Inslee found that the Washington  
18 State Department of Health had confirmed localized person-to-person spread of  
19 COVID-19 in Washington State, which “significantly increase[ed] the risk of  
20 exposure and infection to Washington State’s general public and creat[ed] an  
21 extreme public health risk that may spread quickly[.]” State of Washington Office  
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1 of the Governor, Proclamation by the Governor 20-05,  
2 [https://www.Governor.wa.gov/sites/default/files/proclamations/20-](https://www.Governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf)  
3 [05%20Coronavirus%20%28final%29.pdf](https://www.Governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf) (last visited May 14, 2020).

4 27. The two largest state universities, University of Washington (UW)  
5 and Washington State University (WSU) curtailed on-campus classes during the  
6 pandemic. UW announced its closure on March 6; and on March 11, WSU  
7 announced the closure would begin after its spring break, on March 23.

8 28. On March 12, 2020, Governor Inslee announced closures for all  
9 public and private K-12 schools in King, Snohomish, and Pierce Counties  
10 beginning from March 17 through at least April 24. Later, on March 13,  
11 Governor Inslee announced K-12 closures until at least April 24 throughout the  
12 state. On April 6, 2020, Governor Inslee announced that the school closure would  
13 encompass the rest of the school year statewide.

14 29. On March 13, 2020, President Trump issued a proclamation that the  
15 COVID-19 outbreak constituted a national emergency.

16 30. As of May 13, 2020, the Washington State Department of Health  
17 reported 17,330 confirmed cases of COVID-19 in the State and 962 deaths.

18 31. As of May 13, 2020, Johns Hopkins University & Medicine  
19 Coronavirus Resource Center reported over 4 million confirmed COVID-19  
20 cases, with over 1.3 million in the United States, and over 293,000 global deaths.

1 **B. The Coronavirus Aid, Relief, and Economic Security Act**

2 32. In late March 2020, the United States Congress acted to address the  
3 COVID-19 outbreak. It passed legislation, signed by the President, that included  
4 large new appropriations to federal agencies with explicit directions for  
5 distributing the new funding.

6 33. At 11:17 p.m., on March 25, 2020, the Senate passed the  
7 Coronavirus Aid, Relief, and Economic Security Act as an amendment in the  
8 nature of a substitute to H.R. 748. On March 27, 2020, the House passed the bill  
9 and presented it to the President, who signed it the same day. Pub. L. No.  
10 116-136, 134 Stat. 281 (Mar. 27, 2020) (CARES Act).

11 34. The CARES Act appropriates federal funding for a wide array of  
12 purposes related to COVID-19. It contains a series of provisions directing  
13 funding through the Department of Education. Specifically, the CARES Act  
14 makes the following appropriation to the Department:

15 For an additional amount for “Education Stabilization Fund”,  
16 \$30,750,000,000, to remain available through September 30,  
17 2021, to prevent, prepare for, and respond to coronavirus,  
18 domestically or internationally[.]

19 *Id.*

20 35. Section 18001 of the CARES Act directs the Secretary of Education  
21 to allocate the Education Stabilization Fund for specified purposes in specified  
22 percentages. After directing the Secretary to allocate 2% of the Education  
Stabilization Fund to certain purposes, Section 18001 specifies the percentages

1 the Secretary is to allocate to three funds created by the Act, the Governor’s  
2 Emergency Education Relief Fund, the Elementary and Secondary School  
3 Emergency Relief Fund, and the Higher Education Emergency Relief Fund  
4 (HEERF). CARES Act, § 18001(b).

5 36. In total, the CARES Act appropriates approximately \$14 billion in  
6 funding to institutions of higher education to assist with the costs associated with  
7 disruptions in education due to COVID-19. In Section 18004(a), Congress details  
8 exactly how the Secretary is to allocate the Higher Education Emergency Relief  
9 Fund. This subsection gives the Secretary discretion only with regard to the  
10 allocation of 2.5% of the roughly \$14 billion fund.

11 37. Subsection (a)(1) directs the Secretary how to allocate the vast  
12 majority of the HEERF. “The Secretary shall allocate funding under this section  
13 as follows: (1) 90 percent”—\$12.56 billion—“to each institution of higher  
14 education to prevent, prepare for, and respond to coronavirus,” using a detailed  
15 formula specified by Congress based on student enrollment. CARES Act,  
16 § 18004(a)(1).

17 38. Subsection (a)(2) directs 7.5% of the HEERF to minority-serving  
18 institutions, again based on a specified, non-discretionary formula. CARES Act,  
19 § 18004(a)(2) (“allocated by the Secretary proportionally to such programs based  
20 on the relative share of funding appropriated to such programs in the Further  
21 Consolidated Appropriations Act, 2020”).

22

1           39. Finally, subsection (a)(3) gives the Secretary some discretion over  
2 just 2.5% of the HEERF. That percentage is reserved for “institutions of higher  
3 education that the Secretary determines have the greatest unmet needs related to  
4 coronavirus . . . .” CARES Act, § 18004(a)(3).

5           40. Subsection (b) of Section 18004 directs the Secretary how to  
6 distribute the HEERF, and subsection (c) directs how the HEERF may be used.  
7 Neither subsection grants the Secretary any interpretive authority or any  
8 discretion in implementing Congress’s directives.

