

Congress of the United States

Washington, DC 20515

October 14, 2026

The Honorable Linda McMahon
Secretary
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Secretary McMahon:

Your recent decision to reallocate mandatory funding for Minority-Serving Institutions (MSIs) in Fiscal Year 2025 and Fiscal Year 2026 is an illegal violation of Congress' spending authority under the Constitution. No court has found these programs that Congress has funded to be unconstitutional, and the administration's mere belief that they are does not give it the necessary authority to spend those funds for any other purpose or program.

Many of us previously sent you a letter urging you to allocate Title III and Title V discretionary and mandatory funds as Congress directed to the more than 800 federally-recognized MSIs, which include Hispanic-Serving Institutions (HSIs), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISIs), Alaska Native and Native Hawaiian-Serving Institutions (ANNHSIs), Native American-Serving Non-Tribal Institutions (NASNTIs), and Predominantly Black Institutions (PBIs). Combined, these institutions enroll more than 5 million students in rural and urban communities in states across the country. The Higher Education Act created the statutory framework for grants to these institutions, and has been in place for more than 30 years.

In December 2019, Congress passed and President Trump signed into law the bipartisan Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act), permanently authorizing \$255 million in grant funds for MSIs, Historically Black Colleges and Universities (HBCUs), and Tribally Controlled Colleges and Universities (TCCUs). The funds are allocated across seven grant programs, each with a designated funding amount beginning in Fiscal Year 2020 and continuing thereafter. This authorization was an extension of prior mandatory appropriations that began in Fiscal Year 2008 and then expired.

Reallocation of Funds Designated for HSIs, AANAPISIs, ANNHSIs, and NASNTIs

On September 22, 2026, the U.S. Department of Education (ED) announced it would reallocate FY25 and FY26 mandatory funds Congress had specifically allocated for MSIs to HBCUs and TCCUs. In the news release announcing this illegal action, ED announced a "significant, one-time investment of more than \$174 million in additional funding to strengthen" HBCUs, and "a one-time award of more than \$61 million in additional funding" for TCCUs.¹

¹ <https://www.ed.gov/about/news/press-release/us-department-of-education-makes-significant-investment-american-historically-black-colleges-and-universities>

While we strongly support additional funding for HBCUs and TCCUs, increasing funding for some institutions should not come at the expense of others. Furthermore, as previously stated, ED has no authority to redirect mandatory funding for MSIs—in this case, for HSIs, AANAPISIs, ANNHSIs, and NASNTIs—for other purposes or programs. In fact, the entire basis for invalidating and redistributing these funds seems to be a U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC) opinion² from December 2, 2025, which wrongly determined that both discretionary and mandatory grants for HSIs, AANAPISIs, ANNHSIs, and NASNTIs, and discretionary grants for PBIs, were unconstitutional—without any judicial decision squarely dictating such a conclusion, and lacking any statutory authority to spend mandatory funds for anything other than their required purposes.

Shortly thereafter, ED stated that it was evaluating the full impact of the OLC opinion on the programs.³ ED then took several actions which made clear that it would not fund the programs, including by not allowing institutions to reapply for eligibility for the programs, and not including them in the eligibility matrix for Title III and Title V funds.⁴

Reallocation of Funds Designated for PBIs

Even by its own baseless standards, the administration determined in the December 2025 OLC memo that the race-based provisions of this program could be severed and stated that ED could continue to provide these competitive grants for the authorized uses in this program, regardless of whether the grant recipient is a PBI. However, rather than adhering to the statute authorizing this grant program—or even OLC’s own wrongful guidance—ED allocated these funds to grantees under a different program with a separate purpose.

Unnecessarily Accelerating Obligation of FY26 Mandatory Funds

On top of all of this, the Trump administration took the completely unnecessary step of obligating FY26 mandatory funding for these programs a full year before it has historically been done, and a full year before the funds expire. These funds are available for two years—funds becoming available in FY26 are available for obligation through FY27. If ED only continued to award funds on the schedule it has historically, FY26 funds would be awarded this time next year.

The administration has claimed it reallocated these funds so they did not lapse and go to waste. While the Trump administration is perfectly willing to let appropriated funds lapse in other cases, including most recently with international education and migrant and seasonal farmworker education programs, half of the MSI funds it reallocated were not going to lapse this year. Even if one were to take the administration’s misguided legal view of these programs at face value, for half of these funds the choice was not between reallocating funding or having the funds lapse.

