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Re: Department of Education Proposed Changes to the Integrated Postsecondary Education Data System (Docket ED-2022-SCC-0026)

We the undersigned 29 organizations write to submit this comment in response to the Department of Education’s notice in the federal register detailing proposed changes to how institutions of higher education report data to the National Center for Education Statistics (NCES) through the Integrated Postsecondary Education Data System (IPEDS) (Docket ID number ED-2022-SCC-0026).

In Appendix A of the proposed guidance, it is proposed that institutions should report undocumented students with DACA under the “nonresident” category and undocumented students without DACA under “race/ethnicity unknown.”¹ The gist of both these directives would be that neither DACA nor other undocumented college or university students would have their race/ethnicity reported by their institutions. While we are appreciative that IPEDS is seeking to provide clarification to institutions on how to report undocumented students, we find the proposed guidance highly concerning and suggest in this comment letter alternative guidance.

The sections below outline the concerns we have identified and the alternative recommendations we would suggest. To note, NCES replaces the term “nonresident alien” with “nonresident” in order to be more inclusive and align with the current administration’s recommendation to drop the term “alien,” which we appreciate and commend.

In Appendix D, NCES poses a set of questions for institutions to consider. Should the “nonresident” category be removed from the collection of racial and ethnic data altogether? NCES asks if institutions have any challenges or concerns with determining which students are “nonresident” for IPEDS reporting purposes and also asks if NCES was to remove the “nonresident” category if our institutions could report total student counts for all of the following citizenship options: US citizen/national; Permanent resident or other eligible non-citizens; Foreign/International student with student visa; and Unknown, which would include undocumented students.² As discussed in this comment letter, we recommend reporting undocumented students, who are Americans in all ways but formal legal status, with other domestic immigrant students with respect to their self-reported race and ethnicity. The questions posed in Appendix D, especially with regard to removing the nonresident category

¹ U.S. Department of Education, “Appendix A - IPEDS 2022-23 through 2024-25 Detailed Proposed Changes,” Document ED-2022-SCC-0026-0003 (Feb. 25, 2022), available at <https://www.regulations.gov/document/ED-2022-SCC-0026-0003>.

² U.S. Department of Education, “Appendix D - IPEDS 2022-23 through 2024-25 Directed Questions,” Document ED-2022-SCC-0026-0003 (Feb. 25, 2022), available at <https://www.regulations.gov/document/ED-2022-SCC-0026-0003>.

altogether, merit thoughtful analysis, and below we recommend the issues that a Technical Review Panel should address in considering those questions.

SUMMARY OF CONCERNS

- I. The guidance runs counter to this administration’s laudable commitments to civil rights, racial justice, and equity, issues of profound importance to the signatories.** Although this does not appear to have been NCES’s intent, the proposed guidance would direct institutions not to report race or ethnicity for a significant part of their student populations, resulting in a significant undercounting of students of color. Such a directive runs counter to long-standing federal policies that have recognized the importance of accurate reporting of race and ethnicity to achieve important civil rights goals. The current “starting point” for all Federal agencies’ race and ethnicity data collection standards should be the Office of Management and Budget’s (“OMB”) 1997 “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity” (“1997 Standards”).³

These same standards were endorsed by the Obama Administration’s OMB as well as an interagency working group (“Working Group”) established in 2014. Although the Working Group released a 2016 report recommending limited changes to the 1997 Standards,⁴ those recommendations have not been adopted and the report referenced the 1997 Standards favorably. In fact, to emphasize its acceptance of the 1997 Standards, in 2015, the Obama Administration’s OMB republished the original 1997 Federal Register Notice announcing the 1997 Standards. Not only did that Notice establish the Federal Government’s current policies regarding race and ethnicity reporting, but it included a 1995 analysis examining the pros and cons of required federal reporting on race and ethnicity, and which categories should be utilized. One of the key issues that the 1995 report looked at was “whether the Federal government should collect racial and ethnic data”? As set forth in that report:⁵

The United States government has long collected statistics on race and ethnicity. Such data have been used to study changes in the social, demographic, health, and economic characteristics of various groups in our population. Federal data collections, through censuses, surveys, and administrative records, have provided a historical record of the Nation's population diversity and its changing social

