May 22, 2024

The Honorable Bernie Sanders
Chairman
Senate Committee on HELP
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Cassidy
Ranking Member
Senate Committee on HELP
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Virginia Foxx
Chairwoman
Committee on Education & the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
Committee on Education & the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sanders, Chairwoman Foxx, Ranking Member Cassidy, and Ranking Member Scott,

On December 27, 2020, the President signed into law H.R. 133, the Consolidated Appropriations Act of 2021 (P.L. 116-260). This bill contained the FAFSA Simplification Act of 2020, which simplified the Free Application for Federal Student Aid (FAFSA) by modifying the federal need analysis formula and streamlining the student aid application experience. In addition, the Department of Education (Department) was tasked with implementing the Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act), enacted in 2019 to authorize a direct data exchange between the Internal Revenue Service (IRS) and income information on the FAFSA form.

Given recent debilitating FAFSA delays[1], rendering most institutions unable to properly package aid offers in a timely fashion, we urge Congress to address problems created by these delays as to guard against similar problems in the future. One way to immediately address students financial aid needs is to allow for institutions to, once again, opt in to transfer up to 100 percent of their unexpended Federal Work-Study dollars to the Federal Supplemental Educational Opportunity Grant program.[2] We also ask Congress to require, and make publicly available, a long-term assessment of how the FAFSA delays have

[1] ACE's timeline on the FAFSA delays can be found at the following link: https://www.acenet.edu/News-Room/Pages/FAFSA-Implementation-Timeline.aspx
[2] Section 3503 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act allowed an institution to transfer up to 100 percent of its unexpended Federal Work-Study allocation to the Federal Supplemental Educational Opportunity Grant program. This option for institutions ended after the pandemic was no longer considered a national emergency.

impacted low-income and other students, as well as how it has impacted institutions.

In addition, we urge Congress to require, and make publicly available, a comprehensive assessment of the changes to the need-analysis formula in the FAFSA Simplification Act of 2020 on student aid eligibility, such as removing the numbers in college and modifications to the income protection allowances. This is necessary given the sweeping nature of these changes. Lastly, we ask that Congress ensures that the FAFSA process is uninterrupted for academic year (AY) 2025-2026 and beyond. We also ask that should any proposal suggested in this letter be implemented, that its implementation be done in a manner that does not create any future FAFSA delay.

Please find our specific proposals below that will strengthen the FAFSA process and improve the student financial aid system.

Establish A Hold Harmless Protection for Institutions of Higher Education That Processed Original ISIRs

Institutions of higher education are doing what they can to ensure that, in light of the FAFSA debacle, students and families can make the best, informed choices about their postsecondary education. Because of the delays in the FAFSA implementation, many institutions are still unable to package aid properly, in part because they are unsure if the data they received was accurate. To speed up the process of allowing institutions to make aid offers, the Department articulated in sub-regulatory guidance that institutions could use original Institutional Student Information Records (ISIRs) that contained inaccurate data if the ISIRs would result in greater aid eligibility for the students.[3] While the Department included language in sub-regulatory guidance indicating that the institution's use of their discretion to process original ISIRs would not, on its own, lead the Department to hold institutions liable, this is not strong enough to fully protect institutions from future audits and program reviews or to create the authorization institutional auditors need to accept such flexibility in federal packaging. We are also concerned that institutions that use incorrect ISIRs to package aid offers will be held accountable to address any discrepancies in student aid eligibility in the subsequent award year. Given this, we ask that clear language be placed in statute to ensure that institutions are allowed to package in this manner and will not be subject to punitive measures at some future point in the future as a result of following the Department's guidance.

Move Up the FAFSA Deadline from January 1 to October 1

Unfortunately, the Department did not release the FAFSA form until December 31, 2023, one day before the extended statutory deadline of January 1st. The FAFSA was made available for very limited hours initially and students, parents, and counselors were extremely frustrated that students could not access or submit the form during the rollout

[3] Federal Student Aid. (2024, April 1). *Update on tax data received from the FA-DDX and manually entered information*. U.S. Department of Education. https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-04-01/update-tax-data-received-fa-ddx-and-manually-entered-information

period successfully.

We propose Congress require the Department to make the FAFSA available for completion by October 1 for future years. Although the FAFSA has typically become available on October 1 since the need analysis began using prior-prior-year (PPY) income information in 2015, Section 483(a)(8) of the Higher Education Act of 1965 (HEA) includes a January 1st statutory deadline for the FAFSA forms to be released. The current FAFSA processing cycle consists of 21 total months, allowing students to begin to submit a FAFSA on October 1st prior to the start of the academic year in which they would enroll. Moving the statutory deadline to October 1st would ensure that students have ample time to complete the form; give college access organizations and counselors time to support student completion; and allow institutions to process aid awards in time for students to make the best college decisions.

Require a Comprehensive Assessment of the Family Farm and Small Business Exclusion

The FAFSA Simplification Act removed the ability of a family farm on which the family resides and a small business with no more than 100 full-time, or full-time equivalent, employees from being excluded from assets in the need analysis formula. This could potentially have a negative impact on students and families when calculating their student aid index (SAI) because these assets would technically be included. In an effort to determine the true impacts of this policy change, we ask Congress to require a comprehensive assessment, along with the other changes to the need-analysis formula, to determine the effects on student aid eligibility for students who come from families with assets from family farms and small business with no more than 100 employees.

