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August 13, 2024

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Re: Docket ID ED–2024-OPE-0050

Dear Secretary Cardona,

I write in support of the U.S. Department of Education’s (“Department”) proposed rules regarding Distance Education, Return of Title IV *Higher Education Act* (HEA) Funds, and Federal TRIO Programs.<sup>1</sup> The Department’s proposed regulations would build on the efforts to increase college access and affordability and improve the quality and value of postsecondary education.<sup>2</sup>

I commend the Department for proposing strong guardrails for students pursuing their higher education online. These guardrails help ensure that students are protected from bad actors and have access to high quality instruction both in the classroom and online. Additionally, I support the Department’s proposal to provide more clarity and streamline the Return of Title IV funds process. The proposed regulations would simplify and create a user-friendly process for students and institutions. Finally, I applaud the Department for aligning eligibility guidelines for critical college access programs with existing federal secondary education programs that serve students irrespective of their immigration status.

As the Department works to finalize these rules, I offer the following comments for consideration.

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<sup>1</sup> Program Integrity and Institutional Quality: Distance Education, Return of Title IV (R2T4), HEA Funds, and Federal TRIO Programs, 89 Fed. Reg. 60256 (July 7, 2024) (hereinafter “2024 NPRM”),

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

<sup>2</sup> See 2024 NPRM at 60258-59.

### **Distance Education Programs**

I am encouraged by the Department’s proposed distance education regulations, which will improve the quality of distance education programs, provide additional clarity about the use of Title IV funds for distance education programs, and deliver critical information about enrollment in such programs. In 2022, more than 53 percent of undergraduate students were enrolled in a program that was either entirely or partially provided through distance education.<sup>3</sup> While this a lower percentage than during the peak of the COVID-19 pandemic, institutions have since continued to expand online programs, signaling the need for enhanced guardrails to support the success of students pursuing online education. To that end, I applaud the Department’s focus on ensuring students enrolled in a distance education program receive the requisite skills to be successful in the occupation for which their program prepares them.

### ***Additional Locations***

I applaud the Department’s proposed updated definition of “additional location” under §600.2, which would now include a virtual location through which an institution of higher education offers 100 percent of an educational program through distance education or correspondence courses.<sup>4</sup> The trend of institutions increasing their online program offerings has appeared alongside the proliferation of contracts between colleges and for-profit online program management companies that may incentivize these companies to enroll as many students as possible, regardless of outcome.<sup>5</sup> It is critical that Department has the necessary information to compare outcomes of students enrolled in various distance education courses with students in other settings to ensure that taxpayer dollars going to online distance education programs are primarily benefitting students, and not contractors.

I also appreciate the Department’s focus on ensuring student borrowers enrolled in online education programs that close and offer no comparable online pathway for program completion are able to access loan relief through closed school discharge.<sup>6</sup> Allowing students enrolled in distance education programs that close to access closed school discharge provides students a meaningful pathway to seek relief and is consistent with other actions taken by the Department to protect students and borrowers.<sup>7</sup>

### ***Distance Education Data Collection***

I applaud the Department’s data collection proposal under §668.41 requiring institutions receiving Title IV funds to report – at the student level and in the aggregate for each campus – any students enrolled in distance education or correspondence courses. This will significantly

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<sup>3</sup> U.S. Dep’t of Educ., Integrated Postsec. Educ. Data System, Fall enrollment component final data (2012-2021) and provisional data (2022), <https://nces.ed.gov/ipeds/TrendGenerator/app/trend-table/2/42?trending=row&cid=85>.

<sup>4</sup> 2024 NPRM at 60284.

<sup>5</sup> U.S. Gov’t Accountability Off., GAO-22-104463, Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges’ Arrangements with Online Program Managers 11(2022), <https://www.gao.gov/products/gao-22-104463>.

<sup>6</sup> 2024 NPRM at 60269.

<sup>7</sup> See e.g. Press Release, U.S. Dep’t of Educ., Education Department Releases Final Regulations to Expand and Improve Targeted Debt Relief Programs (October 31, 2022), <https://www.ed.gov/news/press-releases/education-department-releases-final-regulations-expand-and-improve-targeted-debt-relief-programs>.

improve the Department’s ability to measure outcomes of students enrolled in distance education programs and meaningfully compare them with students in traditional settings. I also appreciate the extended transition period provided by the Department to fully implement this provision.<sup>8</sup> The proposed implementation date of July 1, 2026 for additional reporting will give the Department and institutions appropriate time to make any changes necessary to report additional data pertaining to distance education enrollment. I was encouraged to see consensus from negotiators on this provision during negotiated rulemaking, and I urge the Department to maintain the language in a final rule for the stated reasons.