³ See 62 FR 58782, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity” (Oct. 30, 1997), available at <https://www.federalregister.gov/documents/1997/10/30/97-28653/revisions-to-the-standards-for-the-classification-of-federal-data-on-race-and-ethnicity>; see also U.S. Department of Health and Human Services, “Explanation of Data Standards for Race, Ethnicity, Sex, Primary Language, and Disability” (May 18, 2021), available at <https://minorityhealth.hhs.gov/omb/browse.aspx?lvl=3&lvlid=54> (“The starting point for the race and ethnicity data collection standards is OMB’s current government-wide standard, issued in 1997 after a comprehensive public engagement process and extensive field testing.”).

⁴ See U.S. Office of Management and Budget, “Interim Report to the Office of Management and Budget: Review of Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity” (2016), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/briefing-room/presidential-actions/related-omb-material/reiwg-interim-report_022417.pdf (explaining that the Working Group adopted 1997 Standards’ guiding principles for its review).

⁵ U.S. Office of Management and Budget, “Standards for the Classification of Federal Data on Race and Ethnicity” Federal Register, Appendix 2 at § 1.2 (Jul. 9, 1997), available at https://obamawhitehouse.archives.gov/omb/fedreg_directive_15/ (citing the 1995 report and accompanying analysis, “Report to the Office of Management and Budget on the Review of Statistical Policy Directive No. 15”).

attitudes and policy concerns. Since the 1960s, data on race and ethnicity have been used extensively in civil rights monitoring and enforcement covering areas such as employment, voting rights, housing and mortgage lending, health care services, and educational opportunities. These legislatively-based priorities created the need among Federal agencies for compatible, nonduplicative data for the specific population groups that historically had suffered discrimination and differential treatment on the basis of their race or ethnicity.

The report further notes that the view of those who favor[ed] continued collection of racial and ethnic data can be summed up by the words of the writer who said, "...the measurable gains made in advancing a civil rights agenda to bring all Americans into the economic, political, and social mainstream would have been extremely difficult, if not impossible, if we did not have adequate information on racial and ethnic groups."⁶ It remains federal policy that race and ethnicity are collected and accurately reported. It is important to institutions of higher education that an accurate picture of their student population demographics is collected and that historically underrepresented and underserved populations are not ignored in such data. At a fundamental level, data accuracy has been key to civil rights monitoring as well as equity in many core areas of institutional practice. The department should not issue guidance that undermines these principles.

II. The guidance would exacerbate data discrepancies. The guidance is at odds with current practice at many institutions and would engender data discrepancies. According to the Presidents' Alliance analysis in partnership with New American Economy, there are over 427,000 undocumented students enrolled in postsecondary education, or about two percent of all postsecondary students.⁷ About 181,000 either hold DACA or would be eligible for DACA.⁸ Until now, there has been little guidance to institutions on how best to report undocumented immigrant students who grew up and were educated in the United States (what we would refer to as "domestic students") via IPEDS. Thus, current reporting of undocumented students is not consistently applied by all institutions of higher education. Some institutions consider these students "residents," others as "nonresidents," and still others do not currently track undocumented students on their campus.

A. Guidance is needed. As a general matter, we believe guidance is needed to establish some consistency in this key element of demographic reporting, and we endorse the department's decision to do so. However, the draft guidance assumes that all institutions currently disaggregate undocumented students (with and without DACA) and lawful permanent residents (LPRs) from other populations, distinguishing citizen students from others in their IPEDS data collection. As noted above, this assumption is not accurate. A number of institutions logically group LPRs and other domestic immigrant students (including undocumented students) with U.S. citizens when reporting ethnicity for IPEDS, reserving the "nonresident" category for students on non-immigrant visas, student or otherwise. Instituting the draft guidance would disrupt the continuity of data

⁶ U.S. Office of Management and Budget, "Standards for the Classification of Federal Data on Race and Ethnicity" Federal Register (Aug. 28, 1997), available at https://obamawhitehouse.archives.gov/omb/fedreg_race-ethnicity (Detailed discussion of the 1995 report's six core issues).

