Congress of the United States

Washington, DC 20515

May 23, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Re: Docket ID number ED-2018-ICCD-0028

Secretary DeVos:

As Members of Congress, we are incredibly disappointed to learn that the U.S. Department of Education ("Department") has disregarded public input on the process for helping institutes of higher education ("IHEs") obtain disaster relief funds and recover from the 2017 hurricanes and wildfires. We have carefully reviewed the Department's May 1 response letter (the "May 1 response"), and find it inadequate and deficient. In particular, the Department has ignored significant concerns about the ability of IHEs in Puerto Rico to access this urgently-needed aid, while IHEs are still struggling to recover from Hurricanes Irma and Maria. By moving forward with this unfair and unduly burdensome process *after* hearing broad public outcry in opposition, the Department shows a deliberate and callous disregard for the calamity the people of Puerto Rico have dealt with since the storms, and accordingly, the Department must reverse course immediately.

Public comments from IHEs in Puerto Rico, non-profit organizations, and Members of Congress, all indicated that the Department's unnecessary hurdles for IHEs to access disaster funding provided by the *Bipartisan Budget Act of 2018* would create substantial challenges and ultimately harm students and families.[1] In fact, out of the 26 public comments submitted, not a single one supports the overly complicated forms and unduly burdensome process as developed by the Department. Nevertheless, the Department is proceeding without any substantive changes to this process or corresponding forms.

The result is a marked departure from the Department's precedent.[2] For submissions in the case of Hurricane Maria, the Department is not awarding any funds automatically, as was done for systems of higher education following Hurricanes Katrina and Rita in 2005. In response to those disasters, Congress appropriated $190 million in combined funding for the Louisiana Board of Regents and Mississippi Institutions of Higher Learning to provide direct disaster assistance, none

[1] Federal Register. Docket ED-2018-ICCD-0028-0011. April 5, 2018. https://go.usa.gov/xQ85h.
[2] Federal Register. Document Numbers 2018-09417 and 2018-09418. May 3, 2018. https://go.usa.gov/xQ8H9 and https://go.usa.gov/xQ8HX

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of which required an application. In total, 70 percent of the funds disbursed in the wake of those hurricanes were disbursed without the need for an application.[3]

We believe the application and disbursement process for the 2017 disasters must mirror the mechanisms used in response to the 2005 disasters, not 2008. The May 1 response states that "[t]he Department's process for making allotments will closely follow the process used in 2009 after the natural disasters in 2008." This position ignores the fact that the 2017 hurricane season was the costliest in U.S. history, with the 2005 hurricane season ranking as the second-costliest.[4] In fact, according to the National Oceanic and Atmospheric Administration ("NOAA"), the 2017 hurricane season caused $309.5 billion in damages, and the 2005 hurricane season caused $ 219.2 billion in damages, while the damages from the 2008 season were well short of $100 billion.[5] This unjustified departure in the face of publicly-available data showing the need to adopt a fairer process is alarming. These facts support the idea that the process used following the 2017 hurricane season should be just as focused on the affected areas as the post-2005 process, if not more so. Accordingly, the Department's process for making allotments must closely follow the process used in 2005, not 2009.

Moreover, the Department insists on maintaining a bifurcated, form-based approach with a separate "pre-application" and "full application" for IHEs located in affected areas to receive emergency assistance. Meanwhile, the funding provided to IHEs to defray the costs of enrolling displaced students does not similarly require a "pre-application." Many of us raised this concern in our previous letter dated April 5, 2018 (the "April 5 letter"), and received no justification from the Department, in the May 1 response or otherwise, as to why IHEs located in disaster areas (and thus suffered greater damage) should be forced through an unjustifiably and disproportionately burdensome process relative to IHEs that experienced no damage at all.

In addition, the Department's own estimates state that each IHE will spend an average of 40 hours completing an application for relief. This is precious time Puerto Rico's IHEs cannot afford to expend on anything but helping their students, families, and communities get back on their feet. To make matters worse, the forms also disregard our previously-requested improvements that would have made this process significantly less burdensome, and are **still** unavailable in Spanish. The Department's lack of responsiveness to these real and urgent concerns is both highly disappointing and unprecedented.

Furthermore, the Department has not indicated that it will provide any direct assistance to IHEs in disaster-stricken areas that may lack consistent, reliable Internet access, electricity generation and supply, and functioning technology. We understand from the May 1 response that the Department *may* accept late applications to account for IHEs with "special needs." While we

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[3] *See* P.L. 109-148, P.L. 109-234, and P.L. 110-28.
[4] NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2018). https://www.ncdc.noaa.gov/billions/.
[5] NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2018). https://www.ncdc.noaa.gov/billions/.

appreciate this modicum of leniency, we must remind the Department that this approach is underserving of the needs of Puerto Rico's IHEs. Applicants for disaster relief are directed to download applications available exclusively online, and all background information refers applicants and interested parties to web addresses. By deliberately proceeding in this fashion, the Department has shown its failure to recognize that Puerto Rico has experienced the second-largest power blackout in world history,[6] and that just weeks ago (almost seven months removed from Hurricane Maria), Puerto Rico again faced an Island-wide power outage that left approximately 870,000 people without electricity.[7]

As we raised in the April 5 letter, the Department had a menu of alternatives available for designing a process of disbursing disaster aid. The Department could have either automatically awarded relief funds in a targeted manner using metrics of student and family need, made major changes to the application process and forms to streamline the process, or ideally, both. Given the multitude and diversity of options for improving the application process, the Department must re-examine its currently-proposed process and its effectiveness for Puerto Rico's IHEs.

