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August 24, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20505

Dear Secretary DeVos:

I write regarding the Department of Education's (Department's) latest attempt to divert Congressionally authorized funding from local educational agencies and institutions of higher education to the Administration's politically favored projects that Congress has continuously declined to fund. These unauthorized actions are particularly problematic at a time when our nation's educational institutions are facing extraordinary fiscal challenges during the COVID-19 pandemic.

Congress passed the *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)* with strong bipartisan support.¹ In order to support local education agencies and postsecondary entities facing the loss of State and local revenue due to the economic impact of the COVID-19 pandemic, Congress dedicated more than \$30 billion in the CARES Act to create an Education Stabilization Fund (ESF), reserving one percent of ESF funds for "grants to States with the highest coronavirus burden".²

The Department, however, is not following the plain language of the statute and granting educational institutions across the country the necessary funding to support student learning during the pandemic. Rather, the Department is once again using taxpayer dollars to fund elements of the Administration's political agenda that Congress has neither authorized nor provided funding for, such as the Administration's ill-conceived industry recognized apprenticeship program (IRAP).

¹ The Senate passed the CARES Act (H.R. 748) by a vote of 96-0. The House passed CARES via voice vote.

² Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18001(a)(3) (2020).

Instead of establishing a program to determine the states with the highest coronavirus burdens and sending grants directly to them, the Department established two new grant competitions with the reserved funds: the “Rethink K-12 Education Models Grant”³ and the “Reimagine Workforce Preparation (RWP) Grants”⁴. While both of these grants allow non-educational institutions to access the CARES Act funding, the RWP Grant specifically allows for the direction of funds not by the state or local education agency, but by state workforce agencies or an agency (public or private) of the state workforce board’s choosing.

Despite repeated requests from Committee staff, Department officials have failed to adequately justify this deviation from statutory language, instead indicating the authority to divert CARES Act funds from schools rests in unrelated provisions of law, specifically the *Carl D. Perkins Career and Technical Education Act of 2006* (Perkins CTE).⁵ This is a misinterpretation of both the CARES Act and Perkins CTE.

Specifically, the Department cites authority under sections 18002(c)(2) and 18003(d)(1) of the CARES Act which authorize activities, “supporting ongoing functionality of the institution”, and the “protection of education related jobs”.⁶ However, neither of these authorities justify the entire breadth of activities authorized by the RWP in Department’s Notice Inviting Applications for the RWP. Funds awarded under RWP grants are not required to be awarded to institutions for their ongoing functionality, and the RWP focuses on developing new programs in high-demand jobs and creating small business incubators, neither of which are required to be education-related jobs. While the RWP may include some activities authorized by CARES, it includes many more that are not.

The Department also cites two provisions within Perkins CTE as authority to for the RWP grants.⁷ The first is a subsection within the Perkins CTE’s purpose which broadly states one of the purposes of the act is “providing individuals with opportunities throughout their lifetimes to develop, in conjunction with other education and training programs, the knowledge and skills needed to keep the United States competitive”.⁸ That same purpose section clearly states that all programs authorized under the Act must relate to “secondary education students and postsecondary education students who elect to enroll in career and technical education programs

³ U.S. Department of Education, Notice Inviting Applications (NIA) for the FY 2020 Education Stabilization Fund-Rethink K–12 Education Models (ESF–REM) Discretionary Grant Program, 85 Fed. Reg. 25411 (May 1, 2020). I have written you previously with concerns about the unauthorized nature of portions of this Program, and mention it here only as it is being funded from the same ESF reservation in the CARES Act as the RWP program. See Letter from Chairman Bobby Scott to Secy. Betsy Devos, May 8, 2020, available at <https://edlabor.house.gov/imo/media/doc/Chairman%20Scott%20Oversight%20Letter%20to%20DeVos%20re%20Voucher%20Scheme.pdf>.

⁴ U.S. Department of Education, Notice Inviting Applications (NIA) for the FY 2020 Education Stabilization Fund-Reimagine Workforce Preparation (ESF-RWP) Grants Program 85 Fed. Reg. 37636 (June 23, 2020).

⁵ E-mail from staff of the Department of Education Office of Legislative and Congressional Affairs to staff of the House Committee on Education and Labor, July 24-28, 2020 (on file with author); Carl T. Perkins Career and Technical Education Act of 2006, 20 U.S.C. §§ 2301-2414 (2018).

⁶ *Id.*; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §§ 18002(c)(2); 18003(d)(1) (2020).

⁷ E-mail from staff of the Department of Education Office of Legislative and Congressional Affairs to staff of the House Committee on Education and Labor, July 24-28, 2020 (on file with author).

⁸ *Id.*; 20 U.S.C. § 2301 (7) (2018).

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and programs of study”.⁹ As career and technical education (CTE) student enrollment or program of study student enrollment are not requirements of or considerations for funding of the RWP grants, the RWP grants are clearly not aligned with the purposes of Perkins CTE and as such cannot be authorized by that law as interpreted by the Department.

The Department also cites authority from another section of Perkins CTE which requires performance improvement plans (PIPs) for underperforming CTE agencies and programs.¹⁰ The Department claims that it has the ability to provide services and activities through “alternative arrangements” such as those it plans to fund using the RWP grant.¹¹ However, the underlying statute references “alternative arrangements” for funding between state CTE agencies and the CTE programs they oversee, conferring no authority on any other state agency. Given that the Department’s RWP proposes granting funds to state workforce agencies and **not** state CTE agencies, this section cannot authorize the RWP program as designed. Further, this provision within Perkins CTE references alternative funding arrangements resulting from reduced fiscal allotments due to a state CTE agency’s lack of improvement on a PIP.¹² Concurrently, this alternative funding arrangement is only valid for CTE programs that currently have PIPs, something that is not accounted for in the RWP grants.

The Department has failed to establish a clear connection between stabilizing state and local education, the purpose of the Education Stabilization Fund, and the FWP grant program. As it cannot point to any law authorizing its use of Education Stabilization Funds to create a program that is unrelated to education stabilization, the Department is exceeding its authority to issue these grants under the CARES Act and other relevant authorizing statutes. While I appreciate the agency’s ability to make use of broad authorizing authorities in furtherance of administrative priorities, there is no such authorizing authority for use of education stabilization funding for the activities conceived of in this grant. Accordingly, I request the Department abandon this unauthorized grant competition and instead award funds, as Congress directed, to States with the highest coronavirus burden to support the stabilization of education within those States.

Sincerely,



ROBERT C. “BOBBY” SCOTT

Chairman

⁹ 20 U.S.C. § 2301 (2019).

¹⁰ E-mail from staff of the Department of Education Office of Legislative and Congressional Affairs to staff of the House Committee on Education and Labor, July 24-28, 2020 (on file with author); 20 U.S.C. § 2343(b)(5) (2019).

¹¹ *Id.*

¹² 20 U.S.C. § 2343(b)(5).