⁷ "Undocumented Students in Higher Education: How Many Students are in U.S. Colleges and Universities, and Who Are They?" Presidents Alliance on Higher Education and Immigration and New American Economy (Mar. 2021), available at <https://www.higheredimmigrationportal.org/research/undocumented-students-in-higher-education-updated-march-2021/>.

⁸ *Id.*

for such undocumented students (and their institutions), placing DACA recipients in the “nonresident” category with international students and all other undocumented students under “race/ethnicity unknown” when they were previously counted with the rest of the domestic student body.

B. The draft guidance increases the administrative burden for campuses. While few institutions currently track their undocumented students, even those that do often do not distinguish among their enrolled undocumented student populations in terms of their DACA status. This is evidenced by the fact that institutions often report their undocumented students as part of their domestic student population (U.S. citizens and LPRs), and reserve the “nonresident” category for international or foreign students with a non-immigrant visa. For those institutions that do not disaggregate their undocumented domestic students from the student body, the proposed guidance would increase the administrative burden on institutions, and render it more difficult for institutions to comply with the guidance in good faith. Such administrative burden conflicts with one of the 1997 Standards’ established principles (“Guiding Principles”), which provides that reporting standards should give consideration “to needs at *the State and local government levels*, . . . as well as to general societal needs for these data.”⁹

III. Recategorizing undocumented students may skew data on race and ethnicity and harm the privacy of undocumented students.

A. Recategorizing undocumented students into categories where their race and ethnicity are no longer recorded may result in a substantial undercounting of students of color. The undocumented student population in higher education is overwhelmingly non-white (87%)—of the estimated 427,000 undocumented students in higher education, half (49%) are Hispanic, 24% are Asian and 13% are Black.¹⁰ DACA and DACA-eligible students are 93% non-white, 70% of which are Hispanic.¹¹ Removing DACA and undocumented students from the general race and ethnicity estimates for the student body would likely increase the overall share of white students reported on campus by a full percentage point, while the share of reported Hispanic students would likely drop by nearly two percent or more according to an analysis by FWD.us.¹²

This skewed dataset could in turn have implications for institutions of higher education that are seeking status as a minority-serving institution (“MSI”) or Hispanic-serving institution (“HSI”). Such designations create opportunities for institutions to access funding to specifically support their minority students. Directing institutions to report the demographics of their students in a way that obscures the race and ethnicity of their domestic undocumented students could cause them to lose access to critical funding. Both Title III and Title V provide funding based on race/ethnicity. For example, Title V awards funding to institutions where 25% of the student population identifies as Hispanic.¹³ The new IPEDS reporting policies may undercount racial and ethnic categories comprising Title III and Title V eligibility causing some institutions to no longer qualify for Title III and Title V (to the great detriment of their students).

B. The guidance could harm the privacy and security of undocumented students. To comply with the guidance to categorize DACA students as “nonresident” and other undocumented students as “race/ethnicity unknown,” institutions would

⁹ *Supra* at note 3 (Guiding Principle No. 6) (emphasis added).

¹⁰ “Undocumented Students in Higher Education,” 2021.

¹¹ *Id.*

¹² FWD.us, Comment to U.S. Department of Education's Proposed Changes to the IPEDS 2022-23 through 2024-25, Docket ED-2022-SCC-0026, April 26, 2022.

¹³ 20 U.S.C.A. § 1101a.

necessarily have to track, disaggregate, and report the number of undocumented students on their campuses with and without DACA. This practice could have unintended effects on the privacy and security of undocumented students, even unintentionally. In contrast, if institutions are able to count and include *all* enrolled students *except for* those on non-immigrant student visas (who are carefully tracked through SEVIS, or the Student and Exchange Visitor Program), the privacy of undocumented students is better preserved. As demonstrated in the prior administration's failed attempt to require the U.S. Census Bureau to report a count of undocumented people for political purposes, even data collection that is on its face apolitical can be distorted against the populations it was meant to help.¹⁴ The laws and policies protecting the privacy and security of census data are much stronger and more effective than can be reasonably expected across campuses. We do not recommend the Department of Education direct institutions to try to distinguish between DACA or undocumented students, classify DACA recipients with "nonresidents," or track undocumented students separately.