We also have serious concerns that this application process will re-direct disaster relief funding away from where it is needed most. The Department has failed to prioritize relief and target aid to where it is most needed, resulting in just one-fifth of all reallocated campus-based aid going to Puerto Rico.[8] In fact, two of the largest individual recipients of disaster aid in a previous round of assistance were Grand Canyon University and Liberty University, neither of which could indicate how many affected students they had enrolled with federal funds for displaced students since Hurricane Maria.[9] This is simply not an effective use of federal funds. Accordingly, the Department must ensure that taxpayer-funded disaster relief is flowing to students and communities with the most significant needs.

The Department's announcement of April 30, 2018 (the "April 30 announcement") regarding federal assistance under the Immediate Aid to Restart School Operations ("K-12 Restart") Program highlights the Department's inconsistent approach towards aid for Puerto Rico.[10] Of the approximately $693 million available under K-12 Restart, approximately $589 million was awarded to the Puerto Rico Department of Education ("PRDE"). While we are grateful for this support, we also consider it a tacit admission by the Department of the severity of the situation Puerto Rico has been facing. Furthermore, Madame Secretary, you are even quoted in the announcement as saying:

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[6] Houser, T. & Marsters, P. Rhodium Group. The World's Second Largest Blackout. April 12, 2018. https://rhg.com/research/puerto-rico-hurricane-maria-worlds-second-largest-blackout/.

[7] Coto, Danica. *Associated Press.* Large power outage affects 870K customers across Puerto Rico. April 12, 2018. https://www.apnews.com/993d09b0eb174bfb810885ba71055f81.

[8] Congressional analysis of U.S. Department of Education data. Release: DeVos Announces Additional Funds to Support Students at Colleges and Universities Impacted by Hurricanes. March 13, 2018. https://go.usa.gov/xQCM3.

[9] Green, E. & Cochrane, E. *New York Times.* In Devastated Puerto Rico, Universities Get Just a Fraction of Storm Aid. May 1, 2018. https://nyti.ms/2KoBEfH.

[10] U.S. Department of Education. Release: Secretary DeVos Announces New Federal Disaster Assistance for California, Puerto Rico, and Texas. April 30, 2018. https://www.ed.gov/news/press-releases/secretary-devos-announces-new-federal-disaster-assistance-california-puerto-rico-and-texas.

> *As communities get back on their feet in disaster affected regions, we continue to support them in every way we can. This additional funding will ensure students, teachers and staff have ongoing access to the services they need to fully recover and rebuild.*[11]

In response, we must stress that the plight is no less severe for IHEs in Puerto Rico, and implore you to take the same approach for them. Accordingly, the Department must amend this application process and the corresponding forms so that the proportion of aid received by IHEs in Puerto Rico compared to the total available roughly matches the proportion received by PRDE.

Finally, the April 5 letter was intended to express our concerns regarding the process by which IHEs in disaster areas apply for and access disaster relief funds, but also to open a dialogue between Congress and the Department about how to optimize the process. Unfortunately, the signers of the April 5 letter have received a response that only doubles down on the Department's nonresponsive approach to the IHEs in Puerto Rico. Instead, the Department completely disregarded the input of 37 Members of the U.S. House of Representatives and 9 U.S. Senators, as well as countless other stakeholders, and moved forward with this process without adopting a single recommendation *or* modifying any part of the process. Accordingly, we are compelled to direct the following interrogatories and requests for documents to you, and respectfully request an official response from your office within 30 days:

1. In the April 5 letter, we expressed deep concerns about the bifurcated and overly burdensome application process the Department created and adopted to disburse funding to IHEs affected by Hurricanes Irma and Maria. **What is the Department's justification for the use of this application process, when recent history of natural disaster emergency aid disbursement has not required such a process?**

2. In the April 5 letter, we encouraged the Department to conduct thorough outreach efforts to help provide necessary information about relief funding to IHEs affected in Puerto Rico and the U.S. Virgin Islands. Additionally, we implored you to provide forms and other information regarding this process in Puerto Rico's dominant language, Spanish.

    a. **To date, what outreach has the Department conducted to ensure local entities and stakeholders have been notified of this funding?**

    b. **Are any of the forms or information for this process available in Spanish?**

    c. **Please provide all outreach materials used by the Department to inform local entities about this funding.**

