

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION; and BETSY DEVOS, in her
official capacity as Secretary of the United States
Department of Education,

Defendants.

Civil Action No. 1:20-cv-11600

PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65(a), the Commonwealth of Massachusetts moves for a preliminary injunction barring the defendants from enforcing the interim final rule titled *Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, 85 Fed. Reg. 36494 (June 17, 2020) (“IFR”), in Massachusetts. The IFR unlawfully prohibits colleges and universities from distributing emergency assistance from the Higher Education Emergency Relief Fund (“HEERF”) to Massachusetts students who are ineligible for non-emergency federal financial aid under Title IV of the Higher Education Act (“Title IV”). In support of this motion, the Commonwealth states as follows.

First, the Commonwealth is likely to succeed on the merits of its claim that the defendants have violated the Administrative Procedure Act, 5 U.S.C. § 706(2). As this Court held in the related case *Noerand v. DeVos et al.*, No. 20-cv-11271-LTS, 2020 WL 4274559 (D.

Mass. July 24, 2020), the eligibility restrictions the IFR imposes on the HEERF program conflict with the unambiguous terms of the CARES Act and exceed the defendants' authority under the statute. The IFR is thus "in excess of the [defendants'] statutory authority" and "not in accordance with the law". *See* 5 U.S.C. § 706(2)(A), (C). The IFR is also arbitrary and capricious, *see id.* at § 706(2)(A), because, among other factors, it is based on an unreasonable interpretation of the Act. Further, the IFR is "contrary to constitutional right, power, privilege, or immunity", *see id.* at § 706(2)(B), because it violates the Spending Clause of the United States Constitution and separation of powers principles. The defendants lack constitutional authority to impose conditions on the use of HEERF funds that were not authorized by Congress.

Second, absent the requested injunction, the Commonwealth will suffer irreparable harm. This harm includes the administrative costs and burdens of implementing the IFR; the diversion of institutional funds to help students rendered ineligible to receive HEERF funds by the IFR; the loss of tuition and other revenue caused by the disenrollment of ineligible students who cannot continue their studies without support; the injury to the reputations and educational missions of colleges and universities; and harm to Massachusetts's comprehensive response to the public health crisis caused by COVID-19.

Third, an injunction is supported by the balance of the equities, and is in the public interest, because it will fulfill the clear directive of Congress to allow funds to flow to students in desperate need of assistance to continue their education.

As further grounds and support for this motion, the Commonwealth relies upon the accompanying Memorandum of Law.

In the interest of judicial economy, and because of the similarity of the issues presented and relief sought in *Noerand v. DeVos*, the Commonwealth requests that this motion be

considered together with the Ms. Noerand's pending request for statewide preliminary injunctive relief.

Wherefore, the Commonwealth asks the Court to enter an order enjoining the defendants from enforcing the IFR in Massachusetts, including by taking steps to prevent colleges and universities from distributing HEERF funds to *any* students with "expenses related to the disruption of campus operations due to coronavirus", as contemplated by Section 18004 of the CARES Act.

Date: August 26, 2020

Respectfully submitted,

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts

/s/ Abigail B. Taylor _____
Abigail B. Taylor
Jonathan Burke
Abrisham Eshghi
David Ureña
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel. (617) 727-2200
abigail.taylor@mass.gov
jonathan.burke@mass.gov
abrisham.eshghi@mass.gov
david.urena@mass.gov

RULE 7.1 CERTIFICATE

I, Abigail B. Taylor, hereby certify that counsel for the Plaintiff provided notice of the foregoing motion to Assistant United States Attorney Annapurna Balakrishna, counsel for the Defendants, by email and phone on August 24, 2020 and conferred in good faith in an effort to resolve or narrow the issues.

/s/ Abigail B. Taylor

CERTIFICATE OF SERVICE

I, Abigail B. Taylor, counsel for Plaintiff, hereby certify that this document has been filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). On August 26, 2020, this document was delivered by email to Assistant United States Attorney Annapurna Balakrishna, who has indicated she would accept service by email.

This document will also be sent by certified mail to the defendants at the addresses below.

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

The Hon. Betsy DeVos
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

/s/ Abigail B. Taylor

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION; and BETSY DEVOS, in her
official capacity as Secretary of the United States
Department of Education,

Defendants.

Civil Action No. 1:20-cv-11600

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
ITS MOTION FOR A PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. FACTUAL AND STATUTORY BACKGROUND..... 2

 A. The COVID-19 Pandemic and the CARES Act 2

 B. The Department’s Conflicting Guidance on HEERF Student Grants 3

 C. The Impact of the Interim Final Rule 6

III. LEGAL STANDARD..... 11

IV. ARGUMENT..... 12

 A. The Commonwealth Will Likely Succeed on the Merits of Its Claim
 that the Department’s Imposition of HEERF Eligibility Restrictions
 Is Unlawful..... 13

 B. The Commonwealth Will Be Irreparably Harmed Unless the IFR Is
 Enjoined 15

 1. The IFR imposes administrative costs and burdens on colleges
 and universities 16

 2. The IFR forces colleges and universities to divert scarce
 institutional resources to assist ineligible students 17

 3. The IFR causes increased student disenrollment 17

 4. The IFR interferes with Massachusetts’s COVID-19 response 18

 C. The Balance of the Equities and Impact on Public Interest Weigh in
 Favor of Issuing an Injunction 19

V. CONCLUSION..... 20

TABLE OF AUTHORITIES

Cases

Amazon.com, Inc. v. Barnesandnoble.com, Inc.,
239 F.3d 1343 (1st Cir. 2001)..... 12

Arborject, Inc. v. Rainbow Treecare Scientific Advancements, Inc.,
794 F.3d 168 (1st Cir. 2009)..... 12