### ***Clock Hour Definition***

I appreciate the Department’s intent in its proposed update to the definition of “clock hour” under § 600.2, which would prohibit asynchronous instruction from counting as clock hours in clock-hour programs.<sup>9</sup> It is certainly true that asynchronous instruction provides students with flexibility to determine the pace of their coursework; however, I am concerned about the Department’s findings which show that the blanket inclusion of asynchronous instruction as clock-hours, which was instituted in the Trump Administration<sup>10</sup>, “puts students and taxpayers at risk.”<sup>11</sup> The Department found that since 2020, asynchronous coursework often consisted of “limited or no engagement” with instructors and when there was engagement, it could not be appropriately determined to be regular or substantive<sup>12</sup>, as required by regulations.<sup>13</sup> Thus, additional data on programs relying primarily on asynchronous instruction is needed to determine whether there is regular and substantive interaction between students and instructors. Such data are especially necessary to measure the quality of coursework and training for jobs requiring hands-on skills (e.g. healthcare, shipbuilding). As the Department moves forward with this proposal, I encourage you to share additional details on the potential impact of this change to short-term workforce programs. And as the Department finalizes the rule, it should take into consideration the needs of students and institutions and provide institutions with resources to enhance the quality of their distance education programs while retaining flexibilities for students.

### **Return of Title IV Funds**

I am encouraged by the Department’s proposal to improve the return of Title IV funds (R2T4) process.<sup>14</sup> The R2T4 regulations dictate how institutions should calculate any Title IV funds that should be returned to the Department when students withdraw from enrollment. According to the Department, “R2T4 is consistently in the Department’s top 10 compliance findings” for institutions due to complexities of the regulation.<sup>15</sup> The proposed changes to §§ 668.21 and 668.22 will simplify the R2T4 process for institutions, encourage students to re-enroll, and provide needed clarity for all parties involved as to what constitutes as a withdrawal under Title IV.

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<sup>8</sup> 2024 NPRM at 60283.

<sup>9</sup> 2024 NPRM at 60284.

<sup>10</sup> Distance Education and Innovation, 85 Fed. Reg. 54742 (Sept. 2, 2020).

<sup>11</sup> 2024 NPRM at 60258-60259.

<sup>12</sup> *Id.* at 60262.

<sup>13</sup> 34 C.F.R. § 600.2 (2022).

<sup>14</sup> 2024 NPRM at 60285.

<sup>15</sup> *Id.* at 60259.

Several pieces of the NPRM align with my goals to support student success in higher education regardless of a student’s financial situation or academic challenges. Currently, when students withdraw early, they are required to repay their student loan immediately in a lump sum, and if they cannot repay immediately, the loan will default.<sup>16</sup> To help students more easily repay loans after a withdrawal, the proposed § 668.21 would allow students to make repayments, after a grace period, under a loan repayment plan that “best meets their needs.”<sup>17</sup> The Department also proposed new exceptions to the R2T4 calculation that would reduce the burden on financial aid officers and support the goal of re-enrolling students who have taken a leave of absence.<sup>18</sup> For example, § 668.22(d)(1) proposes that students enrolled in prison education programs be exempted from R2T4 calculations because they may face “involuntary interruptions” to their education which could constitute as a leave of absence under the regulations; this exception ensures that incarcerated students’ financial aid is uninterrupted due to circumstances beyond their control, such as facility-wide lockdowns.<sup>19</sup> These two provisions will reduce barriers to re-enrollment and college completion for students who are faced with withdrawals during their higher education journey.<sup>20</sup>

Newly proposed § 668.22(b)(1) also requires institutions to take attendance in most distance education courses to address longstanding inaccuracies in tracking withdrawals from distance education courses.<sup>21</sup> In conjunction with the proposed changes to distance education described earlier, this regulation reinforces the importance of providing regular and substantive interactions between students and faculty in online coursework.

Despite not reaching consensus<sup>22</sup>, §§ 668.21 and 668.22 received broad support during negotiated rulemaking meetings, signaling the strong support for streamlining the R2T4 process; therefore, I strongly urge the Department to retain the proposed R2T4 changes. Knowing the complication of these calculations, as these new regulations are implemented, I encourage the Department to provide robust guidance in the Federal Student Aid (FSA) handbook to aid institutions in compliance.