Allow for Alternate SAIs to Ensure Maximum Aid Eligibility

The FAFSA Simplification Act of 2020 removed the ability of future alternate SAIs to be calculated. In both Section 475 and 477 of the current HEA, a student who is enrolled in periods other than nine months can have their actual monthly enrollment reflected in their expected family contribution (EFC). The new need analysis formula eliminates this option and creates a situation where a student who is enrolled for three months in a program would have their subsidized direct loan eligibility based on the three-month cost of attendance but have their SAI reflect a nine-month enrollment. As a result, students enrolled for periods shorter than nine months will have less demonstrated need than when using an alternate SAI.

This would make it difficult for students to pay for periods of short-term enrollment and could even create perverse incentives. For example, a student with a $16,000 nine-month SAI might qualify for both subsidized Direct Loan and college need-based aid. Under the old rules, if that student could graduate at the end of fall semester, their estimated cost of attendance and EFC would have been halved, preserving their eligibility as they attempt to pay for the last term of their degree. Under the new rules, that fall-only student would have half the cost of attendance and a full $16,000 SAI, drastically reducing their eligibility for need-based financial aid and creating a disincentive for early graduation.

Add the Housing Question Back to the FAFSA Form

While we enthusiastically endorse the overall FAFSA simplification, there are instances in which not asking for information results in students needing to complete multiple forms, thereby undermining the goal of simplification. A pressing instance of this is the Simplification Act's removal of the question regarding the student's housing plans for a given institution, while the institution still needs this information to complete aid packaging. To ensure that students are truly provided a simplified process, we propose to add this question back to the FAFSA.

Allow for Married Students Who Are Separated to be Considered Independent

Previously, married but separated students could still be considered independent for financial aid purposes. However, under the FAFSA Simplification Act of 2020, the ability of married students, whether separated or not, to qualify as independents was removed and only a married student who is not separated can be considered as independent. Under this scenario, if you are 23 years old and separated, you would be considered a dependent and receive a higher SAI because of different treatment in the income protection allowance formulas. We do not believe that this provision accurately accounts for the financial circumstances of all married borrowers and propose reverting to the prior HEA language.

Allow for Increased Usage of FAFSA Data

In prior award years, if a student wanted to import their tax return information into their FAFSA, they used the IRS data retrieval tool. Once tax data was transferred into the FAFSA by the taxpayer, it was considered "FAFSA data" and subject to legal protections under HEA and Family Educational Rights and Privacy Act (FERPA). Due to changes in the FUTURE Act, the Department of Education now receives Federal Tax Information (FTI) directly from the IRS. FTI includes information such as income earned from work; taxes paid, educational credits, and adjusted gross income. This results in the data being categorized as Controlled Unclassified Information/Specified Tax (CUI//SP-TAX). All FTI must be handled—at minimum—in accordance with the confidentiality protections of the IRC and subject to Section 6103(l)(13) of the IRC requirements as well as the use restrictions of FTI under Section 483 of HEA as amended by the FAFSA Simplification Act.

The practical effect of this prohibits existing uses of FAFSA data in ways that support low-income students, such as targeted support to Pell recipients in the application and enrollment processes; notifications of eligibility for other forms of non-Title IV federal aid or assistance; or eligibility to participate in certain federal programs such as TRIO. In addition, researchers on campuses and at the Department are unable to use salary and employment information to pre-populate or complete numerous survey, reporting and other data instruments, adding cost and error into processes that campuses and policymakers rely on to better understand student behavior and outcomes.

We propose to restore the prior levels of usage of this data for state higher education agencies, designated scholarship organizations, institutions of higher education, and other relevant entities to ensure that they are able to better support students.

<u>Reduce Income Verification Now that IRS Transfers Data Directly to ED</u>

Earlier this year, the Department announced that it would significantly reduce verification requirements to allow institutions to better focus on the FAFSA process. Due to changes in the FUTURE Act, the Department is receiving the vast majority of income data directly from the IRS and has gradually reduced the verification rate, more effectively targeting verification efforts while alleviating burdens for millions of students and thousands of institutions. The most recent reduction in verifications related to the delay in the FAFSA will further reduce the burden for institutions and students, while continuing to protect against fraud.

With the various changes and challenges being faced by our institutions, we propose that institutions continue to receive flexibilities around verification as currently provided for by the Department.[4] Continued flexibility would allow for institutions to adjust to the new FAFSA process, ensure their institutional systems are operating smoothly, and test the new data exchange between the IRS and the Department to assess the need to continue verification in its current manner. This will also allow for time to ensure that students are relieved of any unnecessary verification requirements moving forward.

Thank you for your consideration of these proposals. We hope that Congress will take action and advance legislation that will both protect our students from any future harm caused by the current FAFSA delays and that will also improve the federal student aid system. We look forward to continuing this conversation with you as you think through further legislative proposals related to the FAFSA and the overall student aid system.

Sincerely,

Ted Mitchell
President

[4] U.S. Department of Education. (2024, February 13). *U.S. Department of Education announces latest steps to support schools and students with Better FAFSA*. https://www.ed.gov/news/press-releases/us-department-education-announces-latest-steps-support-schools-and-students-better-fafsa

On behalf of:

ACT's Center for Equity in Learning
American Association of Colleges and Universities
American Association of Colleges of Nursing
American Association of Colleges of Osteopathic Medicine
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
American Dental Education Association
Association for the Study of Higher Education
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
Career Education Colleges and Universities
College and University Professional Association for Human Resources
College Board
Common App
Consortium of Universities of the Washington Metropolitan Area
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Opportunity in Education
Council of Graduate Schools
Council of Independent Colleges
EDUCAUSE
Hispanic Association of Colleges and Universities
NASPA - Student Affairs Administrators in Higher Education
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
State Higher Education Executive Officers Association
UPCEA