City & Cty. of San Francisco v. Trump,
897 F.3d 1225 (9th Cir. 2018) 15

F.C.C. v. Fox Television Stations, Inc.,
556 U.S. 502 (2009)..... 14

Gen. Instrument Corp. v. F.C.C.,
213 F.3d 724 (D.C. Cir. 2000)..... 13

Gonzalez-Droz v. Gonzalez-Colon,
573 F.3d 75 (1st Cir. 2009)..... 12

League of Women Voters of the United States v. Newby,
838 F.3d 1 (D.C. Cir. 2016)..... 20

Meyer v. Nebraska,
262 U.S. 390 (1923)..... 20

Michigan v. E.P.A.,
576 U.S. 743 (2015) 14

*Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile
Ins. Co.*,
463 U.S. 29 (1983)..... 14

Nat’l Cable & Telecommunications Assn. v. Brand X Internet Servs.,
545 U.S. 967 (2005)..... 14

Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs,
145 F.3d 1399 (D.C. Cir. 1998)..... 1

Nken v. Holder,
556 U.S. 418 (2009)..... 19

Noerand v. DeVos et al.,
No. 20-cv-11271-LTS, 2020 WL 4274559 (D. Mass. July 24, 2020)..... *passim*

Oakley v. DeVos et al.,
 No. 20-cv-03215-YGR, 2020 WL 3268661 (N.D. Cal. June 17, 2020) *passim*

Pennhurst State Sch. & Hosp. v. Halderman,
 451 U.S. 1 (1981)..... 15

Ross-Simons of Warwick v. Baccarat, Inc.,
 102 F.3d 12 (1st Cir. 1996)..... 12

South Dakota v. Dole,
 483 U.S. 203 (1987)..... 15

United States v. Weikert,
 504 F.3d 1 (1st Cir. 2007)..... 11

Washington v. DeVos,
 No. 20-cv-0182-TOR, 2020 WL 3125916 (E.D. Wash. June 12, 2020) 13

Statutes

20 U.S.C. § 1091..... 5

5 U.S.C. § 706(2) 13-14

M.G.L. c. 15A, § 5 7

The Coronavirus Aid, Relief, and Economic Security Act,
 Pub. L. No. 116-136, 134 Stat. 281 (2020)..... *passim*

Constitutional Provision

U.S. Const. art I, § 8, cl. 1..... 14

Agency Rules and Notices

*Eligibility of Students at Institutions of Higher Education for Funds Under the
 Coronavirus Aid, Relief, and Economic Security (CARES) Act*,
 85 Fed. Reg. 36494 *passim*

*Personal Responsibility and Work Opportunity Reconciliation Act of 1996
 (PRWORA) Interpretation of “Federal Public Benefit*,
 63 Fed. Reg. 41658 (August 4, 1998)..... 6

Other Sources

Deirdre Fernandes, *Fewer students are applying for financial aid for college – a worrying sign about who will show up this fall*, Boston Globe (June 6, 2020), <https://tinyurl.com/y4gkn7td>..... 9

Higher Education Emergency Relief, Frequently Asked Questions About the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, U.S. Dep’t of Educ., <https://tinyurl.com/yajnjpr2> 5

IPEDS Data Explorer, National Center for Education Statistics, <https://tinyurl.com/y266ph9f> 4

Massachusetts COVID-19 Regulations and Guidance, <https://tinyurl.com/yyqxozfs> 19

Mass. Department of Higher Education, *COVID-19 Higher Education Control Plan*, <https://tinyurl.com/y6hwxamp> 8

Mass. Department of Higher Education, *Reopening: Higher Education*, <https://tinyurl.com/y58eelzx> 19

Methodology for Calculating Allocations per Section 18004(a)(1) of the CARES Act, U.S. Dep’t of Educ., <https://tinyurl.com/y67ecwkl> 4

Recipients Funding Certification and Agreement: Emergency Financial Aid Grants to Students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, U.S. Dep’t of Educ., <https://tinyurl.com/y8j7m8t3> 4

Reopening Massachusetts, May 18, 2020, <https://tinyurl.com/yyud4ak2> 8

Secretary DeVos Letter to College and University Presidents, U.S. Dep’t of Educ. (April 9, 2020), <https://tinyurl.com/y7f9tlrk>..... 4

I. Introduction

The Commonwealth of Massachusetts brings this motion seeking a preliminary injunction to prevent the defendants from enforcing an unlawful rule that is preventing colleges and universities across the state from providing emergency relief to students in crisis. As part of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or “Act”), Congress created the Higher Education Emergency Relief Fund, which includes funding for colleges and universities to assist students struggling because of the COVID-19 pandemic. The Act grants colleges and universities broad discretion over how to distribute the funds to any students affected by the widespread disruption to campus life caused by COVID-19. Contrary to this clear congressional mandate, the defendants have issued an interim final rule that prevents colleges and universities from distributing funds to students who are ineligible for non-emergency financial aid under Title IV of the Higher Education Act (“Title IV”). This restriction effectively excludes tens of thousands of Massachusetts students from receiving the assistance they need to safely and effectively continue their education.

A preliminary injunction should be issued. Consistent with this Court’s decision in *Noerand v. DeVos et al.*, No. 20-cv-11271-LTS, 2020 WL 4274559 (D. Mass. July 24, 2020), the Commonwealth is likely to succeed on its claim that the rule is unlawful and must be set aside under the Administrative Procedure Act (“APA”). *Id.* at *5. Moreover, without the requested statewide relief,¹ Massachusetts, its schools, and its students will suffer irreparable harm.

¹ Under the APA, the “ordinary” remedy when a court finds agency regulations to be unlawful is to “set aside” – or vacate – those regulations with nationwide effect. *Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d

Finally, an injunction is supported by the balance of the equities and is in the public interest because it will fulfill the mandate of the CARES Act to allow needed assistance to flow to students striving to continue their education in the face of the crisis caused by COVID-19.