9           41. Subsection (b) states that HEERF funds “shall be distributed by the  
10 Secretary using the same systems as the Secretary otherwise distributes funding  
11 to each institution under title IV of the Higher Education Act of 1965 (20 U.S.C.  
12 [§] 1001 et seq.)” This refers to an existing G5 grants management system the  
13 Department uses to disburse money. CARES Act, § 18004(b).  
14 *See also* U.S. Dep’t of Educ., Frequently Asked Questions,  
15 [https://www.g5.gov/g5/home!/ut/p/z1/hY1BC4IwHMu\\_za77\\_zHN6GahkHaIQly7xAZrCrrJXAp9-gYduhS923vv93jAgQE3Yu608J01og\\_-yte3CPeIWF3q9JyneEiKuDxVdRQXCM0\\_gIcafyhDKIHr3sr3VWbkaqOBO3VXTjn6cCFuvR-nLUGCy7JQnVBtZ4KNkjthTIBaP3wdt3bywD4bGAf2PKomewEZ\\_rsa/dz/d5/L2dJQSEvUUt3QS80TmxFL1o2XzVJMVVRM0tTVUY3SkQwSUFKMFY3ODgxMDA3/#faqQuestion11](https://www.g5.gov/g5/home!/ut/p/z1/hY1BC4IwHMu_za77_zHN6GahkHaIQly7xAZrCrrJXAp9-gYduhS923vv93jAgQE3Yu608J01og_-yte3CPeIWF3q9JyneEiKuDxVdRQXCM0_gIcafyhDKIHr3sr3VWbkaqOBO3VXTjn6cCFuvR-nLUGCy7JQnVBtZ4KNkjthTIBaP3wdt3bywD4bGAf2PKomewEZ_rsa/dz/d5/L2dJQSEvUUt3QS80TmxFL1o2XzVJMVVRM0tTVUY3SkQwSUFKMFY3ODgxMDA3/#faqQuestion11), (last visited May 14, 2020).  
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1           42. Subsection (c) addresses “use of funds” by institutions. It gives the  
2 Secretary no authority; indeed, it does not mention the Secretary. “Except as  
3 otherwise specified in subsection (a), an institution . . . may use the funds received  
4 to cover any costs associated with significant changes to the delivery of  
5 instruction due to the coronavirus,” excluding athletics, religious instruction, and  
6 other activities for which Congress denies funding. CARES Act, § 18004(c).

7           43. Further addressing the emergency grants at issue in this litigation,  
8 Congress directs that:

9           Institutions of higher education shall use no less than 50 percent  
10 of such funds to provide emergency financial aid grants to  
11 students for expenses related to the disruption of campus  
12 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.

13 *Id.*

14           44. The education provisions in the CARES Act define “cost of  
15 attendance” as used in § 18004(c). “Except as otherwise provided in sections  
16 18001–18006 of this title, as used in such sections . . . the term ‘cost of  
17 attendance’ has the meaning given such term in section 472 of the Higher  
18 Education Act of 1965.” CARES Act, § 18007(5). In turn, section 472 of the  
19 HEA is an expansive definition that includes things like tuition, books,  
20 miscellaneous personal expenses, computer equipment, room and board, and  
21 certain dependent care expenses. 20 U.S.C. § 1087II (2008).

22

1 **C. The Department’s CARES Act Guidance**

2 **1. April 9, 2020, guidance**

3 45. On April 9, 2020, the Department released the portion of the  
4 CARES Act funding Congress appropriated for student emergency grants. The  
5 Department issued a press release, in which Defendant DeVos was quoted:  
6 “What’s best for students is at the center of every decision we make.”

7 46. In addition to a press release, the Department contemporaneously  
8 issued a letter from Secretary DeVos to college and university presidents, a  
9 certification form for higher education institutions, a list of individual allocations  
10 to colleges and universities, and a methodology for how it calculated the  
11 allocations schools were scheduled to receive.

12 47. The documents issued by Defendants on April 9, 2020, correctly  
13 read the CARES Act as giving no authority to the Department to restrict the  
14 students to whom institutions awarded emergency grants, not limiting recipients  
15 to students eligible for financial aid under Title IV of the HEA, and as  
16 empowering institutions to determine the recipients limited only by the express  
17 requirements in the Act.

18 48. In the April 9, 2020, letter to college and university presidents,  
19 Defendant DeVos wrote that “[t]he CARES Act provides institutions with  
20 significant discretion on how to award this  
21 emergency assistance to students.” Letter from the Secretary of  
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1 Education to College and University Presidents (Apr. 9, 2020),  
2 [https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.](https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf)  
3 [pdf](https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf) (last visited May 14, 2020). DeVos continued:

4 This means that *each institution may develop its own system and*  
5 *process for determining how to allocate these funds*, which may  
6 include distributing the funds to all students or only to students  
7 who demonstrate significant need. The *only statutory*  
8 *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).

9 *Id.* (emphasis added).

10 49. The Department’s press release confirmed the Department’s initial  
11 understanding of the CARES Act: “In order to access the funds, the Department  
12 must receive a signed certification from the higher education institution affirming  
13 they will distribute the funds in accordance with applicable law. *The college or*  
14 *university will then determine which students will receive the cash grants.*”  
15 Press Release, U.S. Dep’t of Educ., Secretary DeVos Rapidly Delivers More  
16 Than \$6 Billion in Emergency Cash Grants for College Students Impacted by  
17 Coronavirus Outbreak (Apr. 9, 2020), [https://www.ed.gov/news/press-](https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak)  
18 [releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-](https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak)  
19 [grants-college-students-impacted-coronavirus-outbreak](https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak) (last visited May 14,  
20 2020) (emphasis added).

