

September 16, 2024

James Kvaal
Under Secretary
United States Department of Education
400 Maryland Ave, S.E.
Washington, D.C. 20202

Re: Proposed Guidance to Expand GEN-22-02 and GEN-24-93 by Encouraging IHEs to Obtain Student Written Consent to Share FAFSA and FTI Data with State and Local Agencies to Increase Student Enrollment in Means-tested Benefits Programs

Dear Under Secretary Kvaal,

The National Student Legal Defense Network (“Student Defense”) and undersigned organizations submit the attached proposed guidance to the Department of Education (ED). This proposal would bolster the Department’s January 20, 2022, April 8, 2024, and July 29, 2024 Dear Colleague Letters by encouraging states and Title IV institutions to provide students with multiple opportunities to consent to share their Free Application for Federal Student Aid (FAFSA) and Federal Tax Information (FTI) data. With written student consent, institutions of higher education (IHEs) may share this information with state and local agencies administering means-tested benefits programs. Applying the proposed guidance, would increase access to means-tested benefits and facilitate students’ ability to meet their basic needs.

The January 20, 2022, Dear Colleague Letter titled “Use of FAFSA Data to Administer Federal Programs” encouraged IHEs to use FAFSA data to communicate with students about designated public benefits programs they may be eligible for and partner with state agencies to verify student eligibility. Yet, a year later, only about 1 in 4 of surveyed IHEs reported that they inform students about public benefits, and only 14% of respondents had developed systems to share student data with state agencies.¹

We commend the Department for recently issuing additional Dear Colleague Letters on the use of FAFSA data to conduct means-tested benefits outreach. The April 8, 2024 Letter titled “Updates to the FAFSA Completion Initiative and Means-Tested Benefits Outreach” informed state grant agencies that they, too, can use FAFSA data to perform outreach to students about means-tested benefits. The July 29, 2024 Dear Colleague Letter titled “Guidance on Means-Tested Benefits Outreach for Institutions and State Grant Agencies” built upon on that guidance by informing IHEs that they can develop processes for students to provide explicit prior written consent to share FAFSA data with Federal, State, or local government agencies or tribal organizations to assist students in applying for and enrolling in means-tested benefits. The July 29 guidance also expanded the list of public benefits programs that are suggested for outreach and noted that institutions can share financial aid data within various offices on campus that help

¹ Higher Learning Advocates, *The Numbers Speak for Themselves: Using FAFSA Data to Secure Today’s Students’ Basic Needs* 8 (Jan. 2024), <https://higherlearningadvocates.org/wp-content/uploads/The-Numbers-Speak-for-Themselves-HLA-and-NASFAA-Survey-Brief-2024.pdf>.

James Kvaal
U.S. Department of Education
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Page 2 of 2

students.

While these Dear Colleague Letters are very helpful for the field, the Department of Education can do more to encourage IHEs to share FAFSA and FTI data with State and local agencies. Sharing student data outside institutions requires written consent consistent with the Family Educational Rights and Privacy Act (FERPA), the Higher Education Act (HEA), and the Internal Revenue Code as amended by the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act.

The attached proposed guidance offers institutions, financial aid officers, and administrators multiple opt-in methods to obtain the consent required. These methods pave the way for institutions to share students' FAFSA and FTI data with state and local agencies administering means-tested benefits programs, thereby streamlining the determination of students' eligibility for vital benefits and their ultimate enrollment into the programs that will help them succeed in college. We also hope that the Department will explore providing financial aid applicants with an upfront option to provide their consent, such as by adding a "check box" to the authorization sections of the FAFSA. Streamlining the process of enrolling in public benefits will help students stay enrolled and complete their degrees and credentials.

In addition to enumerating data-share opt-in methods that comply with privacy provisions, the proposed guidance outlines additional steps institutions and state grant agencies can take to share information with students. ED's provision of technical assistance is essential to empowering educational institutions and state grant agencies with the knowledge and tools needed to effectively inform students about means-tested benefits programs.

Sincerely,

National Student Legal Defense Network

The Hope Center for Student Basic Needs at Temple University

The Institute for College Access & Success