II. Factual and Statutory Background

A. The COVID-19 Pandemic and the CARES Act

The COVID-19 pandemic has created an unprecedented public health and economic crisis in Massachusetts and across the country. Massachusetts reported its first confirmed case of COVID-19 in February 2020. By March, the rate of infection had increased sharply. In response, on March 10, 2020, the Governor of Massachusetts declared a state of emergency. This was followed on March 13 by the declaration of a national emergency by President Trump.

Beginning immediately thereafter, colleges and universities (“institutions of higher education” or “IHEs”) in Massachusetts – as well as across the country – placed restrictions on in-person activities on their campuses, cancelled classes, and transitioned to remote learning systems. This transition had a severe impact on both IHEs and their students. In addition to the costs of establishing or expanding remote learning platforms, IHEs lost hundreds of millions of dollars in revenue – including revenue from dining, housing, parking and transportation, extracurricular activities, athletics, and other on-campus events. *See* UMass. Decl., ¶¶ 8, 32; Com. Col. Decl., ¶¶ 8, 27; State Uni. Decl., ¶¶ 8-10. Students, in turn, were forced to assume increased costs for housing, food, and access to the technology they needed to effectively participate in remote learning. *See* UMass. Decl., ¶¶ 9, 19, 31, 42; Com. Col. Decl., ¶¶ 9, 28; State Uni. Decl., ¶ 11. At the same time, thousands of students lost their on-campus or off-

1399, 1409 (D.C. Cir. 1998). Here, the Commonwealth has focused on the harm the defendants’ actions will cause in Massachusetts and accordingly has elected to request a statewide preliminary injunction.

campus jobs and were unable to find alternative employment. *See* UMass. Decl., ¶¶ 9, 20, 31, 42; Com. Col. Decl., ¶ 9; State Uni. Decl., ¶ 11.

Congress responded to this crisis with the CARES Act. Signed into law on March 27, 2020, the Act appropriates approximately \$30.75 billion to the Department of Education “to prevent, prepare for, and respond to coronavirus, domestically or internationally.” Pub. L. No. 116-136, 134 Stat. 281, 564 (2020). The Act directs the Department to allocate approximately \$14.25 billion of this money to establish a Higher Education Emergency Relief Fund (“HEERF”). *Id.* at § 18001(b)(3). The Act further requires the defendants to allocate approximately \$12.56 billion of HEERF funds according to the following statutory formula: 75 percent based on each IHE’s relative share of the full-time equivalent (“FTE”) enrollment of Pell Grant recipients; and 25 percent based on their relative share of FTE enrollment of all other students. *Id.* at § 18004(a)(1). IHEs must, in turn, use at least 50 percent of the HEERF funds they receive to provide emergency grants to students to assist with “expenses related to the disruption of campus operations due to coronavirus” (“HEERF Student Grants”). *Id.* at § 18004(c). The Act contains no relevant restrictions on eligibility for HEERF Student Grants.

B. The Department’s Conflicting Guidance on HEERF Student Grants

On April 9, 2020, the defendants informed eligible IHEs of the amount of HEERF Student Grant funds they would receive and published guidance on how to administer the funds (the “April 9 Guidance”). Consistent with the Act, the April 9 Guidance confirmed that IHEs had “significant discretion over how to award emergency assistance to students”; that each IHE had the authority to “develop its own system and process for determining how to allocate these funds”; and that the “only statutory requirement is that the funds be used to cover expenses

related to the disruption of campus operations due to coronavirus.”² Accordingly, the defendants calculated each IHE’s share of Non-Pell Grant Funds based on its total FTE enrollment – including international students, undocumented students, and others who are ineligible for federal financial aid under Title IV.³

The April 9 Guidance also informed IHEs that they would be required to execute a Funding Certification and Agreement (“Certification”) to access HEERF funds. The Certification, also released on April 9, 2020, requires IHEs to distribute funds “consistent with all applicable laws” but specifies that the defendants “do not consider...[HEERF Student Grants] to constitute Federal financial aid under Title IV of the [Higher Education Act].”⁴ IHEs that fail to comply with the Certification are subject to penalties, including suspension and debarment from receiving federal funding.⁵

On April 21, 2020 – after many IHEs had already executed the Certification and accepted funds – the defendants reversed their position and began attempting to impose the restrictions at issue on the HEERF Student Grant program. In “Frequently Asked Questions” published to the Department’s website (the “April 21 Guidance”), the defendants announced that colleges and universities could only provide HEERF Student Grants to students who were eligible to receive

² See Secretary DeVos Letter to College and University Presidents, U.S. Dep’t of Educ. (April 9, 2020), <https://tinyurl.com/y7f9trk>.

³ See Methodology for Calculating Allocations per Section 18004(a)(1) of the CARES Act, U.S. Dep’t of Educ., <https://tinyurl.com/y67ecwkl>; IPEDS Data Explorer, National Center for Education Statistics, (providing IPEDS data including of “nonresident alien” students), <https://tinyurl.com/y266ph9f>.

⁴ See Recipients Funding Certification and Agreement: Emergency Financial Aid Grants to Students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, U.S. Dep’t of Educ., <https://tinyurl.com/y8j7m8t3>.

⁵ *Id.*

federal financial assistance under Title IV.⁶ Title IV requires that a student, among other things: be a U.S. Citizen, permanent resident, or immigrant who meets other specific criteria;⁷ maintain “satisfactory progress” in their course of study, defined as either having a C average or academic standing consistent with the IHE’s standards for graduation, at the end of the second academic year; not owe a refund or be in default on federally-backed student loans or grants; and be a high school graduate or recognized equivalent. 20 U.S.C. § 1091(a), (c), and (d). In effect, this means that many Massachusetts students are not eligible for HEERF Student Grants, including students who are undocumented, have a grant of Deferred Action for Childhood Arrivals (“DACA”) or Deferred Enforced Departure (“DED”), have Temporary Protected Status (“TPS”), are awaiting a determination on an application for asylum, are attending school on an international student visa, are pursuing their GED while enrolled at an IHE, owe a refund on a federal loan or grant, or have not maintained satisfactory academic standing after two years of study.