² <https://www.justice.gov/olc/media/1421576/dl?inline>

³ <https://www.ed.gov/about/news/press-release/us-secretary-of-education-linda-mcmahon-statement-office-of-legal-counsels-opinion-constitutionality-of-race-based-higher-education-grant-programs>

⁴ <https://www.ed.gov/grants-and-programs/grants-higher-education/eligibility-designations-higher-education-programs>

The administration has said repeatedly it wants to work with Congress on solutions to address the legal status of these programs. While we fundamentally disagree with the administration's view, the administration could have simply continued to administer these funds on the timeline it always has—which means obligating the FY26 funds next September—and waited to see if Congress enacted a solution or a court ruled on the constitutionality of these programs over the course of the next year. In fact, Congress did enact a temporary and albeit imperfect fix in the FY26 Consolidated Appropriations Act when faced with the fact that the Trump administration would otherwise let discretionary funding for MSIs lapse.

This administration unnecessarily reallocated half of these funds in order to put out a press release leading up to midterm elections touting how much funding it was providing to HBCUs and Tribal Colleges—while robbing MSIs of investments Congress has provided them. It is offensive that the Trump administration is pitting these institutions of higher education and the students they serve against each other, and going to extra lengths to do so. If President Trump and this administration were serious about investing in all of these institutions—as each of us is—the president would push for more funds for them instead of seeking to slash education programs while supersizing the Pentagon's budget.

The law is clear. Congress mandated that funds, with specific statutorily prescribed amounts, be provided for each grant program with specific statutorily defined purposes in each fiscal year. To be clear, mandatory funding for HBCUs, TCCUs, HSIs, AANAPISIs, ANNHSIs, NASNTIs, and PBIs—as provided by the FUTURE Act—cannot be reallocated for other purposes or programs without explicit authorization from Congress. ED does not have the unilateral authority to reallocate these funds.

The Executive Branch's improper use of mandatory funds plainly violates Article I of the Constitution, which delegates the spending power to Congress. By failing to follow the law and fund programs as Congress directed, and to instead allocate funds for other unauthorized purposes, the Executive Branch has clearly exceeded its Constitutional authority. ED must immediately remedy these illegal actions and restore the funds that were illegally taken away from HSIs, AANAPISIs, ANNHSIs, NASNTIs, and PBIs. Increases in funding for HBCUs and TCCUs should not come at the expense of other critical institutions of higher education. We would welcome the opportunity to work on a bipartisan basis with the administration to increase investments in MSIs, HBCUs, and TCCUs.

Thank you for your attention to this urgent matter. We look forward to your response.

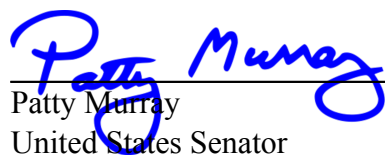
Sincerely,



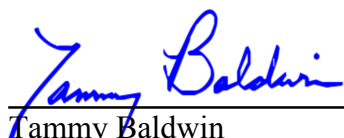
Mazie K. Hirono
United States Senator



Bernard Sanders
United States Senator
Ranking Member, Committee
on Health, Education, Labor,
and Pensions



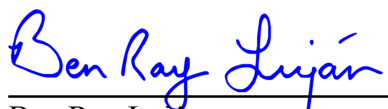
Patty Murray
United States Senator



Tammy Baldwin
Ranking Member
Appropriations Subcommittee
on Labor, Health and Human
Services, Education, and
Related Agencies



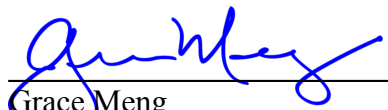
Richard J. Durbin
United States Senator
Ranking Member, Senate
Committee on the Judiciary



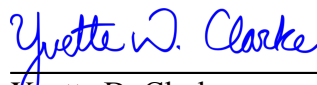
Ben Ray Lujan
United States Senator



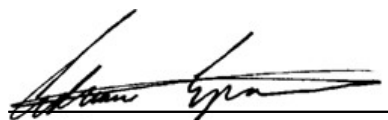
Alex Padilla
United States Senator



Grace Meng
Chair, Congressional Asian
Pacific American Caucus



Yvette D. Clarke
Member of Congress



Adriano Espaillat
Member of Congress



Christopher A. Coons
United States Senator



Angela D. Alsobrooks
United States Senator



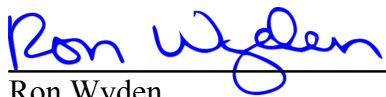
Eleanor Holmes Norton
Member of Congress



