

Congress of the United States

Washington, D.C. 20515

June 15, 2022

Delivered via E-Mail

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

Dear Secretary Cardona:

It is clear that you, the Biden administration, and your Department have no interest in following the law. Our offices sent more than 10 letters and made countless briefing requests to ensure that the Department abides by the laws Congress has enacted. It is our duty as ranking members of the House and Senate education committees to conduct oversight of your Department on behalf of taxpayers. Today we award you an “F” due to your dismissive failure to ensure student loans are administered and payments are collected in accordance with the law.

The Department continues to pretend student loans will eventually go back into repayment when talking to Congress while simultaneously telling the country the repayment pause will remain until a decision is made on broad student loan forgiveness. Thankfully, as time passes, more and more of the American public is realizing that the administration does not have the authority to enact these radical policies by executive fiat. Most recently, the former General Counsel for the Department of Education during the Obama administration stated, “If the issue is litigated, the more persuasive analyses tend to support the conclusion that the Executive Branch likely does not have the unilateral authority to engage in mass student debt cancellation.” Therefore, it is no surprise that both Speaker Pelosi¹ and President Biden² have outright rejected or admitted skepticism that this authority exists. Even the liberal *New York Times* Editorial Board wrote that “[s]uch a move is legally dubious, economically unsound, politically fraught and educationally problematic.”³

It is clear, however, that your agency does not care about the limits of its executive authority or the perilous economic impact of its actions. You proudly announce that the Department has

¹ <https://www.cnbc.com/2021/07/28/pelosi-says-biden-doesnt-have-authority-to-cancel-student-debt-.html>

² <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/17/remarks-by-president-biden-in-a-cnn-town-hall-with-anderson-cooper/>

³ <https://www.nytimes.com/2022/05/14/opinion/student-debt-cancel.html>

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forgiven at least \$25 billion in student loan debt.⁴ This does not include the \$83 billion cost to taxpayers for your continual extensions of the repayment pause or the untold hundreds of billions forgiven through your unlawful “waivers.” To achieve this, the Department has taken 14 legally dubious actions—all at taxpayer expense. Our staff previously asked the Department to specify which statutory authority was being used for each of these actions. Your staff concealed the answer to this question by responding that the Department is relying on “multiple authorities.” Then, on April 26, 2022, our staff emailed your staff the chart below and asked them to cite the legal authority for each action. We have yet to receive a response.

Ignoring our questions is your Department’s modus operandi. Yet, Congressional oversight is not an option. It is there to ensure that you and your Department are accountable to the American people

Given the expected announcement on more misguided and illegal student debt cancellation, we request that the Department fill in the “Legal Authority” column for each action in the chart provided below. Please provide a response by June 22, 2022.

Thank you for your attention to this matter.

Sincerely,



Richard Burr
Ranking Member
U.S. Senate Committee on Health,
Education, Labor and Pensions



Virginia Foxx
Ranking Member
U.S. House Committee on Education and
Labor

⁴ <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-cornithian-colleges>

ATTACHMENT

Actions related to the cessation of interest accrual, payments, and involuntary collections			
Date	Action	Source	Legal Authority
January 21, 2021	<ul style="list-style-type: none"> Extension of cessation of interest accrual, payments, and involuntary collections on ED-held loans through September 30, 2021 	https://www.ed.gov/news/press-releases/request-president-biden-acting-secretary-education-will-extend-pause-federal-student-loan-payments https://web.archive.org/web/20210122141713/https://studentaid.gov/announcements-events/coronavirus	???
March 30, 2021	<ul style="list-style-type: none"> Cessation of interest accrual and involuntary collections on guaranty agency-held FFEL program loans, retroactive to March 13, 2020 Transfer of FFEL program loans that defaulted since March 13, 2020, to ED and placement of such loans into good standing. In effect, this ensured that such loans are now considered “ED-held” and are subject to the cessation of interest accrual and payments, retroactive to March 13, 2020. 	https://www.ed.gov/news/press-releases/department-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default GEN-21-13, Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021)	???
August 6, 2021	Extension of cessation of interest accrual, payments, and involuntary collections through January 31, 2022	https://www.ed.gov/news/press-releases/biden-administration-extends-student-loan-pause-until-january-31-2022	
December 22, 2021	Extension of cessation of interest accrual, payments, and involuntary collections through May 1, 2022	https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-may-1-2022	???
April 6, 2022	Extension of cessation of interest accrual, payments, and involuntary collections through August 31, 2022	https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31	???

Other Student Loan Related Actions			
Date	Action	Source	Legal Authority
March 29, 2021	<ul style="list-style-type: none"> Suspension of requirement that certain borrowers who received a TPD discharge provide subsequent earnings documentation in accordance with the 3-year monitoring period during the COVID-19 emergency Restoration of TPD loan discharge for borrowers whose loans were reinstated because they did not submit earnings documentation in accordance with the 3-year monitoring period between March 13, 2020, and the end of the COVID-19 emergency; resumption of such borrower's 3-year monitoring period based on original discharge date	https://www.ed.gov/news/press-releases/education-department-announces-relief-student-loan-borrowers-total-and-permanent-disabilities-during-covid-19-emergency	???
August 19, 2021	Indefinite extension of suspension of requiring borrowers to provide earnings data during the 3-year TPD discharge monitoring period	https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges	???
October 6, 2021	<ul style="list-style-type: none"> Establishment of PSLF Limited Waiver 	https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness	???

		https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul	
January 13, 2022	Waiver of 3-year cumulative limit on forbearances for Perkins Loan borrowers during the COVID-19 emergency, retroactive to March 13, 2020	https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-01-13/waiver-three-year-cumulative-limit-forbearances-federal-perkins-loan-borrowers	???
April 6, 2022	Elimination of “the impact of delinquency and default and allowing [borrowers] to reenter repayment in good standing.”	https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31	???
April 19, 2022	Income-driven repayment plan waivers and updated PSLF waivers including: <ul style="list-style-type: none"> • counting certain long-term forbearances toward IDR and PSLF forgiveness • counting most periods of deferment prior to 2013 toward IDR forgiveness • counting payments made prior to loan consolidation toward IDR forgiveness • revising IDR-qualifying payments for Direct Loans and ED-held FFEL program loans to include any month in which a borrower made a payment, regardless of the repayment plan automatic forgiveness for borrowers with loans that “have accumulated time in repayment of at least 20 or 25 years” even if borrower is not	https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs https://studentaid.gov/announcements-events/idr-account-adjustment	???

	currently enrolled in an IDR plan		
unclear	Any balance of unpaid interest on a borrower's loan before March 13, 2020, will not be capitalized when through March 1, 2023, unless the borrower consolidates their loan.	https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest	???
unclear	Borrowers receiving Teacher Loan Forgiveness may count the period of service that led to their eligibility towards period of service for PSLF if they certify PSLF employment for that period	https://studentaid.gov/announcements-events/pslf-limited-waiver	???
June 1, 2022	Discharge of all remaining federal student loans borrowed to attend Corinthian Colleges Inc. from its founding in 1995 through its closure in April 2015.	https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges	???