On June 17, 2020, the defendants issued an Interim Final Rule (“IFR”) implementing the eligibility restrictions announced in the April 21 Guidance. *See Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, 85 Fed. Reg. 36,494. In the IFR, the defendants assert that the word “student” in Section 18004 of the CARES Act creates a “critical ambiguity” as to who is eligible to receive HEERF Student Grants. *Id.* at 36,497. The defendants then claim that they are using

⁶ *See Higher Education Emergency Relief*, Frequently Asked Questions About the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, U.S. Dep’t of Educ., <https://tinyurl.com/yajnjpr2>.

⁷ An eligible noncitizen must be “able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.” 20 U.S.C. § 1091(a)(5).

their “narrow interpretative authority” to resolve this ambiguity by defining “student” to mean a student “who is, or could be, eligible, to participate in programs under Title IV of the HEA.” *Id.* The defendants assert that this restrictive definition is necessary, in part, to prevent waste and fraud by IHEs. *Id.* at 36,497-98. Specifically, the IFR speculates that, absent the eligibility restrictions, IHEs will use HEERF Student Grants to entice Title IV ineligible students to enroll in sham classes in order to increase revenue. *Id.* The IFR, however, provides no evidence of such schemes or any other waste or fraud. Nor does it acknowledge – much less explain – the conflict between the eligibility restrictions it imposes and the April 9 Guidance and Certification. And it fails to give meaningful consideration to the harm this restriction – and the Department’s change in position – will inflict on students, colleges, and universities.

C. The Impact of the Interim Final Rule

By unlawfully restricting IHEs’ control over HEERF funds, the IFR has harmed, and will continue to harm, colleges, universities, and students in Massachusetts, as well as the Commonwealth as a whole. Nationally, the IFR makes more than a million students ineligible to receive HEERF Student Grants.⁸ *See* 85 Fed. Reg. at 36,500 (providing estimate of ineligible students based primarily on the number of ineligible “Non-Resident Alien” students). Without access to assistance, many of these students will be forced to discontinue their education,

⁸ In the IFR, the defendants assert that many Title IV ineligible students are also barred from receiving HEERF Student Grants by 8 U.S.C. § 1611(a) (“Section 1611”). *See* 85 Fed. Reg. at 36,496. Not so. Section 1611 generally prohibits certain non-citizens (called ineligible or non-qualified aliens) from receiving “Federal public benefits.” HEERF Student Grants, however, do not qualify as a “public benefit” because HEERF “is targeted toward IHEs to provide aid to their students, not directed to individual eligibility units.” *Oakley v. DeVos*, No. 20-cv-03215-YGR, 2020 WL 3268661 at *14-15; *see also Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) Interpretation of “Federal Public Benefit,”* 63 Fed. Reg. 41658, at 41659, 1998 WL 435846 (August 4, 1998) (programs targeted at entire “communities” or “sectors of the population” do not qualify as a “Federal public benefit”). Moreover, even if HEERF grants were public benefits, the CARES Act creates a “statutory exemption to Section 1611’s general denial of federal public benefits.” *Noerand*, 2020 WL 4274559 at *7; *see also Oakley*, 2020 WL 3268661 at *15.

upending their lives and depriving IHEs of tuition and other revenues. *Id.* at 36,496 (recognizing that IHEs are “rightfully concerned about declining enrollment and loss of ancillary revenue as a result of COVID-19”). On top of this, implementing the eligibility restrictions imposed by the IFR forces IHEs to divert overburdened staff and scarce resources from budgets that are already in crisis. *Id.* at 35,601 (estimating that implementing and administering the eligibility restrictions will require more than 25,600 hours of work and cost more than \$1.1 million).

These harms are especially acute in Massachusetts, due to its high concentration of IHEs and students. The Commonwealth is home to more than one hundred colleges and universities which enroll over 600,000 students annually. This includes Massachusetts’s public higher education system – established and funded by the state – which consists of the five campuses of University of Massachusetts⁹; nine State Universities¹⁰; and fifteen Community Colleges¹¹ (collectively “Massachusetts public institutions of higher education” or “MPIHEs”). *See* M.G.L. c. 15A, § 5. Collectively, Massachusetts IHEs were allocated almost \$300 million in HEERF funds – including more than \$130 million for MPIHEs. The IFR excludes tens of thousands of students from receiving support from these funds.

The improper exclusion of these students frustrates the Commonwealth’s ability to implement policies calibrated to prevent the spread of the COVID-19 virus while minimizing disruption and harm to our IHEs and students. Massachusetts is engaged in a carefully balanced

⁹ These are UMass Amherst, UMass Boston, UMass Dartmouth, UMass Lowell, and UMass Worcester (also known as UMass Medical School).

¹⁰ These are Bridgewater State University (“SU”), Fitchburg SU, Framingham SU, Massachusetts College of Art and Design, Massachusetts Maritime Academy, Massachusetts College of Liberal Arts, Salem SU, Westfield SU, and Worcester SU.

¹¹ These are Berkshire Community College (“CC”), Bristol CC, Bunker Hill CC, Cape Cod CC, Greenfield CC, Holyoke CC, Massachusetts Bay CC, Massasoit CC, Middlesex CC, Mount Wachusett CC, Northern Essex CC, North Shore CC, Quinsigamond CC, Roxbury CC, and Springfield Technical CC.

process of structured reopening pursuant to policies developed by executive branch agencies and in reliance on federal support from the CARES Act.¹² For IHEs, the Massachusetts Department of Higher Education has issued specific reopening guidance, which prioritizes and balances health and safety, meaningful educational progress, research and innovation, and minimization of adverse economic impacts.¹³ For example, the Department of Higher Education has required that each IHE develop a “control policy” to help reduce the spread of the virus.¹⁴ Pursuant to these policies, IHEs will continue to use some form of remote learning system during the 2020-2021 academic year, and will use HEERF funding to mitigate some of the costs of remote learning on institutions and their students. *See* UMass Decl., ¶¶ 6, 10, 38; Com. Col. Decl., ¶ 7, 10; State Uni. Decl., ¶ 9, 12. The IFR strips IHEs of the flexibility they need – as granted to them by the CARES Act – to support all their students while keeping their campuses safe. It thus interferes with Massachusetts’s COVID-19 response by making it more difficult to keep students, faculty, and staff safe while mitigating other impacts of the crisis.