1           50. The Department’s certification form expressly disavowed that  
2 CARES Act emergency grants were subject to Title IV requirements: “The  
3 Secretary does not consider these individual emergency financial aid grants to  
4 constitute Federal financial aid under Title IV of the HEA.” Recipient’s Funding  
5 Certification and Agreement Emergency Financial Aid Grants to Students under  
6 the Coronavirus Aid, Relief, and Economic Security (CARES) Act ¶ 3,  
7 [https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreement](https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreementfinalombapprovedforissuance.pdf)  
8 [finalombapprovedforissuance.pdf](https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreementfinalombapprovedforissuance.pdf) (last visited May 14, 2020). The certification  
9 form also expressly acknowledged that Congress assigned to institutions the  
10 discretion to determine the amount, and thus necessarily the recipients, of  
11 emergency aid, subject to applicable statutes: “Recipient retains discretion to  
12 determine the amount of each individual emergency financial aid grant consistent  
13 with all applicable laws including non-discrimination laws.” *Id.* The language the  
14 Department included in the certification regarding institutions’ use of CARES  
15 Act emergency grant funding was intentionally hortatory and not mandatory,  
16 using phrases such as “the Secretary recommends,” “the Recipient should be  
17 mindful,” and the “Secretary strongly encourages.” *Id.*

18           51. Contemporaneous reporting on the website of a prominent higher  
19 education trade organization, the National Association of Financial Aid  
20 Administrators, noted institutions’ broad discretion recognized by the  
21 Department, expressly reporting that the Title IV federal financial aid eligibility  
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1 requirements did not apply: “Notably, neither the statute or certification form  
2 require that these funds be provided to Title IV eligible students, meaning schools  
3 are able to cast a wider net in determining and meeting emergency needs.”  
4 Owen Daugherty, *ED Provides Details on Institutional*  
5 *Allocation for \$6 Billion in Emergency Funds for Students*,  
6 NASFAA (Apr. 10, 2020, 12:35 p.m.), [https://www.nasfaa.org/news-](https://www.nasfaa.org/news-item/21501/ED_Provides_Details_on_Institutional_Allocation_for_6_Billion_in_Emergency_Funds_for_Students)  
7 [item/21501/ED\\_Provides\\_Details\\_on\\_Institutional\\_Allocation\\_for\\_6\\_Billion\\_i](https://www.nasfaa.org/news-item/21501/ED_Provides_Details_on_Institutional_Allocation_for_6_Billion_in_Emergency_Funds_for_Students)  
8 [n\\_Emergency\\_Funds\\_for\\_Students](https://www.nasfaa.org/news-item/21501/ED_Provides_Details_on_Institutional_Allocation_for_6_Billion_in_Emergency_Funds_for_Students) (last visited May 14, 2020).

9 52. The Department’s April 9, 2020, guidance to institutions is  
10 consistent with guidance its Office of Postsecondary Education issued on April 3,  
11 2020. In a memorandum posted on that office’s website, it stated: “*Any aid (in*  
12 *the form of grants or low-interest loans) received by victims of an emergency*  
13 *from a federal or state entity for the purpose of providing financial relief is not*  
14 *counted* as income for calculating a family’s Expected Family Contribution  
15 (EFC) under the Federal Methodology or *as estimated financial assistance for*  
16 *packaging purposes.*” Office of Postsecondary Education, UPDATED Guidance  
17 for interruptions of study related to Coronavirus (COVID-19),  
18 Federal Student Aid (Apr. 3, 2020), [https://ifap.ed.gov/electronic-](https://ifap.ed.gov/electronic-announcements/040320UPDATEDGuidanceInterruptStudyRelCOVID19)  
19 [announcements/040320UPDATEDGuidanceInterruptStudyRelCOVID19](https://ifap.ed.gov/electronic-announcements/040320UPDATEDGuidanceInterruptStudyRelCOVID19)  
20 (last visited May 18, 2020) (emphasis added).

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1           **2. April 21, 2020, guidance**

2           53. On April 21, 2020, the Department announced that it would release  
3 the additional \$6.2 billion the CARES Act appropriated for institutions' own use.  
4 The Department recognized that the "funding for these 'Recipient Institutional  
5 Costs' is separate from the funding previously made available for 'Emergency  
6 Financial Aid Grants to Students.'" Press Release, U.S. Dep't of Educ., Secretary  
7 DeVos Delivers \$6 Billion in Additional Grant Funding to Support Continued  
8 Education at America's Colleges, Universities (Apr. 21, 2020),  
9 [https://www.ed.gov/news/press-releases/secretary-devos-delivers-6-billion-](https://www.ed.gov/news/press-releases/secretary-devos-delivers-6-billion-additional-grant-funding-support-continued-education-americas-colleges-universities)  
10 [additional-grant-funding-support-continued-education-americas-colleges-](https://www.ed.gov/news/press-releases/secretary-devos-delivers-6-billion-additional-grant-funding-support-continued-education-americas-colleges-universities)  
11 [universities](https://www.ed.gov/news/press-releases/secretary-devos-delivers-6-billion-additional-grant-funding-support-continued-education-americas-colleges-universities) (last visited May 14, 2020).

12           54. Despite the fact that this release of funds did not pertain to  
13 Congress's authorization of emergency grants to students, the Department  
14 reversed its position on the discretion institutions had to determine students  
15 eligible for emergency grants, as well as the authority the Department had to  
16 restrict student eligibility.

17           55. On April 21, 2020, it posted a document entitled "Frequently Asked  
18 Questions about the Emergency Financial Aid Grants to Students under Section  
19 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act"  
20 (Emergency Grants FAQs). In the Emergency Grants FAQs, the Department  
21 purported to answer the question, "What students are eligible to receive  
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1 emergency financial aid grants from the HEERF?” For the first time, the  
2 Department asserted that “[o]nly students who are or could be eligible to  
3 participate in programs under Section 484 in Title IV of the Higher Education  
4 Act of 1965, as amended (HEA), may receive emergency financial aid grants.”  
5 Higher Education Emergency Relief Fund, Frequently Asked Questions about  
6 the Emergency Financial Aid Grants to Students under Section 18004 of the  
7 Coronavirus Aid, Relief, and Economic Security (CARES) Act (Emergency  
8 Grants FAQs I), <https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf>  
9 (FAQ #9) (last visited May 14, 2020).

