

May 7, 2020

The Honorable Bobby Scott  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lamar Alexander  
Chairman  
Committee on Health, Education,  
Labor and Pensions  
U.S. Senate  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education,  
Labor and Pensions  
U.S. Senate  
Washington, DC 20510

Dear Chairmen Scott and Alexander and Ranking Members Foxx and Murray,

As colleges and universities initially responded to the coronavirus pandemic, the lack of flexibility available under existing statutory and regulatory requirements quickly became apparent. Thankfully, Congress and the Administration moved rapidly to respond to the concerns of students and institutions, both through administrative waivers at the Department of Education (Department) and through clarifying adjustments provided in the CARES Act. In providing this flexibility, the federal government undoubtedly helped limit the spread of COVID-19 by allowing institutions to move rapidly to an online environment. Our members are deeply appreciative of the actions of Congress and the Administration to support the shared goals of preserving the health and safety of our students and staff.

Given the unprecedented challenges the pandemic poses, and the accelerated process Congress pursued in advancing CARES, there is a need for clarifications and technical corrections to CARES and other statutory language to ensure that Congress's intent is fully met and that new issues that have come to light are addressed, particularly as we move to face the challenge of reopening campuses when it is safe to do so. In particular, guidance offered by the Department has resulted in aid to students being limited in scope and delayed in disbursement, while allowable uses of aid to institutions is narrowly restricted.

Our comments in this letter are focused on the provisions in the CARES Act that are subject to the Department of Education guidance issued on April 9 and April 21. We believe that the Department's efforts to implement this law have created an administrative roadblock for institutions that are trying to get the funding out quickly because they are unsure of the final rules. The guidance has, for all intents and purposes, made millions of students facing dire financial problems ineligible for emergency grants. In doing so, the Department has undermined the ability of institutions to help financially needy students. We will, in the very near future, send you another letter in which we will make recommendations for student and

institutional support in any future legislation. This letter is focused simply on the problems that have arisen in the implementation of the CARES Act and accompanying recommendations for improving it. If the Department issues either subsequent clarification of existing guidance or new guidance on CARES Act implementation, we will address that in future correspondence. But given the urgency of the problems facing schools as they attempt to follow Congress' desire for quick action, we felt the need to raise these concerns now.

For these reasons, we offer the following suggestions for technical corrections to CARES and other statutes in order to better align existing federal requirements with the needs of students and campuses.

1. **Limitations on eligibility of students for emergency grant aid** – While the CARES Act did not provide a definition of a student for the purposes of determining eligibility to receive emergency grant aid, the Department has restricted eligibility in guidance only to those students who satisfy the requirements in Section 484 of the Higher Education Act. This could have the practical effect of limiting institutions to disbursing emergency grants only to those students who have already applied for, and been determined eligible to receive, federal financial aid. Institutions do not know, and would be unable to determine, a student's eligibility without certifying a number of different requirements with the student and with agencies of the federal government. Currently, an institution may only feel confident that the necessary eligibility requirements have been met once a student files a FAFSA.

As a result, a large number of students would be excluded from getting assistance through the CARES Act, including students whose financial circumstances have changed since the year started; students enrolled in non-degree programs and students whose grades may have dropped as a result of the disruption caused by the pandemic who would now not meet satisfactory academic progress requirements. We would therefore ask that Congress clarify in statutory language that the CARES Act student grants are not limited to Title IV eligible students.

2. **Limitations on the use of student emergency grant funds** – Institutions are endeavoring to distribute emergency aid to students as expeditiously as possible, but need clarification that these grants may be awarded to students to help them with increased financial need resulting from the pandemic. For example, some institutions are unclear if they may make an award to a student who has lost a job due to the pandemic. We believe Congress intended for these grants to be broadly applicable in such cases, rather than limited to the much narrower set of circumstances covered by the guidance issued by the Department.
3. **Limitations on the use of institutional funds** – Congressional intent in the CARES Act was to provide maximum flexibility by schools in the use of the

institutional funds. The guidance issued by the Department instead strictly limits the use of institutional funds, with narrow exceptions related to certain, time-limited refunds and the provision of additional emergency aid to students. This has several consequences for institutions, including a heightened vulnerability to litigation and/or the Department's auditors, which we address below. For these reasons, Congress should clarify that institutions have the authority to use the institutional share of CARES Act funding to address all measures of lost revenue or new expenses incurred as a result of the pandemic's impact, and such flexibility should be included in any additional support for institutions going forward.

4. **Use of institutional funds for scholarships** – In order to ensure that students are eligible for the greatest possible amounts of aid, Congress should clarify that institutions have broader latitude to use institutional funds provided through CARES to provide scholarships or other financial aid to current and incoming students for current or future academic terms. The Department's guidance on the use of institutional funds restricts the use of funds for these purposes to instances where it can be directly identified as related to changes in the delivery of instruction, limiting the ways in which schools can use the institutional portion of CARES Act funding help meet student needs.
5. **Limitations on liability regarding use of CARES Act funding** - In the CARES Act, Congress made clear that funding should be provided to students and schools as quickly as possible. Institutions were similarly eager to make funds available to students and to use them to stabilize their operations. Unfortunately, some of the Department's guidance has been inconsistent with the statutory language or the Department's previous guidance. In addition, we are aware that the Department is currently developing additional clarification to existing guidance. Given this, some institutions may have disbursed funds in a manner that inadvertently conflicts with the Department's final guidance. In particular, schools may have awarded funds to students who have not filed a FAFSA, as the CARES Act did not stipulate that the emergency aid was restricted to students eligible under section 484 of HEA. Indeed, the Department's initial guidance indicated it could be given to "all students," and schools signed the certification agreements with that understanding. To address this, Congress should limit the liability of institutions who acted in accord with Congress's intent, but may not be in full compliance with Departmental guidance, particularly if the institutions disbursed aid consistent with initial Department requirements and before additional requirements were made known.
6. **Treatment of grant and stimulus funding to individuals in need analysis** – In order to ensure that students are not penalized as a result of receiving grant funding through the Higher Education Emergency Relief Fund in the CARES Act or