The IFR has made it more difficult for Massachusetts IHEs to manage COVID-related disruptions and support their students in continuing their education, as demonstrated by the experience of MPIHEs. The transition to remote learning has created enormous challenges for MPIHEs and their students. *See* UMass Decl., ¶¶ 6-9, 31-32; Com. Col. Decl., ¶¶ 8-10; State Uni. Decl., ¶¶ 8-11, 16. Immediately following passage of the CARES Act, MPIHEs began developing plans to distribute HEERF Grants to all students in need. *See* UMass Decl., ¶ 14; Com. Col. Decl., ¶ 14; State Uni. Decl., ¶ 17. Most MPIHEs executed the Certification before

¹² *See Reopening Massachusetts*, May 18, 2020, <https://tinyurl.com/yyud4ak2>.

¹³ *See* Mass. Department of Higher Education, *Reopening: Higher Education*, <https://tinyurl.com/y58eelzx>

¹⁴ *See* Mass. Department of Higher Education, *COVID-19 Higher Education Control Plan*, <https://tinyurl.com/y6hwxamp>.

the April 21 Guidance and had no notice of any eligibility restrictions when they accepted HEERF funds. *See* UMass Decl., ¶ 13; Com. Col. Decl., ¶ 13. When the defendants unexpectedly announced the eligibility restrictions, MPIHEs were forced to scrap their plans and create systems to screen for eligibility. *See* UMass Decl., ¶¶ 16-18, 35; Com. Col. Decl., ¶¶ 16-17.

The need to create screening systems initially delayed the distribution of HEERF funds – and administering them continues to consume scarce time and resources. *Id.* MPIHEs are struggling to manage mandatory staff furloughs and reduced operating budgets because of the COVID-19 pandemic. *See, e.g.,* UMass Decl., ¶ 18. In the face of these challenges, the IFR has forced MPIHEs to divert staff to reach out to and explain the Title IV restrictions and application procedures to students, review their applications, and make eligibility determinations. *See* UMass Decl., ¶ 17; Com. Col. Decl., ¶ 17. This process is particularly demanding for students who do not have a Free Application for Federal Student Aid (“FAFSA”) on file. *Id.* Many Title IV eligible students – particularly low-income, minority, and first-generation students – have not filled out FAFSAs because doing so is complicated and time-consuming.¹⁵ *See* Com. Col. Decl., ¶ 17; *see also* 85 Fed. Reg. at 36,500 (acknowledging barriers to FAFSA completion). For each of these students, staff must either help the student fill out and submit a FAFSA, collect eligibility information directly, or attempt to make an eligibility determination based on a review of existing records. *Id.*

Because of the IFR, thousands of MPIHE students – including both citizens and non-citizens – are ineligible to receive HEERF Student Grants. *See* UMass. Decl., ¶¶ 4-5, 30; Com.

¹⁵ Across Massachusetts, the rate at which students complete the FAFSA has declined by more than 10% since the onset of the COVID-19 pandemic. *See* Deirdre Fernandes, *Fewer students are applying for financial aid for college – a worrying sign about who will show up this fall*, Boston Globe (June 6, 2020), <https://tinyurl.com/y4gkn7td>.

Col. Decl., ¶¶ 6, 26; State Uni. Decl., ¶¶ 6-7. This includes many of the Commonwealth's most vulnerable residents, including low-income minority students, DACA recipients, TPS recipients, and asylum applicants. *See* UMass Decl., ¶¶ 5, 30, 42; Com. Col. Decl., ¶¶ 6, 18-19, 26; State Uni. Decl., ¶ 11. It also includes some of those who are struggling most because of COVID-19; for example, students who have become Title IV ineligible only because the pandemic has made it impossible for them to maintain satisfactory academic progress. *See* State Uni. Decl., ¶ 7.

Without access to financial assistance, many of these ineligible students will have no choice but to drop out of school. *See* UMass Decl., ¶¶ 21, 26-27, 45; Com. Col. Decl., ¶ 19; State Uni. Decl., ¶¶ 15, 18. In fact, many MPIHEs are already suffering from increased rates of disenrollment due to unmet financial need. *See* UMass Decl., ¶ 27; Com. Col. Decl., ¶¶ 20, 35; State Uni. Decl., ¶ 18. This trend simply reflects the fact that many ineligible students are in desperate need of assistance to pay for food, housing, and the basic technology necessary to participate in remote learning. *See* UMass Decl., ¶¶ 19, 40-42; Com. Col. Decl., ¶¶ 18-19; State Uni. Decl., ¶¶ 7, 11. Many ineligible students or their parents lost their jobs as result of the COVID-19 pandemic at the same time campuses closed in March. *See, e.g.,* UMass Decl., ¶ 42; State Uni. Decl., ¶ 11. Still others cannot continue to work because COVID-related childcare obligations make it impossible to work and pursue their studies. *See, e.g., id.* And many are not eligible for vital social safety net programs because of their immigration status. *See, e.g., id.*

In order to mitigate disenrollment and other harms, many MPIHEs have used institutional and emergency funds to provide assistance to ineligible students. *See* UMass Decl., ¶¶ 22-23, 37; Com. Col. Decl., ¶ 21; State Uni. Decl., ¶ 17. Unfortunately, MPIHEs do not have the resources to fully meet students' needs on their own. *See* UMass Decl., ¶¶ 23, 37, 44; Com. Col. Decl., ¶¶ 21, 34; State Uni. Decl., ¶ 17. In fact, some MPIHE's have not been able to provide alternative

assistance at all due to lack of funds. *See, e.g.*, Com. Col. Decl., ¶ 34. And of those MPIHEs that have been able to tap alternative sources of funds, Title IV ineligible students have received significantly less than their eligible peers. *See, e.g.*, UMass Decl., ¶ 23-24.