10 56. The Department’s FAQ response continued:

11 If a student has filed a Free Application for Federal Student Aid  
12 (FAFSA), then the student has demonstrated eligibility to  
13 participate in programs under Section 484 the HEA. Students who  
14 have not filed a FAFSA but who are eligible to file a FAFSA also  
15 may receive emergency financial aid grants. The criteria to  
16 participate in programs under Section 484 of the HEA include but  
are not limited to the following: U.S. citizenship or eligible  
noncitizen; a valid Social Security number; registration with  
Selective Service (if the student is male); and a high school  
diploma, GED, or completion of high school in an approved  
homeschool setting.

17 *Id.*

18 57. On or about April 21, 2020, the Department also published a second  
19 set of FAQs, entitled, “Frequently Asked Questions about the Institutional  
20 Portion of the Higher Education Emergency Relief Fund under Section  
21 18004(a)(1) and 18004(c) of the Coronavirus Aid, Relief, and Economic Security  
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1 (CARES) Act.” Higher Education Emergency Relief Fund, Frequently Asked  
2 Questions about the Institutional Portion of the Higher Education Emergency  
3 Relief Fund under Section 18004(a)(1) and 18004(c) of the Coronavirus Aid,  
4 Relief, and Economic Security (CARES) Act (Emergency Grants FAQs II),  
5 <https://www2.ed.gov/about/offices/list/ope/heerfinstitutional FAQs.pdf>  
6 (last visited May 14, 2020). In this FAQ, the Department repeated that “students  
7 must be eligible to receive emergency financial aid grants, and only students who  
8 are or could be eligible to participate in programs under Section 484 in Title IV  
9 of the Higher Education Act of 1965, as amended (HEA), may receive emergency  
10 financial aid grants.” *Id.*, FAQ #5.

11 58. Section 484 of Title IV of the HEA, 20 U.S.C. § 1091, contains  
12 numerous requirements for student eligibility for financial aid not contained in  
13 the CARES Act. These include “U.S. citizenship or eligible noncitizen; a valid  
14 Social Security number; registration with Selective Service (if the student is male);  
15 and a high school diploma, GED, or completion of high school in an approved  
16 homeschool setting.” Emergency Grants FAQs I, FAQ #9. Other requirements  
17 include that the student not be in default on any loan issued by the Department and  
18 have maintained at least a cumulative C average, or its equivalent or academic  
19 standing consistent with the requirements for graduation. 20 U.S.C. § 1091(a)(3),  
20 (c)(1)(B) (2019); *see also* 34 C.F.R. § 668.32 (2020). By imposing eligibility  
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1 requirements not contained in the CARES Act, the Emergency Grants FAQs  
2 violated section 18004(c) of the CARES Act.

3 59. While the Department's Emergency Grants FAQ states that a FAFSA  
4 is not required, having one on file is the primary practicable means for an institution  
5 to determine that a student is eligible to participate in the student aid programs and  
6 meet all applicable eligibility requirements.

7 60. For institutions to access the second wave of funding, the Department  
8 announced they first must have submitted the certification form for the emergency  
9 grants for students, and then must submit a second certification form attesting that  
10 they will use the money in accordance with the law.

11 61. Both the Department's certifications purported to impose liability on  
12 institutions if they did not comply with the Department's restriction of student  
13 eligibility for emergency grants. The certification required for institutions to receive  
14 emergency grant funding for their students states:

15 [F]ailure to comply with this Certification and Agreement, its  
16 terms and conditions, and/or all relevant provisions and  
17 requirements of the CARES Act or any other applicable law may  
18 result in Recipient's liability under the False Claims Act,  
19 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on  
20 Governmentwide Debarment and Suspension (Nonprocurement)  
in 2 CFR part 180, as adopted and amended as regulations of the  
Department in 2 CFR part 3485; 18 USC § 1001, as appropriate;  
and all of the laws and regulations referenced in Attachment A,  
which is incorporated by reference hereto.

21 Recipient's Funding Certification and Agreement Emergency Financial Aid  
22 Grants to Students under the Coronavirus Aid,

1 Relief, and Economic Security (CARES) Act ¶ 4(g),  
2 <https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreement>  
3 [finalombapprovedforissuance.pdf](https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreement) (last visited May 14, 2020).

4 62. The certification to receive CARES Act funding for institutions' own  
5 use states:

6 Recipient's failure to comply with this Certification and  
7 Agreement, its terms and conditions, and/or all relevant  
8 provisions and requirements of the CARES Act or any other  
9 applicable law may result in Recipient's liability under the False  
10 Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to  
11 Agencies on Governmentwide Debarment and Suspension  
(Nonprocurement) in 2 CFR part 180, as adopted and amended as  
regulations of the Department in 2 CFR part 3485; 18 USC  
§ 1001, as appropriate; and all of the laws and regulations  
referenced in Attachment A, which is incorporated by reference  
hereto.

12 Recipient's Funding Certification and Agreement for the Institutional Portion of  
13 the Higher Education Emergency Relief Fund Formula Grants Authorized by  
14 Section 18004(a)(1) of the Coronavirus Aid, Relief,  
15 and Economic Security (CARES) Act ¶ 4(i),  
16 <https://www2.ed.gov/about/offices/list/ope/heerfInstitutionalcertificationagreement42020v2.pdf>  
17 (last visited May 14, 2020).

18 **D. The Department's Reversal of Position in Its April 21, 2020,  
19 Guidelines Is Unlawful**

20 63. The Department's restriction on student eligibility for CARES Act  
21 emergency grants to only those students who qualify for federal financial aid under  
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1 section 484 of Title IV of the HEA is unlawful.<sup>2</sup> The CARES Act does not restrict  
2 emergency grants to only students eligible for federal financial aid under section  
3 484 of Title IV of the HEA. Further, the CARES Act does not delegate to the  
4 Department the authority to interpret section 18004.

