

Congress of the United States

Washington, DC 20515

February 18, 2016

John B. King, Jr., Ed.D.
Acting Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Dr. King:

It has come to our attention that the Department of Education may have made decisions regarding student participation in, and access to, funds for the District of Columbia Opportunity Scholarship Program (OSP). As you and your staff determine how best to implement the OSP in accordance with the Fiscal Year 2016 Consolidated Appropriations Act provisions, we strongly urge the Department to take care that any policies conform with the letter and intent of the authorizing statute. Congress created and reauthorized the OSP to provide educational opportunities to children of low-income families in the District of Columbia, which might not otherwise be available. Accordingly, the Department is responsible for ensuring that any policy related to the OSP allows the maximum number of students to benefit from this important program.

We have learned, however, that the Department is preventing the OSP administrator from accessing annual carryover funds for the program. These dollars are crucial to providing low-income families within the District access to a quality education.

The House Committee on Appropriations report accompanying the Financial Services and General Government Appropriations Bill for fiscal year 2016 states, “[t]he Secretary shall use current and *prior* (emphasis added) year balances to fund scholarships to students currently enrolled in the program and new students to the extent that funds are available.”¹ The Department is required to allow the OSP administrator to access any prior year carryover balances.² Without access to these funds, the program administrator’s capacity to fund OSP scholarships for current and new students is restricted. Additionally, limiting the program administrator’s ability to provide eligible students with OSP scholarships directly contradicts the intent of Congress.

Additionally, we understand certain eligibility requirements have been added that exceed those dictated by the statutory language. Eligibility to receive OSP funds, as defined in the statutory requirements, is based on a determination that students reside in the District of Columbia, and that their households meet certain income requirements.

¹Report, Financial Services and General Gov’t Appropriations Bill, 2016, 114th Cong, 1st Sess., at 45-46 (Report 114-194) (July 9, 2015).

² Congressional Record, Dec. 17, 2015, H.R. [2029], Vol. 161, No. 184—Book 11, H10135.

The Department's guiding principle, when considering how to implement the OSP, is to ensure that the administrator provides funds to those who meet the eligibility requirements. The Department is not to apply additional eligibility requirements beyond those expressly provided for by Congress.

To assist us in oversight of OSP implementation, please provide the following information as soon as possible, but no later than 5:00 p.m. March 2, 2016:

1. Documents referring or relating to any criteria beyond those expressly authorized for determining a student's eligibility for an OSP scholarship.
2. Documents and communications referring or relating to the justification for imposing additional eligibility criteria.
3. Any legal opinion created, requested, or obtained by the Department related to the creation of additional eligibility criteria beyond those expressly authorized by statute.
4. Documents referring or relating to the Department's policy governing the OSP administrator's access to carryover funds (meaning those funds which have been obligated to the program, but which have not been exhausted by the administrator of the OSP).
5. Documents and communications referring or relating to why the Department believes that OSP carryover funds can or cannot be withheld from the OSP administrator.
6. Any legal opinion created, requested, or obtained by the Department related to the administrator's access to carryover funds.
7. Any impact assessment(s) conducted by the Department related to how withholding carryover funds will affect the program.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

In addition, the Committee on Education and the Workforce has a general obligation to conduct oversight of the Department of Education and a particular interest in ensuring policies enacted by Congress to expand educational opportunities for low-income students in the District of Columbia are implemented with fidelity.

When producing documents, please deliver production sets to the Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building, the Oversight and Government Reform Minority Staff in Room 2471 of the Rayburn House Office Building, the Education and the Workforce Majority Staff in 2176 of the Rayburn House Office Building and the Education and the Workforce Minority Staff in 2101 of the Rayburn House

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Office Building. We prefer, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to this request.

Please contact Christopher D'Angelo of the Oversight and Government Reform Committee staff at 202-225-5074 or Mandy Schaumburg of the Education and the Workforce Committee staff at 202-225-6558 with any questions. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform



John Kline
Chairman
Committee on Education and the Workforce



Mark Meadows
Chairman
Subcommittee on Government Operations



Todd Rokita
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

The Honorable Robert C. "Bobby" Scott, Ranking Member
Committee on Education and the Workforce

The Honorable Gerald E. Connolly, Ranking Member
Subcommittee on Government Operations

The Honorable Marcia L. Fudge, Ranking Member
Subcommittee on Early Childhood, Elementary, and Secondary Education

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.