## **TRIO**

I commend the Department for its proposal to expand student eligibility for the federal TRIO programs that serve elementary and secondary students—Upward Bound, Talent Search, and the

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<sup>16</sup> U.S. Dep’t of Educ., Program Integrity and Institutional Quality Negotiated Rulemaking Issue Paper 4: Withdrawals and Return of Title IV Funds, 1, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/program-integrity-and-institutional-quality-session-1-issue-paper-r2t4-final.pdf> (Last accessed Aug. 1, 2024).

<sup>17</sup> *Id.* at 1.

<sup>18</sup> 2024 NRPM at 60286.

<sup>19</sup> *Id.* at 60265.

<sup>20</sup> Lydia Franz & Edward Conroy, It Is Student’s Money; Department of Education Begins Work to Make Higher Education Regulations More Student-Focused, *New America* (Jan. 18, 2024), <https://www.newamerica.org/education-policy/edcentral/it-is-students-money-department-of-education-working-to-protect-students/>.

<sup>21</sup> 2024 NPRM at 60265.

<sup>22</sup> *Id.* at 60261.

Educational Opportunity Centers—by serving students irrespective of their immigration status.<sup>23</sup> As a whole, the TRIO programs are designed to assist individuals from disadvantaged backgrounds prepare for postsecondary education.<sup>24</sup> The proposed rule is aligned with TRIO’s purpose and consistent with federal law.<sup>25</sup>

As the Department noted, public elementary and secondary schools must allow all students to attend “regardless of their immigration status.”<sup>26</sup> I agree with the Department’s rationale that “all children who attend high school in the United States should have the same access to TRIO services to assist their pathway into postsecondary education.”<sup>27</sup> The Department further notes that allowing students to participate regardless of immigration status will align these programs with “other federal K-12 spending programs”<sup>28</sup> that are allowed to serve students regardless of their immigration status, (e.g., Titles I and IV of the *Elementary and Secondary Education Act*).<sup>29</sup> Given that undocumented students already face a myriad of challenges accessing postsecondary education,<sup>30</sup> it is appropriate to revise unnecessary policy barriers that prevent qualified students from accessing the Upward Bound, Talent Search, and Educational Opportunity Centers programs.

The proposed broadening of TRIO eligibility requirements adheres to federal statute in two important ways, as highlighted by the Department. First, by expanding the eligibility pool to all individuals who are enrolled or seeking enrollment in high school, the proposed rule would align the eligibility requirements of the programs with the statutory goals of TRIO, which include identifying “qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education”.<sup>31</sup> Second, the Department rightly recognizes that there are statutory limitations that will prevent undocumented students from participating in all aspects of the TRIO programs. The proposed TRIO rules comport with the federal law that prevents undocumented individuals from receiving certain direct federal benefits.<sup>32</sup> As such, the rule strikes a balance and allows undocumented students to participate in the Upward Bound Program, but prohibits such students from receiving direct cash stipends.<sup>33</sup> The Department’s proposed TRIO rules are consistent with federal law, and I was pleased that the negotiators reached consensus on this provision during negotiated rulemaking. I urge the Department to maintain these provisions in a final rule.

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<sup>23</sup> 2024 NPRM at 60259.

<sup>24</sup> 2024 NPRM at 60259.

<sup>25</sup> 2024 NPRM at 60266.

<sup>26</sup> 2024 NPRM at 60266, *Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>27</sup> 2024 NPRM at 60266.

<sup>28</sup> 2024 NPRM at 60267.

<sup>29</sup> 20 U.S.C. §§ 6301-6576, §§ 7101-7294.

<sup>30</sup> Jessie Hernandez-Reyes et al., Higher Education Access and Success: for Undocumented Students Start with 9 Key Criteria, The Education Trust (Feb. 22, 2023), [https://edtrust.org/wp-content/uploads/2014/09/UndocuReport\\_Combined\\_FINAL\\_2.pdf](https://edtrust.org/wp-content/uploads/2014/09/UndocuReport_Combined_FINAL_2.pdf).

<sup>31</sup> 20 U.S.C. § 1070a-11.

<sup>32</sup> See 8 U.S.C. § 1611(c)(1)(B).

<sup>33</sup> See 2024 NPRM at 60267 (“The Department’s proposed expansion of student services for the Upward Bound program would not include providing direct cash stipends to individuals who do not meet the requirements of § 645.3(a)(1) through (5) because that would be contrary to Federal statute.”).

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**Conclusion**

In conclusion, the Department's proposed regulations aim to build on its previous efforts to increase college access and affordability and improve the quality and value of postsecondary education. The considerations I have proposed in this letter will strengthen the Department's recommendations to ensure that every student has access to quality, affordable higher education. I appreciate the Department's commitment to ensuring our students have access to postsecondary education through these proposed rules.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**

Ranking Member