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[11] *Id.*

3. According to a May 1 New York Times article,[12] many universities who enrolled students affected by these natural disasters received funding to help defray the costs associated with doing so. However, the article points out that several of the IHEs that were awarded large amounts of funding, such as Liberty University (Virginia) and Grand Canyon University (Arizona), have not disclosed how many affected students they have enrolled with federal funds for displaced students since Hurricane Maria. **What specific formulas or methodologies were used by the Department under the campus-based aid reallocation authority of *Hurricanes Harvey, Irma and Maria Education Relief Act of 2017*? For each metric used in the formula, please provide the score or weight of each IHE, including the number of affected students served.**

4. The April 30 announcement of $693 million in emergency aid funding for primary and secondary schools included that the vast majority ($589 million) would go to Puerto Rico and PRDE. This announcement is an implicit admission by the Department of the uniquely severe devastation facing Puerto Rico post-Maria, and accordingly, the acute need for aid to Puerto Rico's IHEs. **Why is there such a vast disparity in disaster aid funding for IHEs in Puerto Rico compared to the K-12 schools and PRDE?**

5. The May 1 response states: "[t]he Department's process for making allotments will closely follow the process used in 2009 after the natural disasters in 2008." NOAA data shows that the top two costliest hurricane seasons were 2017 ($309.5 billion) and 2005 ($219.2 billion).[13] Meanwhile, the 2008 hurricane season caused less than $100 billion in damage. Furthermore, the extent and nature of the damage wrought in 2017 (widespread infrastructure and power grid damage) closely mirrors that from 2005. In fact, following the 2017 hurricane season, Puerto Rico faced (and continues facing) the second-largest blackout in world history.[14] **Why was the methodology used in 2009 following the 2008 hurricane season selected as a model for disbursement/allotments following the 2017 hurricane season, instead of the methodology used following the 2005 hurricane season?**

6. The May 1 response states: "[t]hat process [for making allotments], which included the review of a pre-application and an application in allotting funds, remains available for public view at www2.ed.gov/programs/disaster-relief/applicant.html." By making the forms and process available exclusively over the Internet, the Department ignores the reality of daily life for Puerto Ricans since Maria: lack of reliable power, Internet access, functional technology infrastructure, or even most basic human necessities. **Why is the Department advancing an Internet-only process, instead of also using additional methods of transmitting the paperwork and information?**

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[12] *Supra* note 9.
[13] NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2018). https://www.ncdc.noaa.gov/billions/.
[14] Houser, T. & Marsters, P. Rhodium Group. The World's Second Largest Blackout. April 12, 2018. https://rhg.com/research/puerto-rico-hurricane-maria-worlds-second-largest-blackout/.

7. The May 1 response states: "[t]he Department's plan to mitigate improper payments is further warranted by the fact that many eligible institutions have been classified as 'high risk' by the Department. The institutions so classified include at least 10 institutions in the Virgin Islands and Puerto Rico as well as institutions in the affected States."

    a. **Why has the Department chosen to emphasize the mitigation of improper payments over delivering desperately-needed relief as quickly as possible?**

    b. **What factors were considered by the Department in making the low, medium, and high-risk classifications?**

    c. **Please provide a full list of all IHEs in Puerto Rico and the U.S. Virgin Islands that the Department has classified based on its level of risk (low-risk, medium-risk, or high-risk), and the level of risk assigned to each IHE.**

The 2018 Atlantic hurricane season begins in less than one month, and by all accounts, Puerto Rico is not ready. Puerto Rico, and the millions of American citizens living there, simply cannot wait any longer for the federal government to finally prioritize their long-ignored, dire needs. At such a critical time for Puerto Rico, the federal government should be doing all it can to enhance Puerto Rico's preparedness and readiness for the 2018 hurricane season. Instead, the Department's callous silence in response to these real and urgent concerns is remarkably frightening, and is yet another example of the Trump administration's failure to recognize Puerto Rico's plight.

The Department must ensure Puerto Rico's IHEs, in addition to the K-12 schools, have the financial support they need to fully rebuild and recover from the storms, restore normal operating order, and resume their mission of educating the next generation of Puerto Ricans. Unfortunately, by insisting on proceeding in this fashion, the Department is failing to live up to that charge. However, it could (and as we argue, must) reverse course, and do the right thing for Puerto Rico, by heeding these concerns immediately and instituting a fair process for the IHEs on the Island to apply for and access disaster aid funding.

We look forward to your timely response to this correspondence, as well as to the interrogatories and requests for documents contained therein, within 30 days.

Nydia M. Velázquez
Member of Congress

Kirsten Gillibrand
United States Senator

José E. Serrano
Member of Congress

Richard Blumenthal
United States Senator

Cory A. Booker
United States Senator

Kamala D. Harris
United States Senator

Robert Menendez
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Alcee L. Hastings
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Sheila Jackson Lee
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Ruben Kihuen
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Jerry McNerney
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Gwen Moore
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Jerrold Nadler
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Eleanor Holmes Norton
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Lucille Roybal-Allard
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Jan Schakowsky
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Carol Shea-Porter
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