Jack Reed
United States Senator



Mark Takano
Member of Congress



Ron Wyden
United States Senator



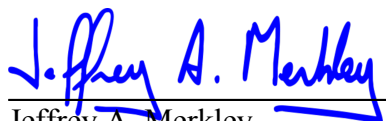
Danny K. Davis
Member of Congress



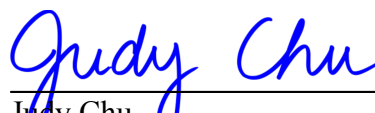
Tim Kaine
United States Senator



Raja Krishnamoorthi
Member of Congress



Jeffrey A. Merkley
United States Senator



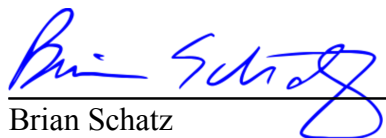
Judy Chu
Member of Congress



Adam B. Schiff
United States Senator



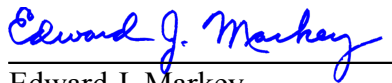
Jesús G. "Chuy" García
Member of Congress



Brian Schatz
United States Senator



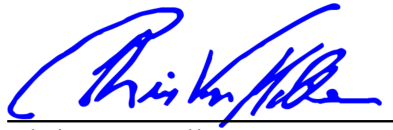
Dina Titus
Member of Congress



Edward J. Markey
United States Senator



Paul D. Tonko
Member of Congress



Chris Van Hollen
United States Senator



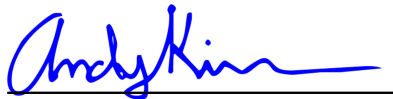
Melanie Stansbury
Member of Congress



Cory A. Booker
United States Senator



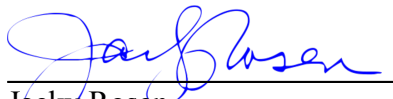
Jim Tokuda
Member of Congress



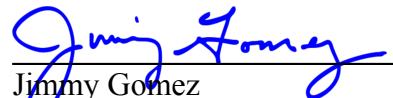
Andy Kim
United States Senator



Robin L. Kelly
Member of Congress



Jacky Rosen
United States Senator



Jimmy Gomez
Member of Congress



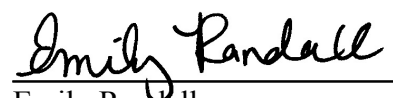
Tammy Duckworth
United States Senator



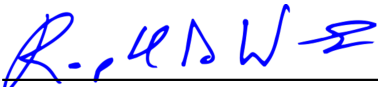
Mark DeSaulnier
Member of Congress



Ruben Gallego
United States Senator



Emily Randall
Member of Congress



Raphael Warnock
United States Senator



Jasmine Crockett
Member of Congress



Mark R. Warner
United States Senator



Joaquin Castro
Member of Congress



Richard Blumenthal
United States Senator



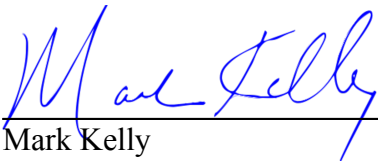
Ed Case
Member of Congress



Elizabeth Warren
United States Senator



J. Luis Correa
Member of Congress



Mark Kelly
United States Senator



Suzanne Bonamici
Member of Congress



Michael F. Bennet
United States Senator



Sylvia R. Garcia
Member of Congress



Robert J. Menendez
Member of Congress



Ted W. Lieu
Member of Congress



Mike Thompson
Member of Congress



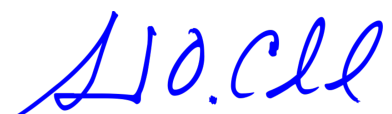
Derek T. Tran
Member of Congress



Lateefah Simon
Member of Congress



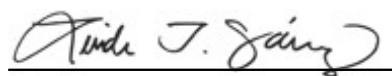
George Whitesides
Member of Congress



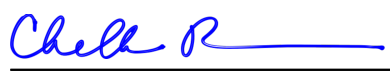
Salud Carbajal
Member of Congress



Greg Stanton
Member of Congress



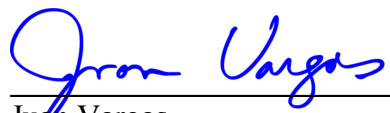
Linda T. Sánchez
Member of Congress



Chellie Pingree
Member of Congress



Darren Soto
Member of Congress



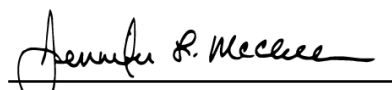
Juan Vargas
Member of Congress



Teresa Leger Fernandez
Member of Congress



Adelita S. Grijalva
Member of Congress



Jennifer L. McClellan
Member of Congress



Kevin Mullin
Member of Congress

A stylized, handwritten signature in black ink, appearing to read 'Rob Garcia', is positioned above a horizontal line.

Robert Garcia
Member of Congress