MPIHEs currently have more than \$23 million in HEERF Student Grant funds left to distribute. *See* UMass. Decl., ¶ 11; Com. Col. Decl., ¶ 12; State Uni. Decl., ¶ 13. But for the IFR, all MPIHEs would use these funds to provide assistance to Title IV ineligible students during the fall semester. *See* UMass Decl., ¶¶ 24-25; Com. Col. Decl., ¶¶ 22, 36; State Uni. Decl., ¶ 18. If MPIHEs are unable to do so, the administrative burdens of the IFR will continue, *see* UMass Decl., ¶¶ 16-18, 35; Com. Col. Decl., ¶¶ 16-17, and MPIHEs will be forced to continue to attempt to identify and provide institutional funds and other alternative sources of assistance to ineligible students. *See* UMass Decl., ¶¶ 23, 37; Com. Col. Decl., ¶ 21, 23; State Uni. Decl., ¶¶ 17-18. Because it will not be possible to gather the resources required to provide necessary supports to all of the ineligible students in need, many students will be forced to compromise, delay, or discontinue their education. *See* UMass Decl., ¶¶ 21, 26-27, 45; Com. Col. Decl., ¶¶ 19-22, 34-35; State Uni. Decl., ¶ 15. In addition to hurting students, disenrollment caused by the IFR will undermine MPIHEs' ability to carry out their educational missions, injure their reputations, and deprive them of tuition and other needed revenues. *See* UMass Decl., ¶¶ 26, 42, 45; Com. Col. Decl., ¶¶ 20, 35; State Uni. Decl., ¶¶ 18-19.

III. Legal Standard

“In considering a motion for a preliminary injunction, a district court weighs four factors: (1) the plaintiff's likelihood of success on the merits; (2) the potential for irreparable harm in the absence of an injunction; (3) whether issuing an injunction will burden the defendants less than denying an injunction would burden the plaintiff; and (4) the effect, if any, on the public

interest.” *United States v. Weikert*, 504 F.3d 1, 5 (1st Cir. 2007). While all four factors must be assessed, the first two are the “most important.” See *Gonzalez-Droz v. Gonzalez-Colon*, 573 F.3d 75, 79 (1st Cir. 2009); *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (1st Cir. 2001). Moreover, a strong showing of likely success on the merits – “the sine qua non of a preliminary injunction,” *Arborject, Inc. v. Rainbow Treecare Scientific Advancements, Inc.*, 794 F.3d 168, 173 (1st Cir. 2009) (internal quotations omitted) – reduces the showing a party must make on the remaining three factors to obtain an injunction. See *Ross-Simons of Warwick v. Baccarat, Inc.*, 102 F.3d 12, 18-19 (1st Cir. 1996).

IV. Argument

Here, all four factors in the preliminary injunction analysis weigh powerfully in favor of injunctive relief. As this Court has already found, claims that the IFR’s restrictions violate the APA are likely to succeed. Moreover, the Commonwealth of Massachusetts will be irreparably harmed if the IFR remains in effect. Absent injunctive relief, Massachusetts IHEs, including public colleges and universities, will suffer under the IFR’s continued financial burden and experience ongoing harm to their educational missions, Massachusetts students will experience parallel harms to their educational attainment, and the Commonwealth will be frustrated in its COVID-19 policy response. Finally, the financial health of our institutions and the continued education of our students is clearly in the public interest, and the balance of equities weighs in favor of the relief requested.

A. The Commonwealth Will Likely Succeed on the Merits of Its Claim that the Department’s Imposition of HEERF Eligibility Restrictions Is Unlawful

In *Noerand*, this Court held that the eligibility restrictions imposed by the IFR are likely unlawful because they contradict “the clear commands set forth in the CARES Act.” 2020 WL 4274559 at *5. The Court should hold the same here.

First, as this Court has already held, the IFR violates the APA because the eligibility restrictions it imposes are “in excess of the [defendants’] statutory authority” and “not in accordance with the law.” *See* 5 U.S.C. § 706(2)(A), (C). The CARES Act does not grant the defendants any general rulemaking authority over the HEERF Student Grant program. *See Washington v. DeVos*, No. 20-cv-0182-TOR, 2020 WL 3125916, at *8 (E.D. Wash. June 12, 2020). In the IFR, the defendants instead rely upon their “narrow interpretative authority” to justify the restrictions. Specifically, the defendants assert that the meaning of the word “student” in Section 18004 of the Act is ambiguous and define it to mean a student who is Title IV eligible. *See supra* at 5-6; *see also Noerand*, 2020 WL 4274559, at *1-2. However, as every court to consider the issue has concluded, there is no such ambiguity. *Id.* at *2-5; *see also Oakley v. DeVos*, No. 20-cv-03215-YGR, 2020 WL 3268661, at *8-13; *Washington*, 2020 WL 3125916, at *8-9. In fact, “the CARES Act unambiguously authorize[s] the provision of funds...to students without regard to...whether the student is eligible for Title IV.” *Noerand*, 2020 WL 4274559, at *5. The IFR is therefore unlawful and must be set aside.

