COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

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VIA ELECTRONIC DELIVERY

Docket ID ED-2024-OPE-0050

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

Dear Secretary Cardona:

Please allow this to serve as a comment on the Department of Education's (Department's) Notice of Proposed Rule Making (NPRM) on Program Integrity and Institutional Quality: Distance Education, Return of Title IV, Higher Education Act (HEA) Funds, and Federal TRIO Programs.[1] We are deeply concerned that the Department continues to push a regulatory agenda that is outside the bounds of the law and that will create unnecessary confusion for institutions that are already working to comply with multiple new regulations from the Department. For the many reasons described in this letter, we urge the Department to halt this NPRM.

Distance Education

The Department has proposed several requirements related to how distance education is categorized at an institution and how data is to be reported about student enrollment in distance education, and it has proposed to eliminate the ability of a clock hour program to provide education through an asynchronous learning environment. These unfair policies expose a trend of overt bias from the Biden-Harris administration against flexible online learning that postsecondary education students seek. As of fall 2022, over 53 percent of students chose to enroll in at least one distance education course.[2] Today's students are choosing to learn through a virtual modality that provides a range of benefits enabling them to expand their learning

[1] https://www.federalregister.gov/documents/2024/07/24/2024-16102/program-integrity-and-institutional-quality-distance-education-return-of-title-iv-hea-funds-and

[2] https://nces.ed.gov/ipeds/TrendGenerator/app/build-table/2/42?rid=6&cid=85#:~:text=Student%20Enrollment%3A%20What%20is%20the,is%20based%20on%205%2C776%20institutions.

opportunities by accessing courses or degree programs away from their physical location or by enrolling in self-paced learning or competency-based education models that allow them to incorporate their postsecondary learning into their daily lives. The Department should not be narrowly focused on promulgating rules that will constrain the benefits of distance education against the desires and interests of students; it should instead work with institutions and Congress to enact an accountability and data framework that ensures high quality education in all types of courses and programs, regardless of modality.

Specifically, the NPRM would amend existing regulations to require institutions to categorize programs that are offered fully through distance education or correspondence education to be an "additional location" of the institution. Currently, additional locations of an institution are physically separated campuses from a main campus or if an institution operates a correctional institution. This new division of an institution's locations by modality wrongly advances the idea that distance education is not a part of an institution's core education offerings. Postsecondary policymakers should continue focusing on how distance education components might be incorporated into all classrooms, virtual or in-person, not seeking to separate the two.

Still worse, it appears that the Department's push to create virtual additional locations of an institution is a means to expand closed school loan discharges for students. The Department states in the NPRM, students "who may not wish to" continue their coursework in an alternative modality, if the distance education program he or she was enrolled in is discontinued, are entitled to a closed school discharge.[3] If an institution decides to no longer offer a distance education program, that does not mean the institution itself is closed. The *Higher Education Act* (HEA) provides the authority for closed school loan discharge only if a student is "unable to complete the program in which such student is enrolled due to the closure of the institution,"[4] not for the taxpayer to cover the cost for borrowers who "may not wish to" complete a program.

Additionally, the Department's proposed rule requires institutions to report student enrollment in distance education programs. While we are supportive of better data collection for increased accountability, we believe that the current proposal should clarify the separation of reporting on distance education and correspondence courses, as the two are distinct,[5] and provide further clarification to account for students who may be enrolled in distance and in-person education. Similarly, the NPRM creates a definition of "distance education course," but the phrasing of this definition appears to classify inaccurately residency experiences in education as non-instructional education. Ultimately, because of the many facets of more granular reporting, the timing of this supplementary reporting requirement is onerous. This is especially true when institutions are struggling to comply with numerous new regulatory reporting requirements that the Biden-Harris administration has already enacted and are also struggling with the severe disruption in staff work because of the Department's mismanagement of the FAFSA process. We believe this is an opportunity for the Department to join with Congress to enact legislation that provides a more complete revised data framework rather than pursue these ad hoc changes.