5 64. The Department’s Eligibility Restriction is illegal whether it is a  
6 legislative or interpretive rule. If it is deemed a substantive rule, it is contrary to the  
7 plain meaning of the CARES Act and is contrary to law. If it is deemed an  
8 interpretive rule, it improperly imposes binding legal obligations on Washington  
9 institutions of higher education that diverge from the CARES Act and purports to  
10 have the force of law. Further, it is entitled to no or minimal deference and  
11 contradicts Congress’s manifest intent to funnel emergency aid through institutions  
12 to students they deem in urgent need.

13 65. The Eligibility Restriction also is arbitrary and capricious. The  
14 Department initially acknowledged that “[t]he CARES Act provides institutions  
15 with significant discretion on how to award this emergency assistance to  
16 students,” and “[t]he only statutory requirement is that the funds be used to cover  
17 expenses related to the disruption of campus operations due to coronavirus  
18 (including eligible expenses under a student’s cost of attendance, such as food,  
19 housing, course materials, technology, health care, and child care).” Letter from  
20 \_\_\_\_\_

21 <sup>2</sup> Washington refers to this restriction below as the Department’s  
22 “Eligibility Restriction.”

1 the Secretary of Education to College and University Presidents (Apr. 9, 2020),  
2 [https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.](https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf)  
3 [pdf](https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf) (last visited May 14, 2020). Further, the Department’s certification form  
4 expressly states that the grants are not “Federal financial aid under Title IV of the  
5 HEA.” Recipient’s Funding Certification and Agreement Emergency Financial  
6 Aid Grants to Students under the Coronavirus Aid,  
7 Relief, and Economic Security (CARES) Act ¶ 3,  
8 [https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreement](https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreementfinalombapprovedforissuance.pdf)  
9 [finalombapprovedforissuance.pdf](https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreementfinalombapprovedforissuance.pdf) (last visited May 14, 2020). Nevertheless,  
10 within 11 days the Department changed course and announced that the funds are  
11 federal financial aid and that students would have to qualify under Title IV of the  
12 HEA to be entitled to an emergency grant. The Emergency Grants FAQs contain  
13 no analysis or explanation for this change of course. Nor was the Department’s  
14 certification revised to remove the inconsistent language that the grants were *not*  
15 considered federal financial aid under Title IV of the HEA.

16 66. The Department reversed its position without displaying awareness  
17 that it was changing course, showing that the Eligibility Restriction was permissible  
18 under section 18004, and without providing good reasons for the change.

### 19 **E. Injuries to the State of Washington and Its Residents**

20 67. The Washington Legislature enacted the Community and Technical  
21 College Act of 1991, Wash. Rev. Code Title 28B.50. This Act created a network  
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1 of community and technical colleges as an essential part of the State's higher  
2 education system, including the colleges referred to above. The purpose of the  
3 Act is to:

4 provide for the dramatically increasing number of students  
5 requiring high standards of education either as a part of the  
6 continuing higher education program or for occupational  
7 education and training, or for adult basic skills and literacy  
8 education, by creating a new, independent system of community  
9 and technical colleges which will:

10 (1) Offer an open door to every citizen, regardless of his  
11 or her academic background or experience, at a cost normally  
12 within his or her economic means;

13 (2) Ensure that each college district, in coordination with  
14 adjacent college districts, shall offer thoroughly comprehensive  
15 educational, training, and service programs to meet the needs of  
16 both the communities and students served by combining high  
17 standards of excellence in academic transfer courses; realistic and  
18 practical courses in occupational education, both graded and  
19 ungraded; community services of an educational, cultural, and  
20 recreational nature; and adult education, including basic skills and  
21 general, family, and workforce literacy programs and services;

22 (3) Provide for basic skills and literacy education, and  
occupational education and technical training in order to prepare  
students for careers in a competitive workforce;

(4) Provide or coordinate related and supplemental  
instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which  
will avoid unnecessary duplication of facilities, programs, student  
services, or administrative functions; and which will encourage  
efficiency in operation and creativity and imagination in  
education, training, and service to meet the needs of the  
community and students;

(6) Allow for the growth, improvement, flexibility and  
modification of the community colleges and their education,  
training, and service programs as future needs occur; and

(7) Establish firmly that as provided under  
RCW 28B.50.810, community colleges are, for purposes of  
academic training, two year institutions, and are an independent,  
unique, and vital section of our state's higher education system,

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separate from both the common school system and other institutions of higher learning.

Wash. Rev. Code § 28B.50.020 (2019).

68. Approximately 363,000 students are enrolled statewide in Washington’s community and technical colleges.

69. Wash. Rev. Code Title 28B.10 establishes a system of Washington universities. These include state universities, the University of Washington and Washington State University; regional universities, Western Washington University at Bellingham, Central Washington University at Ellensburg, and Eastern Washington University at Cheney; and state college, The Evergreen State College in Thurston county. Wash. Rev. Code § 28B.10.016 (2019). These universities also are part of the State’s system of higher education.

70. Numerous colleges and universities in Washington have submitted applications to the Department to receive HEERF monies and have signed Funding Certifications and Agreements as required by the Department. This includes Washington’s major four-year universities and all 34 community and technical colleges in Washington, including Columbia Basin College, Wenatchee Valley College, Pierce College, North Seattle College, and Skagit Valley College. Many of these institutions signed the Recipient’s Funding Certification and Agreement Emergency Financial Aid Grants to Students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act before the Department announced the Eligibility Restriction.