Second, the eligibility restrictions must also be set aside under the APA because they are arbitrary and capricious. 5 U.S.C. § 706(2)(A). As indicated above, the interpretation of Section 18004 adopted by the defendants in the IFR is contrary to the “plain and ordinary meaning” of the statute, is not “reasonable,” and would “lead to absurd results.” *Noerand*, 2020 WL 4274559, at *2, 4-5. These are the hallmarks of arbitrary and capricious agency action. *See, e.g., Gen.*

Instrument Corp. v. F.C.C., 213 F.3d 724, 732 (D.C. Cir. 2000) (“Whether a statute is unreasonably interpreted is close analytically to the issue of whether an agency’s actions under a statute are [arbitrary and capricious].”). Further, the IFR: (1) fails to acknowledge that the eligibility restrictions it adopts conflict with and reverse the April 9 Guidance, much less explain this reversal; (2) relies upon unsupported and implausible assertions about fraud and waste; and (3) fails to adequately consider the costs and burdens it will impose on IHEs and students. Each of these failures provides an independent reason to hold the IFR to be arbitrary and capricious. See *Michigan v. E.P.A.*, 576 U.S. 743, 753 (2015) (an agency must “pay[] attention to the advantages *and* the disadvantages of [its] decisions.” (emphasis in original)); *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“[T]he requirement that an agency provide a reasoned explanation for its action” requires it to at least “display awareness that it *is* changing its position[.]” (emphasis in original)); *Nat’l Cable & Telecommunications Assn. v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (“Unexplained inconsistency” is a basis “for holding an interpretation to be an arbitrary and capricious change from agency practice.”); *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious if it relies on “implausible” reasoning or fails to “articulate a satisfactory explanation”).

Finally, the eligibility restrictions imposed by the IFR are “contrary to constitutional right, power, privilege, or immunity,” 5 U.S.C. § 706(2)(B), because they violate separation of powers principles and the Spending Clause of the United States Constitution, U.S. Const. art I, § 8, cl. 1. The Spending Clause gives Congress the exclusive power to place conditions on federal

funding. *See South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (“Incident to th[e] power [granted by the Spending Clause], Congress may attach conditions on the receipt of federal funds...”).

The defendants lack constitutional authority to place restrictions on the distribution of funds appropriated by Congress when such restrictions were not authorized by Congress and are contrary to the plain language of a statute. *Oakley*, 2020 WL 3268661, at *7-12. *See also City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1233 (9th Cir. 2018) (The executive branch has no authority to impose restrictions on funding if Congress “has not delegated authority to the Executive to [do so].”).¹⁶

B. The Commonwealth Will Be Irreparably Harmed Unless the IFR Is Enjoined.

If the IFR is not enjoined, the Commonwealth and its students, colleges, and universities will be irreparably harmed. Screening students to ensure compliance with the IFR’s eligibility restrictions imposes significant, ongoing administrative costs and burdens on IHEs. *See supra* at 9. Moreover, the restrictions have prevented, and will continue to prevent, Massachusetts IHEs from distributing grants to thousands of students who need assistance to safely and effectively continue their education. *See supra* at 9-10. Many IHEs have attempted, and will continue to attempt, to fill this gap by providing substitute aid to ineligible students using institutional and other funds. *See supra* at 10-11. However, because IHEs do not have the resources to meet ineligible students’ needs on their own, the IFR has disrupted, and will continue to disrupt,

¹⁶ In addition to the above, the defendants did not impose the eligibility restrictions until after many IHEs – including the MPIHEs – had executed the certification and accepted HEERF funds. *See supra* at 8-9. As such, even if the defendants had the authority to impose restrictions, the IFR would still violate the Spending Clause because it impermissibly imposes “post-acceptance” conditions on federal funds. *See Oakley*, 2020 WL 3268661, at *12 n. 19; *see also Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981) (“the federal government may not ‘surpris[e]’ grant recipients with funding conditions after acceptance”).

higher education statewide. *See supra* at 11. Many students who are denied assistance will simply be forced to drop out of school, depriving IHEs of badly needed tuition and other revenues and harming their educational missions and reputations. *See supra* at 11. All of this frustrates the Commonwealth's policy objectives to prevent the spread of COVID-19 while mitigating downstream economic consequences to institutions and residents. *See supra* at 7-8.

1. The IFR imposes administrative costs and burdens on colleges and universities.

As a result of the IFR, IHEs have been forced to create, implement, and maintain burdensome application and reporting systems. *See* UMass Decl., ¶¶ 16-18; Com. Col. Decl., ¶¶ 16-17. For example, the defendants' imposition of eligibility restrictions forced the University of Massachusetts at Boston ("UMass Boston") to scrap carefully developed plans for distributing HEERF funds and implement an application process that continues to impose significant costs. *See* UMass Decl., ¶¶ 33-39. UMass Boston executed the Certification and accepted HEERF funds on April 15, 2020 – at which point it had already developed and begun to implement procedures to distribute assistance to all students in need. *Id.* at ¶ 33. The eligibility restrictions included in the April 21 Guidance came as a complete surprise and threw UMass Boston's plans into turmoil. *Id.* at ¶ 34.

UMass Boston's administration concluded that treating students in need differently based on status would be "antithetical to [the University's] foundational values." *Id.* For this reason, UMass Boston developed an application process designed to maximize every student's chance of receiving assistance and avoid stigmatizing or alienating ineligible students. *Id.* at ¶ 35. UMass Boston has encouraged, and continues to encourage, all students in need of help to request assistance using a single, uniform application. *Id.* at ¶ 37. UMass Boston staff review every application and make initial eligibility determinations based on student records and other

available information. *Id.* When necessary, staff assist students who do not have a current FAFSA on file to update their documents or file a new form. *Id.* at ¶ 35. When a student is identified as ineligible for a HEERF Student Grant, staff make every effort to identify and provide alternative sources of assistance. *Id.* at ¶ 37. This process is time consuming and costly. *Id.* at ¶¶ 16-17, 35-39. But UMass Boston will be compelled to keep it in place as long as the IFR's eligibility restrictions remain in effect.