[3] https://www.federalregister.gov/d/2024-16102/p-138
[4] 20 U.S.C §1087(c)(1)
[5] 34 C.F.R. § 600.2

A further problem with the NPRM is that it prohibits Title IV eligible clock hour programs from being offered as asynchronous education. Nowhere in law has Congress asserted that asynchronous education is not allowable for Title IV programs. This proposal instead reverses the Department's 2020 rule, which acknowledged that technology has enabled asynchronous education to engage students in various ways, such as through interactive tutorials and assisted instruction modules.[6] This prohibition is both an unlawful and unnecessary regulation of distance education: the HEA and subsequent regulation already require that distance education provide regular and substantive interaction between students and instructor,[7] And learners need flexibility that asynchronous education offers. Current regulation has evolved to acknowledge that innovation in education should be focused on tailoring learning to help students master content on a flexible time schedule rather than on requiring students to log-in at the same time to count attendance. The Department has not provided strong evidence for this prohibition, which will eliminate access to virtual online learning opportunities for working students who are juggling responsibilities that do not allow them to always have content delivered live from an instructor.

Lastly, in the NPRM the Department states that it has not been able to account for "issues" pertaining to "students' participation in distance education, account for differences in outcomes and conduct oversight, accurately measure taxpayer expenditures on distance education programs, and gauge the success of such education."[8] However, for none of these proposed changes does the Department offer more detail on what the "issues" are with distance education. This posture insinuates that distance education provides different outcomes for students and automatically warrants more oversight, but these are merely claims without evidence. The proposed policies within the NPRM are the epitome of a misguided solution in search of a problem. Distance education programs that receive Title IV funding must be offered at an accredited institution that is authorized by a state, and it is disingenuous to suggest that these programs do not already have oversight. The Department's regulatory approach to micromanaging program offerings will hamper innovation in delivery of education materials. Instead, the Department's approach should consider how updates to the law and partnerships with the other entities focused on program integrity can ensure that all programs are meeting quality standards.

Return to Title IV

The Department's proposed changes to the regulations dictating return of Title IV (R2T4) funds sets new reporting requirements for student attendance in distance education programs, codifies sub regulatory guidance, amends the calculation for the amount of funds returned, and allows students who are required to return federal student loans to repay instead their loans under the terms of their master promissory note, among other things. In general, while we agree that increased transparency around student attendance in distance education programs and attempts to simplify R2T4 calculations are a laudable goal, a better solution would be to work with Congress to develop a robust data and accountability system that is simpler and more effective than additional patchwork "solutions" that may ultimately lead to unintended consequences. In

[6] https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation
[7] 34 C.F.R. § 600.2
[8] https://www.federalregister.gov/d/2024-16102/p-87

particular, while we agree that some students who withdraw may face financial challenges if they are required to return a portion of the Title IV funds they were awarded, when viewed in conjunction with the radical and illegal changes to income-driven repayment, this proposed change could exacerbate the abuses of taxpayer dollars already present in the federal student loan program.[9] Students could simply enroll in an institution, borrow several thousand dollars (or unlimited sums if they are graduate students), and withdraw before classes begin, only to use such funds for purposes other than those for which such loans were intended such as a personal vacation, a new car, or a home improvement project. Already, an estimated one in four online community college applicants in California are not actually students but individuals looking to commit fraud.[10] Taxpayers could end up spending billions on this widespread abuse, further undermining the integrity of the Title IV programs authorized under the HEA.

TRIO

The Department's proposed rule to expand eligibility for the TRIO programs Talent Search, Educational Opportunity Centers, and Upward Bound ignores the legislative intent of the HEA and will siphon resources away from currently eligible low-income American citizens.

Section 484 of the HEA establishes the following immigration-related requirement for any person receiving a grant, loan, or work assistance:

> "be a citizen or national of the United States, a permanent resident of the United States, or 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."[11]

This requirement has been in law since 1986 and, besides a few Congressional amendments regarding citizens of the Freely Associated States, has remained unchanged.[12] Current TRIO eligibility requirements correctly reflect the language in the HEA and are designed to ensure participants succeed in postsecondary education.

The proposed rule disregards this legislative intent and instead expands eligibility for all individuals enrolled in or seeking to enroll in high school, regardless of whether or not that individual has any intent of pursuing legal citizenship. The proposed rule incorrectly cites requirements under *Plyler v. Doe* and programs under the *Elementary and Secondary Education Act* (ESEA) as a parallel for TRIO programs.[13]

As a statutory program designed to lead to postsecondary education, TRIO is governed by the HEA, not the ESEA. TRIO's current eligibility requirements do not deny students a "free public

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[9] https://www.brookings.edu/articles/bidens-income-driven-repayment-plan-would-turn-student-loans-into-untargeted-grants/
[10] https://calmatters.org/education/higher-education/2024/04/financial-aid-fraud/
[11] https://www.govinfo.gov/content/pkg/COMPS-765/pdf/COMPS-765.pdf, Section 484 (a)(5)
[12] https://crsreports.congress.gov/product/pdf/R/R46510
[13] https://www.federalregister.gov/d/2024-16102/p-202

education" and are not a violation of *Plyler v. Doe*. TRIO's current eligibility requirements mimic those in the HEA for other HEA programs.