IV. The guidance undermines efforts to serve a diverse student body

A. Institutions need an accurate count to serve their students. Tracking the race and ethnicity of their student body helps institutions adequately address the needs of specific demographic groups on their campuses. Splintering the count of minority student groups only serves to mask how those groups are faring, which subsequently affects the allocation of funds, the services provided, and the perception of these student groups as a whole.

Institutions have a responsibility to all students to maximize a student's access to higher education and nurture their ability to succeed once they are enrolled. This guidance would obscure and segregate undocumented students from their peers and school administration, making it that much more difficult for institutions to meet their educational and moral obligations to students of color, low-income students, undocumented students, and otherwise marginalized students.¹⁵ Any action that increases or ignores barriers to educational success for undocumented students and students of color is a detriment to the whole campus.

B. As noted in Section I, above, the guidance contradicts other administrative guidance and directives to recognize race and ethnicity, and support a diverse student body. Secretary of Education Miguel Cardona and other administration officials have appropriately pointed out the importance of recognizing and supporting a diverse student body, including recognizing publicly that undocumented students are "the fabric of this country."¹⁶

C. The guidance will create inconsistency among the Department of Education's K-12 and higher education policies. The Department's Civil Rights

¹⁴ President Donald J. Trump to Secretary of Commerce, *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, White House (Jul. 21, 2020), available at <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-excluding-illegal-aliens-apper-tionment-base-following-2020-census/>.

¹⁵ See *supra* note 3. Such results also contradict one of the 1997 Standards' Guiding Principles, which instructs that any changes in reporting categories should prioritize "[r]espect for individual dignity." (Guiding Principle No. 2).

¹⁶ Lois Elfman, "Cardona Vows to Support Undocumented Educators and Students," *Diverse Issues in Higher Education* (Apr. 21, 2021), available at <https://www.diverseeducation.com/latest-news/article/15108793/cardona-vows-to-support-undocument-ed-educators-and-students>.

Data Collection (“CRDC”) program seeks to collect accurate data on race and ethnicity to better enforce civil rights violations.¹⁷ The Department’s Office for Civil Rights’ mission “is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation’s schools.”¹⁸ OCR’s mission does not differentiate between k-12 schools and postsecondary institutions. Accordingly, having a different policy for universities is not only inconsistent, but it will obstruct the Department’s efforts to enforce the civil rights of undocumented and DACA students.

RECOMMENDATIONS

- I. **The Department of Education should allow institutions to report aggregate demographic information on their “domestic” students**, defined as all students who completed high school or equivalency within the United States and were not on an F-1 visa at the time of high school graduation. This category would include all U.S. citizens, permanent residents, and other noncitizen immigrant students. This category would thus include most undocumented and DACA recipient students rather than classifying them into “race/ethnicity unknown” or “nonresident” respectively. By reporting the demographics of these students as one domestic group, undocumented students and DACA recipients will thus be classified in their respective race and ethnicity categories, generating the accurate and comprehensive information needed to measure enrollment, persistence, and other student success metrics across race/ethnicity lines.
 - A. USICS states in the DACA FAQs that “[i]ndividuals granted deferred action are not precluded by federal law from establishing domicile in the U.S.”¹⁹ To align with USCIS and other statements from the Department of Education affirming undocumented students as Americans in waiting,²⁰ we encourage the Department of Education to promulgate guidance that encourages institutions of higher education to classify these students as “domestic” students.
 - B. We do not recommend that the Department of Education direct institutions to try to distinguish between DACA or undocumented students or track them specifically through IPEDS, but rather simply include them in the aggregate count of “domestic” students.
- II. **The Department of Education should reserve the category of “nonresident” for reporting students on F-1 or J-1 visas** who enter the United States specifically to

¹⁷ See U.S. Department of Education, Civil Rights Data Collection FAQs (last updated Apr. 14, 2021), available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html>. The purpose of the CRDC is to “collect[] a variety of information including student enrollment and educational programs and services, most of which is disaggregated by race/ethnicity, sex, limited English proficiency, and disability. The CRDC is a longstanding and important aspect of the ED Office for Civil Rights (OCR) overall strategy for administering and enforcing the civil rights statutes for which it is responsible.”

¹⁸ U.S. Department of Education, Office for Civil Rights (last updated Jan. 5, 2022), available at <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html>.