2. The IFR forces colleges and universities to divert scarce institutional resources to assist ineligible students.

In order to minimize the harm caused by the IFR, many IHEs have been compelled to use institutional funds to provide assistance to students who are ineligible for HEERF Student Grants. *See* UMass. Decl., ¶¶ 22-23, 37; Com. Col. Decl., ¶ 21; State Uni. Decl., ¶ 17. For the MPIHEs, of course, these institutional funds are public dollars. For example, the UMass Amherst Graduate School and UMass Boston each diverted institutional funds to students ineligible for support under the IFR. The Graduate School used \$300,000 in institutional funds and UMass Boston diverted \$92,000 to a designated emergency fund. *See* UMass. Decl., ¶¶ 23, 37, 41. The Graduate School and UMass Boston collectively used this funding to support more than 600 students. *Id.* If the IFR remains in effect, UMass will continue to find and use institutional funding in the fall semester for students excluded from HEERF who need support due to the disruption caused by COVID-19. *Id.* Unfortunately, the institutional resources available are not enough to provide full support for students in need, and diverting additional funds will further stretch already severely depleted budgets. *Id.*

3. The IFR causes increased student disenrollment.

The IFR has contributed to and continues to drive student disenrollment at Massachusetts IHEs. *See* UMass Decl., ¶¶ 21, 26-27, 45; Com. Col. Decl., ¶¶ 19-20, 22-23; State Uni. Decl.,

¶¶ 15, 18. For example, Bunker Hill Community College (“BHCC”) has already seen students made ineligible by the IFR disenroll, and continued disenrollment is likely if the IFR stays in effect. The IFR has made 4,500 of BHCC’s 19,000 students ineligible for HEERF Student Grants. Com. Col. Decl., ¶¶ 25-26. Many of these students are in desperate need of financial assistance because of COVID-19. For example, many BHCC students cannot afford personal computers, or reliable internet access, and previously relied on computer labs to complete their coursework. Those labs are no longer available to most students because of the pandemic. *Id.* at ¶ 28. BHCC simply does not have the resources to provide students with needed technology to continue their education. *Id.* at ¶ 34. As a result, many ineligible students have not received the assistance they need to continue their education, and some have disenrolled. *Id.* at ¶ 34-35.

At the same time, BHCC has almost \$900,000 in remaining HEERF Student Grant funds that it intends to distribute in the fall semester. *Id.* at ¶ 32. If permitted, it would use these funds to provide assistance to all students in need – including students made ineligible under the IFR. *Id.* at ¶ 36. If it is unable to do so, many of these students will be forced to drop out, as financial need drives disenrollment. *Id.* at ¶¶ 35-36. BHCC is already faced with a \$6 million dollar deficit caused in significant part by declining enrollment. *Id.* at ¶ 27. It quite simply cannot afford to continue to have students unnecessarily disenroll because of the IFR’s unlawful eligibility restrictions. *Id.* at ¶¶ 35-36.

4. The IFR interferes with Massachusetts’s COVID-19 response.

By unlawfully restricting funding meant for vulnerable students, the IFR frustrates the Commonwealth’s carefully calibrated response to the public health crisis. Starting with the

announcement of a state of emergency on March 10, 2020 and continuing through the structured reopening currently underway, Massachusetts has created and implemented numerous policies to prevent spread of the disease while mitigating the economic, social, and other consequences of the crisis.¹⁷ The Massachusetts Department of Higher Education has provided specific guidance and support to IHEs across Massachusetts to ensure that these institutions can continue to operate and serve their students while preventing the spread of COVID-19 on campus.¹⁸ In achieving this balance, the Commonwealth has relied on HEERF and other relief made available by the CARES Act to institutions and residents to mitigate the harms of the pandemic. The IFR arbitrarily prevents IHEs from distributing funds allocated to them to support their students and prevent harm to those students and to themselves. In turn, it frustrates Massachusetts policy to protect the public health while preventing harm to residents and institutions.

C. The Balance of the Equities and Impact on Public Interest Weigh in Favor of Issuing an Injunction.

When the government is a party, the balance of the equities and the public interest merge into one analysis. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the public interest weighs decisively in favor of allowing schools to provide HEERF Student Grants to *any* students with “expenses related to the disruption of campus operations due to coronavirus[.]” CARES Act at § 18004(c).

“There is generally no public interest in the perpetuation of unlawful agency action.” *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). (citations omitted). “To the contrary, there is a substantial public interest ‘in having

¹⁷ See *Massachusetts COVID-19 Regulations and Guidance*, <https://tinyurl.com/yyqxoZfs>

¹⁸ See Mass. Department of Higher Education, *Reopening: Higher Education*, *supra* 8, n. 13.

governmental agencies abide by the federal laws that govern their existence and operations.’” *Id.* (internal quotations omitted). In this case, it is decisively in the interest of the public to preserve the clear directive of Congress to empower schools to address the needs of their students in the wake of COVID-19.

Beyond the clear commands of the statute, supporting students’ educational attainment is always in the public interest,¹⁹ and these interests are all the more acute here, where students are at risk of dropping out of school or delaying their education because of prohibitive but completely redressable barriers like the lack of technology to pursue their studies. *See supra* at 18. Indeed, without relief, our students and schools may be impacted not only in this acute moment of crisis, but for years to come – as students who drop out lose the benefit of their education, and schools suffer irreparable and lasting harm to their budgets, educational missions, and reputations.

In passing the CARES Act and granting IHEs broad authority to use funds to assist students, Congress recognized the unprecedented, wide-ranging, and urgent needs created by the COVID-19 crisis and did not require IHEs to impose any artificial Title IV-related eligibility requirements before granting aid to students. An injunction is required to curb the harm of the defendants’ unlawful and arbitrary restriction on schools’ provision of desperately needed emergency assistance.

V. Conclusion

For the foregoing reasons, the Court should issue a statewide preliminary injunction enjoining the Defendants from implementing the IFR in Massachusetts.

¹⁹ *See, e.g., Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”).

CERTIFICATE OF SERVICE

I, Abigail B. Taylor, counsel for Plaintiff, hereby certify that this document has been filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). On August 26, 2020, this document was delivered by email to Assistant United States Attorney Annapurna Balakrishna, who has indicated she would accept service by email.

This document will also be sent by certified mail to the defendants at the addresses below.

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

The Hon. Betsy DeVos
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

/s/ Abigail B. Taylor