The proposed rule also labels the current TRIO eligibility requirements as an "operational burden."[14] The Department's decision not to expand direct cash stipends under Upward Bound, despite expanding eligibility, shows logical inconsistency for deeming eligibility requirements "operational burdens." The Department cites restrictions in the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA) as preventing the expansion of cash stipends.[15] Because of this prohibition, schools under the Department's proposed Upward Bound expansion would still face the "operational burden" of separating students enrolled in Upward Bound but not eligible for the cash stipend due to not seeking citizenship. The Department does not label this scenario under PRWORA's restrictions as an "operational burden" despite the same scenario occurring under current TRIO requirements.[16] The Department correctly argues that PRWORA is designed to discourage "incentive for illegal immigration provided by the availability of public benefits."[17] Labeling HEA requirements as an "operational burden" while accepting those in PRWORA is inconsistent. Eligibility requirements, whether in PRWORA or the HEA, are requirements established by legislation to ensure program funds are used for their intended purpose.

The Department argues that TRIO programs have "limited resources."[18] Expanding the number of eligible students means that more students will compete for the same amount of resources, resulting in fewer resources distributed to low-income American citizens who are currently TRIO eligible.

The Department estimates that 500,000 additional non-citizen students in grades 9-12 will become eligible for the three TRIO programs under the proposed expansion.[19] According to the Department's estimates, this is nearly double the total amount of students who are currently eligible.[20] The Department states that only 10 percent of the newly eligible non-citizens will be served, but this assumes TRIO programs serve the newly eligible non-citizens at a lower priority compared to currently eligible TRIO students.[21]

There is nothing to indicate that TRIO programs would or should treat newly eligible non-citizens as a "last option." A program may decide to fill all its capacity with newly eligible non-citizens, resulting in no capacity for currently eligible students. The Department's calculations also only factor in the 15 states with the largest percentage of high school graduates who are not citizens (81 percent).[22] This ignores the potential negative distributional effect on the other 35 states. Those 15 states may vie for a larger share of the existing TRIO funding to support newly eligible non-citizens, thus reducing funds available for all other states who are serving low-

[14] https://www.federalregister.gov/d/2024-16102/p-202
[15] https://www.federalregister.gov/d/2024-16102/p-213
[16] https://www.federalregister.gov/d/2024-16102/p-213
[17] https://www.federalregister.gov/d/2024-16102/p-212
[18] https://www.federalregister.gov/d/2024-16102/p-338
[19] https://www.federalregister.gov/d/2024-16102/p-287
[20] https://www.federalregister.gov/d/2024-16102/p-291
[21] https://www.federalregister.gov/d/2024-16102/p-291
[22] https://www.federalregister.gov/d/2024-16102/p-289

income American students now. The Department describes the funding effect as "distributional" and that "different or additional participants" would receive TRIO services.[23] This description of the funding effect is likely to be true, albeit not in a positive way. The Department's proposed rule alarmingly risks "distributing" funds away from currently eligible U.S. citizens and states to "different" non-citizens.

TRIO programs have historically benefitted low-income Americans, first generation college students, and students with disabilities to help close the educational gap and ensure they have the skills needed to succeed in postsecondary education. Under current law, those who are pursuing legal pathways to citizenship can already access TRIO programs. The proposed expansion is a blatant attempt to provide additional taxpayer-funded services to those not seeking citizenship in the name of reducing "burden." The Department's proposed expansion will stretch funding thin and risk those currently eligible for TRIO.

For all these reasons we urge the Department to halt the NPRM, work with Congress to enact clearer policies to provide more precise data collection, ensure that all programs provide high quality education to students and taxpayers, and ensure that only currently eligible students receive taxpayer-funded services.

Sincerely,

Virginia Foxx
Chairwoman

Tim Walberg
Member of Congress

Glenn Grothman
Member of Congress

Jim Banks
Member of Congress

Burgess Owens
Member of Congress

Michael Rulli
Member of Congress

[23] https://www.federalregister.gov/d/2024-16102/p-281