

United States Senate

November 16, 2023

VIA ELECTRONIC TRANSMISSION

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

Dear Secretary Cardona:

In October 2023, the U.S. Government Accountability Office (GAO) informed our offices that the Department of Education (ED) is applying the Executive Branch’s Controlled Unclassified Information (CUI) designation to content in GAO reports slated for public release.

Our concerns relate to GAO’s November 16, 2023 report, “Student Loans: Education Should Proactively Manage Fraud Risks in Any Future Debt Relief Efforts.”¹ During its review of the public release version of this report, ED applied the CUI designation to entire sentences, and, in one case, an entire footnote. GAO made changes to its report to address ED’s concerns. Our staff reviewed an unamended version of GAO’s report and were unable to determine a reasonable justification for ED’s CUI classifications.

We also understand that ED attempted to apply the CUI designation to materials associated with another draft report that GAO is preparing, including information that ED itself previously made public. This raises serious questions about the review process that ED follows when examining GAO reports. It also raises concerns that ED may be using the CUI designation to sanitize embarrassing or otherwise unfavorable information in GAO reports and shield it from public release.

As you know, GAO is “[l]ocated in the legislative branch” and “is an independent agency that provides Congress with objective, nonpartisan, and evidence-based information, analysis, and recommendations.”² In this capacity, GAO’s work helps Congress to inform the public about how the government is operating. The work that GAO completes in response to legislative mandates is publicly available as soon as it is issued to Congress, and unclassified GAO reports are made available to the public at no cost.³

As members of Congress, we recognize the need to protect highly sensitive information from public release when it poses a threat to public safety or is required by statute. When there is no

¹ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, RESTRICTED REPORTS, <https://www.gao.gov/reports-testimonies/restricted>.

² *GAO: Evolving and Innovating to Meet Congressional Needs*, Hearing Before the Subcomm. on Modernization, Comm. on H. Admin., 107th Cong. (2023), <https://files.gao.gov/reports/GAO-23-900536/index.html>.

³ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT AND TESTIMONIES, <https://www.gao.gov/about/what-gao-does/reports-testimonies>.

legitimate basis for safeguarding information, however, it is important to ensure maximum transparency for the American people. The Executive Branch should never unnecessarily apply its own designations just to hide material from the public because it is embarrassing or difficult to explain.

We have serious questions about the process that ED followed when conducting its sensitivity review of this report. We also have serious concerns that ED has been improperly applying the Executive Branch's CUI designation.

In order for Congress to ensure that ED and the GAO are providing the American people as much transparency as possible, we ask that you respond to the following, on a question-by-question basis, no later than November 30, 2023.

1. Please provide a detailed description of the process that ED follows when conducting sensitivity reviews of GAO reports prior to their public release.
2. Please include the names and positions of senior ED officials who are involved in the review process.
3. Does ED follow the National Archives and Records Administration's Marking Controlled Unclassified Information handbook?⁴
4. Please provide copies of all internal policies, guidance documents, and memoranda pertaining to ED's use and application of the CUI designation.
5. Please provide all versions of GAO's November 16, 2023 report, "Student Loans: Education Should Proactively Manage Fraud Risks in Any Future Debt Relief Efforts" (the report) which contain banner markings and related notes. These documents should clearly indicate the CUI categories and safeguarding and/or dissemination authorities used.
6. Please provide a written explanation of why ED believes the CUI designations it applied to the report are necessary and appropriate.
7. Please provide all communications between ED and GAO relating to ED's sensitivity review of the report.
8. Did ED recently mark information associated with a GAO draft report as CUI even though the information was publicly available? If yes, please explain the circumstances that led to this mistake and provide an accounting of actions that ED has taken to update its policies and procedures in response.
9. Please provide all versions of prior GAO reports regarding fraud vulnerabilities in Federal Student Aid programs (listed below), which contain any notes from ED regarding any prior CUI designations.

⁴ NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, MARKING CONTROLLED UNCLASSIFIED INFORMATION (Dec. 6, 2016), <https://www.archives.gov/files/cui/documents/20161206-cui-marking-handbook-v1-1-20190524.pdf>.

- a. Federal Student Loans: Education Needs to Verify Borrowers' Information for Income-Driven Repayment Plans (2019)
- b. Federal Student Loans: Education Needs to Improve Its Income-Driven Repayment Plan Budget Estimates (2017)
- c. Education Financial Management: Weak Internal Controls Let to Instances of Fraud and Other Improper Payments (2002)
- d. Taxpayer Information: Increased Sharing and Verifying of Information Could Improve Education's Award Decisions (2003)
- e. Office of Federal Student Aid: Better Strategic and Human Capital Planning Would Help Sustain Management Process (2004)

Thank you for your prompt attention to this important matter.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
Senate Committee on Health,
Education, Labor, and Pensions



Rand Paul, M.D.
Ranking Member
Committee on Homeland
Security and Governmental Affairs