1           71. The Department’s Eligibility Restriction applies to Washington  
2 colleges and universities and restricts their ability to distribute CARES Act funds  
3 to all needy students. But for the Eligibility Restriction, Washington colleges and  
4 universities would distribute CARES Act funding to students who qualify under  
5 section 18004(c) but are excluded by the challenged action.

6           72. Students at Washington colleges and universities have been deeply  
7 affected by the COVID-19 pandemic. The disruption of campus operations has  
8 caused them to incur unexpected expenses such as food, housing, course materials,  
9 technology, health care, and child care. Some students have been unable to remain  
10 in school due to these expenses, and Washington institutions have lost enrollment  
11 as a result. In addition, the institutions anticipate continued loss of enrollment in  
12 summer terms and future semesters because of these expenses. The Eligibility  
13 Restriction has caused students to have to try to absorb the above expenses  
14 themselves, forced students to disenroll in order to manage these expenses, and  
15 worsened the rate of disenrollment from Washington institutions.

16           73. Lack of financial resources is the most common reason for student  
17 disenrollment. Many students, particularly at technical and community colleges,  
18 work part-time while in school making them ineligible for unemployment benefits,  
19 and others are small business owners. Many such students are without an income  
20 because of COVID-19 and desperately need help. In addition, many Washington  
21 students are just above the level to receive Pell Grants. These individuals are often  
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1 the hardest hit because they do not meet the threshold to receive any significant  
2 amount of aid, but they do not make enough to make ends meet. Many of these  
3 students would be able to continue their education if their institutions could provide  
4 CARES Act funding more broadly.

5 74. The loss of enrollment at Washington institutions caused by the  
6 Eligibility Restriction has reduced tuition payments and will continue to do so. This  
7 financial injury harms the proprietary interests of Washington and its institutions of  
8 higher education.

9 75. Washington higher education students have encountered a variety of  
10 needs during the switch to online learning. These include:

- 11 a. Loss of access to campus computer labs, student media centers, artist  
12 centers, electronics, science, and/or nursing labs requiring the purchase of  
13 technical equipment for use at home such as computers, printers, cameras,  
14 other equipment for classes, and upgrades of internet services or internet  
15 hotspots;
- 16 b. Loss of access to technology resources for disability services  
17 accommodations such as screen readers, alternate format textbooks,  
18 notetakers, or other needs;
- 19 c. Loss of income from a campus job or other work;
- 20 d. Loss of access to onsite counselors and other medical care; and
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e. Loss of access to campus gym shower facilities for personal hygiene when necessary due to living situations or homelessness.

76. The Eligibility Restriction has forced Washington colleges and universities to deny emergency financial aid grants to students who are eligible for emergency financial aid grants under the CARES Act.

77. 545,000 of Washingtonians 18 and over lack a high school credential. The students improperly denied grants by the Eligibility Restriction include those in Basic Education for Adults (BEA) programs. The majority of Washington’s 51,838 Basic Education for Adults students are not receiving or deemed eligible for CARES Act funding. BEA students fall into two categories: students who did not complete high school but are seeking to reengage in school to get a high school diploma and students for whom English is not their first language. The students for whom English is not their first language are often highly educated in their home countries and plan to enroll in a 4-year degree once their English language skills improve. Both these populations are more likely to rely on campus internet or computer labs making the transition to distance learning more challenging or impossible without financial support. Sometimes this is because the students cannot afford laptops or internet. Other students are older and face the additional burden that the use of technology is already more difficult or the use of the internet or a laptop was not part of their daily life.

1           78. The Eligibility Restriction also denies emergency financial aid  
2 grants to students in the Running Start Program. There are a significant number  
3 of Running Start students at Washington higher education institutions who are high  
4 school students taking primarily, or all, community college classes. In the 2017-18  
5 school year, 28,541 community and technical college students were in a Running  
6 Start Program. Many of those students qualify for free or reduced lunches and now  
7 face food insecurity due to campus closure. They already face other economic  
8 barriers. For example, Running Start students do not qualify for federal aid  
9 money to purchase textbooks and other course materials.

10           79. Other Washington students harmed by the Eligibility Restriction  
11 include those under the age of 24 who would otherwise qualify for aid under Title  
12 IV but cannot file a FAFSA because their parents will not sign the document. These  
13 include students who have been abandoned, whose parents were abusive, or whose  
14 parents simply refuse to sign because their child is now over 18 and they will no  
15 longer provide any form of assistance.

16           80. According to data maintained by the Washington Student  
17 Achievement Council, of 79,668 expected graduates for the class of 2020 in  
18 Washington, 41,271 (or 51.8 percent) students did not submit a FAFSA. Wash.  
19 Student Achievement Council, FAFSA Completion, [https://wsac.wa.gov/fafsa-](https://wsac.wa.gov/fafsa-completion)  
20 [completion](https://wsac.wa.gov/fafsa-completion) (last accessed May 15, 2020). Of the 38,397 students who did submit  
21 a FAFSA, 1,636 (or 4.3 percent) of those students submitted FAFSAs with errors.  
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1 *Id.* Indeed, Washington has an extremely low FAFSA completion rate. According  
2 to the Washington Student Achievement Council, for all 2019 seniors, it was  
3 46 percent, which placed Washington 49th nationally. *Id.*

4 81. In addition, Washington colleges and universities have many  
5 students who have temporary protected status or DACA status. Under the  
6 Department's Eligibility Restriction, these students are ineligible to receive  
7 emergency financial aid under the CARES Act. If these students do not receive  
8 this aid and no other assistance is available, many will have to disenroll, lose  
9 housing, or face any number of consequences of lack of funds.