¹⁹ “Consideration of Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions,” U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security (last reviewed/updated Aug. 31, 2022), available at <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>.

²⁰ See *supra* note 16. (“Your stories have strongly influenced me . . . “I’m going to take these stories with me . . . I’m going to do everything in my power to support you and support students like you. They are the fabric of this country. It’s such an asset when we give all of our students an opportunity to thrive.”) (quoting Sec. Cardona).

pursue their education and are expected to return to their home country after their studies are complete.

III. The Department of Education should promulgate guidance to institutions on best practices for campus data collection regarding undocumented students, including appropriate precautions to protect student privacy and data minimization practices.

- A. In addition to the alternative guidance that we recommend regarding how institutions should report the race and ethnicity of undocumented students with other domestic students, we encourage the Department to issue clear guidance on how FERPA protects undocumented students' personally identifiable information (and so should not be disclosed in the instance of a FOIA request), how to handle requests for such protected information, etc. The Department should create a working group or other mechanism to follow up with higher education and immigration groups on these practices and receive feedback for the needed guidance above.

IV. The question in Appendix D of whether institutions should report race and ethnicity for international students merits further consideration. While the U.S. categories of race and ethnicity have meaning and significance for the lived experiences of domestic students in the United States, including domestic immigrant students, international students coming to the United States specifically for their post-secondary education do not have the same context for self-identifying their race and ethnicity per U.S. categories.²¹ Indeed, international students arrive on U.S. campuses from over 200 countries. Eliminating the nonresident category and reporting international students in race/ethnicity categories would have significant data continuity issues. Such a count would subsequently increase the proportion of Asian students on many campuses, decreasing the proportion of other racial and ethnic populations and increasing the overall proportion of students of color.²² Thus eliminating the nonresident category could have unintended consequences.

While it is important for campuses to recognize that the complex interplay of race and immigration status applies to both domestic immigrant students and international students,²³ eliminating the nonresident category for IPEDS race and ethnicity reporting requires deeper discussion and careful consideration. We recommend the creation of a Technical Review Panel or more substantive working group. We stand ready to provide technical assistance and expertise to a TRP or working group.

²¹ Bryce Loo, "International Students and Experiences with Race in the United States," *World Education News and Reviews* (March 26, 2019), available at <https://wenr.wes.org/2019/03/international-students-and-experiences-with-race-in-the-united-states>; Elizabeth Buckner et al., "Diversity without Race: How University Internationalization Strategies Discuss International Students," *Journal of International Students* 11(1), no. 1 (2021): 32-49, <https://ojed.org/index.php/jis/article/view/3842/1472>.

²² In 2021, the top three countries of origin for international students were China, India, and South Korea, constituting over 50% of all international students in the United States. See *Open Doors 2021 Report on International Educational Exchange*, Open Doors (Nov. 15, 2021), available at <https://opendoorsdata.org/annual-release/international-students/#download-data>.

²³ Rajika Bhandari and Jill Welch, "Immigration and Racial Equity for Immigrant and International Students," Higher Ed Immigration Portal (Feb. 15, 2022), available at https://www.higheredimmigrationportal.org/effective_practice/immigration-and-racial-equity-for-immigrant-and-international-students/.

The Department of Education has an important opportunity to provide clarification to institutions on how to report undocumented students and continue to advance the equity and racial justice goals of this administration. We thank you for the actions taken to date and those yet to come. If you have any questions about the concerns or recommendations shared in this letter, or other issues regarding IPEDS reporting, and the impact on immigrant and international students, please feel free to contact Miriam Feldblum, Executive Director, Presidents' Alliance on Higher Education and Immigration (miriam@presidentsalliance.org).

Thank you,



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CC: Tara Lawley, Postsecondary Branch Chief, IPEDS Program Director, National Center for Education Statistics

On behalf of:

**Aliento Education Fund
American Association of Collegiate Registrars and Admissions Officers
American Immigration Council
Capital Area Immigrants' Rights (CAIR) Coalition
Clearinghouse on Women's Issues
Feminist Majority Foundation
FWD.us
Hispanic Federation
Immigrants Rising
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Institute for Higher Education Policy (IHEP)
Japanese American Citizens League
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National College Attainment Network
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