the government's action to provide up to \$1,200 in stimulus payments directly to individuals, Congress should clarify in statute that neither source of funding should count as income for purposes of federal student aid eligibility, and neither source of funding should count as financial assistance for aid packaging purposes. While the Department addressed this issue in an April 3 electronic announcement, Congress should reinforce this through statutory language.

7. **Waive the nonprofit share of Federal Work Study (FWS) matching requirements** – While the CARES Act allows institutions to waive the funding match required in FWS, it does not extend this waiver to nonprofit organizations that participate in the program. Given the role of many nonprofit organizations in addressing the needs of students and their communities, as well as the necessity of maintaining existing federal financial aid for students, Congress should waive the matching requirement for nonprofit organizations.
8. **Suspend requirements related to full-time employment for Public Service Loan Forgiveness (PSLF) eligibility determinations** – The CARES Act suspended payment and interest for certain federal student loan borrowers for a six-month period, and provided that periods of suspended payment would count towards individuals' eligibility for PSLF. Given the economic challenges individuals are facing, Congress should exempt otherwise eligible borrowers from the requirement that they work full-time, while receiving full credit for progress towards completion of their required service, until such time as a suspension of payments expires or the state of national emergency is lifted (if this occurs after payments resume).
9. **Clarify the status of the interest suspension for borrowers not currently in repayment** – The CARES Act suspends interest on loans currently in repayment, but does not address loans of students who are currently enrolled or the loans of recent students who have recently entered repayment and are in the grace period. The Administration's March 13, 2020, announcement extends the waiver of interest to all federal loans, regardless of their payment status, and Congress should clarify in statute that interest is suspended for all student loan borrowers until such time as student loan payments and interest accumulation resume.
10. **Waiver of the allowable uses in the Minority Science Engineering and Improvement Program** - The Minority Science Engineering and Improvement Program (MSEIP) provides minority institutions with grants to improve science and engineering education and increase the participation of underrepresented minorities in science and technological careers. The CARES Act allows the Secretary of

Education (Secretary) to waive allowable uses for grants awarded under Part A or B of Title III, Chapter I or II of Subpart 2 of Part A of Title IV, Title V, and Subpart 4 of Part A of Title VII of the Higher Education Act, and we request statutory language providing similar flexibility in MSEIP.

11. **Remove the \$62 million cap in the HBCU Capital Financing Loan Program** - The CARES Act allows the Secretary to defer the payments of principal and interest for HBCUs that are currently participating in the HBCU Capital Financing Loan program during the period of COVID-19. This deferral is capped at a total of \$62 million dollars, which eligible institutions are likely to reach before institutional operations return to normal. We would ask that language be included in any supplemental funding bill to remove the cap on deferral through Award Year 2020-21 or for the entire period during which a national emergency is declared, whichever is longer.
  
12. **Ensure that TRIO funding fulfills the goals of the program** - The language in Sec. 3518(a) of the CARES Act that provides flexibility to institutions regarding the use of federal funds may be interpreted as allowing for the transfer of funds from the TRIO programs to other purposes. Congress should clarify in future supplementals that institutions may only use funds within the TRIO programs to fulfill the program's intents, purposes, and goals, and may not shift funding designated for TRIO to other purposes.

We believe the proposals suggested above, if implemented, would allow for a faster and more equitable distribution of CARES Act funding to where it is most needed, while also freeing institutions to dedicate available resources to serving their students and supporting their faculty and staff.

We look forward to working with you and the members of your committees to address the issues identified in this letter.

Sincerely,



Ted Mitchell  
President

On behalf of:

Achieving the Dream

American Association of Colleges for Teacher Education

American Association of Colleges of Nursing

American Association of Collegiate Registrars and Admissions Officers

American Association of Community Colleges

American Association of State Colleges and Universities

American College Health Association

American Council on Education

APPA - Leadership in Educational Facilities

Association of American Colleges and Universities

Association of American Universities

Association of Catholic Colleges and Universities

Association of Community College Trustees

Association of Governing Boards of Universities and Colleges

Association of Jesuit Colleges and Universities

Association of Public and Land-grant Universities

Common App

Council for Advancement and Support of Education

Council for Christian Colleges & Universities

Council for Higher Education Accreditation

Council for Opportunity in Education

Council of Graduate Schools

Council of Independent Colleges

Council on Social Work Education

EDUCAUSE

National Association for College Admission Counseling

National Association of College and University Business Officers

National Association of Colleges and Employers

National Association of Independent Colleges and Universities

National Association of Student Financial Aid Administrators

National Collegiate Athletic Association

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