10 82. Washington institutions may face legal claims by the Department if  
11 they inadvertently disbursed funds in violation of the Eligibility Restriction. If  
12 institutions inadvertently erred in determining a student's eligibility for federal  
13 financial aid under Title IV and disbursed an emergency grant to the student, the  
14 Department could demand they pay back the money back to the Department, or  
15 seek to impose False Claims Act liability.

16 83. The missions of Washington institutions of higher education are  
17 harmed by the Eligibility Restriction. Colleges and universities already have lost  
18 student enrollment because of the Eligibility Restriction and expect that more  
19 students will disenroll. The loss of enrollment because of the Eligibility  
20 Restriction will cause students to give up or put on hold their hopes of bettering  
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1 their lives, which is the ultimate goal of Washington's system of higher  
2 education.

3 **V. CAUSES OF ACTION**

4 **Count I:**  
5 **Violation of the Administrative Procedure Act**  
6 **Agency Action in Excess of Statutory Authority, Short of Statutory Right,**  
7 **or Not in Accordance with Law**

8 84. Washington realleges and reincorporates by reference the  
9 allegations set forth in each of the preceding paragraphs.

10 85. The APA requires that a court hold unlawful and set aside agency  
11 action, findings, and conclusions found to be in excess of statutory authority,  
12 short of statutory right, or not in accordance with law. 5 U.S.C. § 706(2)(A), (C)  
13 (1966).

14 86. Congress did not grant the Department authority to interpret section  
15 18004 of the CARES Ac. In addition, Congress did not delegate authority to the  
16 Department to make rules concerning section 18004, such as the Eligibility  
17 Restriction, carrying the force of law. The Department's Eligibility Restriction is  
18 unauthorized by and contrary to section 18004(c) of the CARES Act. It therefore  
19 is in excess of statutory authority, short of statutory right, and not in accordance  
20 with law.

21 87. To the extent the Department claims that its Eligibility Restriction  
22 is merely an interpretation contained in a policy statement, agency manual, or  
enforcement guideline that lacks the force of law, the Department's interpretation

1 is entitled to no or only limited deference. The Eligibility Restriction is not  
2 persuasive, nor does it reflect thorough consideration. There are many students  
3 at Washington's institutions of higher education who do not qualify for financial  
4 aid under Title IV, but who need emergency financial assistance due to the  
5 impacts of COVID-19. In fact, many of the students who do not qualify under  
6 the Eligibility Restriction are those most in need of financial support. In any  
7 event, Congress's intent in the CARES Act is clear that institutions of higher  
8 education possess discretion to determine which students need emergency grants  
9 to cover expenses related to the disruption of campus operations due to  
10 coronavirus, and their discretion is not limited by section 484 of Title IV of the  
11 HEA.

12 88. Absent injunctive and declaratory relief suspending and vacating the  
13 April 21, 2020, guidance, Washington and its residents will be immediately,  
14 continuously, and irreparably harmed by Defendants' illegal actions.

15 **Count II:**  
16 **Violation of the Administrative Procedure Act**  
**Arbitrary and Capricious Agency Action**

17 84. Washington realleges and reincorporates by reference the  
18 allegations set forth in each of the preceding paragraphs.

19 85. The APA requires that a court hold unlawful and set aside agency  
20 action, findings, and conclusions found to be arbitrary, capricious, or an abuse of  
21 discretion. 5 U.S.C. § 706(2)(A) (1966).

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1 90. The Eligibility Restriction is a legislative rule adopted without  
2 complying with the notice and comment requirements of the APA.

3 91. Absent injunctive and declaratory relief suspending and vacating the  
4 April 21, 2020, guidance, Washington and its residents will be immediately,  
5 continuously, and irreparably harmed by Defendants' illegal actions.

6 **Count IV:**  
7 **Separation of Powers**

8 92. Washington realleges and reincorporates by reference the  
9 allegations set forth in each of the preceding paragraphs.

10 93. Article I of the Constitution “exclusively grants the power of the  
11 purse to Congress[.]” *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225,  
12 1231 (9th Cir. 2018) (citing U.S. Const. art. I, § 9, cl. 7; U.S. Const. art. I, § 8,  
13 cl. 1). That power includes “condition[ing] the receipt of funds, by states and  
14 others, on compliance with federal directives.” *Nevada v. Skinner*, 884 F.2d 445,  
15 447 (9th Cir. 1989). As the Ninth Circuit recently reaffirmed, the Executive  
16 Branch “does not have unilateral authority” to “thwart congressional will by  
17 canceling appropriations passed by Congress.” *City & Cty. of San Francisco*,  
18 897 F.3d at 1232 (internal quotation marks and citations omitted); *Clinton v.*  
19 *City of New York*, 524 U.S. 417, 438 (1998) (“[N]o provision in the  
20 Constitution . . . authorizes the President to enact, to amend, or to repeal  
21 statutes.”). To that end, the Executive Branch is without inherent power to  
22 “condition the payment of . . . federal funds on adherence to its political

1 | priorities.” *Oregon v. Trump*, 406 F. Supp. 3d 940, 961 (D. Or. 2019) (citing  
2 | *City of Chicago v. Sessions*, 888 F.3d 272, 283 (7th Cir. 2018), *reh’g en banc*  
3 | *granted in part, opinion vacated in part*, No. 17-2991, 2018 WL 4268817  
4 | (7th Cir. June 4, 2018), *vacated on other grounds*, Nos. 17-2991 & 18-2649,  
5 | 2018 WL 4268814 (7th Cir. Aug. 10, 2018)). If the Executive Branch wishes to  
6 | condition the receipt of federal funds, it may *only* do so pursuant to a specific  
7 | delegation of spending authority by Congress. *City & Cty. of San Francisco*,  
8 | 897 F.3d at 1233-34.

9 |       94. The Eligibility Restriction permits Defendants to withhold, deny,  
10 | suspend, claw back, or terminate money appropriated by Congress, thereby  
11 | violating constitutional separation of powers principles based on conditions not  
12 | provided for in the CARES Act. Defendants did not have inherent authority to  
13 | impose these restrictions. Nor did Congress afford Defendants any discretion or  
14 | authority to place such restrictions through the CARES Act.

15 |       95. In unilaterally imposing the Eligibility Restriction, the Department  
16 | abrogated the discretion given the educational institutions in the CARES Act and  
17 | usurped Congress’ power to legislate in violation of the principles of separation  
18 | of powers.

19 |       96. Absent injunctive and declaratory relief vacating the Final Rule and  
20 | prohibiting it from going into effect, Washington and its residents will be  
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22 |

1 immediately, continuously, and irreparably harmed by Defendants’ illegal  
2 actions.

3 **Count V:**  
4 **Spending Clause**

5 97. Washington realleges and reincorporates by reference the  
6 allegations set forth in each of the preceding paragraphs.

7 98. Article I, section 8, clause 1 of the United States Constitution, also  
8 known as the Spending Clause, states that “Congress shall have Power To lay  
9 and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for  
10 the common Defence and general Welfare of the United States[.]”

11 99. Under the Spending Clause, conditions may not be placed on federal  
12 funds that are (1) so coercive that they compel (rather than encourage) recipients  
13 to comply, (2) ambiguous, (3) retroactive, or (4) unrelated to the federal interest  
14 in a particular program. *Nat’l Fed’n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S.  
15 519, 575–78 (2012); *South Dakota v. Dole*, 483 U.S. 203, 206–08 (1987).

16 100. At the very least, the Department’s Eligibility Restriction violates  
17 the Constitutional requirements that conditions on funds be “unambiguous” and  
18 not retroactive because they are improper “post-acceptance” restrictions.  
19 *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)  
20 (“[I]f Congress intends to impose a condition on the grant of federal moneys, it  
21 must do so unambiguously.”). States “cannot knowingly accept conditions of  
22 which they are ‘unaware’ or which they are ‘unable to ascertain.’ ” *Arlington*

1 | *Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting  
2 | *Pennhurst*, 451 U.S. at 17).

3 |       101. “Though Congress’ power to legislate under the spending power is  
4 | broad, it does not include surprising participating States with post acceptance or  
5 | ‘retroactive’ conditions.” *Pennhurst*, 451 U.S. at 25; *see also Sebelius*, 567 U.S.  
6 | at 584 (quoting *Pennhurst*, holding Congress cannot retroactively alter conditions  
7 | of Medicaid grants to states). Once a state has accepted funds pursuant to a federal  
8 | spending program, the federal government cannot alter the conditions.

9 |       102. Accordingly, the Spending Power does not permit what the  
10 | Department is attempting to do here: “surprising participating States with post  
11 | acceptance or ‘retroactive’ conditions” on congressionally appropriated funds.  
12 | *Pennhurst*, 451 U.S. at 25; *see also Sebelius*, 567 U.S. at 519 (quoting *Pennhurst*,  
13 | holding Congress cannot retroactively alter conditions of Medicaid grants to  
14 | states). Once a state or state entity has accepted funds pursuant to a federal  
15 | spending program, the federal government cannot alter the conditions attached to  
16 | those funds so significantly as to “accomplish[] a shift in kind, not merely  
17 | degree.” *Sebelius*, 567 U.S. at 523.

18 |       103. The Eligibility Restriction is not stated unambiguously in the  
19 | CARES Act. Further, Washington institutions did not know of the Eligibility  
20 | Restriction at the time they signed the Department’s certification to receive  
21 | emergency financial aid grants for their students. Therefore they were unable to  
22 |

1 exercise their choice knowingly, cognizant of the consequences of their  
2 participation, and they were surprised with post acceptance or retroactive  
3 conditions. In addition, the Eligibility Restriction is not related to the federal  
4 interest in assisting students impacted by COVID-19, nor is it consistent with  
5 other provisions of the Constitution. For these reasons, the Eligibility Restriction  
6 violates the Spending Clause.

7 104. Absent injunctive and declaratory relief vacating the Final Rule and  
8 prohibiting it from going into effect, Washington and its residents will be  
9 immediately, continuously, and irreparably harmed by Defendants' illegal  
10 actions.

## 11 VI. PRAYER FOR RELIEF

12 WHEREFORE, the State of Washington prays that the Court:

13 a. Declare Defendants' April 21, 2020, restriction on student eligibility  
14 for emergency financial relief grants is unauthorized by and contrary to the  
15 Constitution and laws of the United States, and the only requirement applicable  
16 to institutions of higher education is that the funds be used to provide emergency  
17 financial aid to their students for expenses related to the disruption of campus  
18 operations due to coronavirus (including eligible expenses under a student's cost  
19 of attendance, such as food, housing, course materials, technology, health care,  
20 and child care);

- 1           b.     Declare Defendants’ April 21, 2020, restriction on student eligibility
- 2 for emergency financial relief grants is invalid and without force of law;
- 3           c.     Issue preliminary and permanent injunctions prohibiting Defendants
- 4 from implementing or enforcing the April 21, 2020, restriction on student
- 5 eligibility for emergency financial relief grants;
- 6           d.     Compel Defendants to rescind the April 21, 2020, restriction on
- 7 student eligibility for emergency financial relief grants and to distribute CARES
- 8 Act funds to Washington institutions without any such restriction, pursuant to
- 9 28 U.S.C. § 1361;
- 10          e.     Award the State of Washington its costs and reasonable attorneys’
- 11 fees; and
- 12          f.     Award such other and further relief as the interests of justice may
- 13 require.
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RESPECTFULLY SUBMITTED this 19th day of May, 2020.

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