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COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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November 16, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Gene Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street NW
Washington, D.C., 20548

Dear Mr. Dodaro,

Recently, the Biden Administration has taken a series of actions that have challenged the U.S. Government Accountability Office's (GAO) ability to effectively carry out its responsibilities. It has slow-walked GAO requests and, according to reports received by my office, improperly flagged information in a GAO report as Controlled Unclassified Information (CUI) unsuitable for public release. While this stonewalling is not GAO's fault, I am concerned that GAO has assumed a deferential posture in order to maintain relationships with the Department of Education (ED). By giving into ED's demands, GAO has missed deadlines set by Members of Congress and made seemingly unnecessary alterations to one of its reports. These decisions have also interfered with the release of a GAO legal opinion and interfered with congressional efforts to provide transparency regarding ED's action on student loans, which is unacceptable.

On September 23, 2022, for example, I and several other House and Senate colleagues sent a letter to GAO requesting that it determine whether President Biden's August 24, 2022, executive action to cancel up to \$20,000 per borrower of federal student loan debt should have been submitted as a rule to Congress.¹ If GAO determined it should have been, this would have made it eligible to be struck down by a Congressional Review Act (CRA) resolution of disapproval. GAO requested information from ED on October 17, 2022; however, the Biden Administration failed to respond to this request for just over four months. Instead of moving forward in order to provide a timely response to Congress, GAO repeatedly delayed issuing its opinion. It did so despite the fact that there was a clear historical precedent for GAO to move forward without a departmental or agency

¹ Letter from Hon. Bill Cassidy, U.S. Senator, Hon. Virginia A. Foxx, Ranking Member, U.S. House Committee on Education and Labor, Hon. Richard Burr, Ranking Member, U.S. Senate Committee on Health, Education, Labor and Pensions, Hon. Bob Good, U.S. Congressman, Hon. Mariannette Miller-Meeks, U.S. Congresswoman, and Hon. John Cornyn, U.S. Senator, to Hon. Gene L. Dodaro, Comptroller General of the United States (September 23, 2022) (on file with Committee staff).

response to its information request. I even had to call you personally on February 27, to insist that GAO move forward with the request. Ultimately, GAO did not issue its decision that ED's actions constituted a rule for purposes of the CRA until March 17, nearly six months after my colleagues and I requested that GAO look into the matter.

Another matter that I find equally concerning relates to GAO's willingness to reword and, in some cases, even delete content from the public release version of a GAO management report at the request of the Biden Administration. Last month, GAO informed my office that ED was applying the Executive Branch's CUI designation to content in GAO's November 16, 2023 report, "Student Loans: Education Should Proactively Manage Fraud Risks in Any Future Debt Relief Efforts."² The report is critical of ED's processes. During its review of the report, ED applied the CUI designation to entire sentences, and, in one case, an entire footnote, effectively designating them as unsuitable for public release. GAO staff told my office that they did not believe these designations were warranted; however, GAO agreed to make at least some of the requested changes to the public release version of its report, anyway.

To GAO's credit, I understand that it pushed back recently when ED designated already-public content associated with one of its forthcoming reports as CUI and that ED backed down from those unwarranted classifications. This is certainly a step in the right direction, but doesn't go far enough. GAO is part of the Legislative Branch and plays a critical role helping Congress to fulfill its constitutional responsibility to conduct oversight of the Executive Branch. According to GAO's list of core values, it is responsible for providing Members of Congress "high quality reports, testimony, briefings, legal opinions, and other products and services that are timely, accurate, useful, clear, and candid."³

When GAO believes the Biden Administration is improperly applying the CUI designation to content in its reports, it should push back consistently and it should not take actions that it believes are unwarranted. It is critical to ensure maximum transparency for the American people when there is no legitimate basis for safeguarding information. Going forward, when the Executive Branch delays or makes unreasonable demands, GAO must take a firm stand and remember that it serves the needs of a separate and coequal branch of the U.S. Government.

I would welcome any legislative recommendations you suggest to ensure your office can effectively serve Congress when Executive Branch agencies are uncooperative, unresponsive, or fail to follow applicable federal laws or final regulations. In order to ensure that GAO is fulfilling its responsibilities to Congress, I ask that you respond to the following, on a question-by-question basis, no later than November 30, 2023.

1. Please explain why GAO waited six months to issue a determination in response to the request contained in my September 23, 2022, letter with other Members of Congress.
2. Does GAO believe the timeline in which it responded to the September 23, 2022, request was necessary and appropriate?

² U.S. GOVERNMENT ACCOUNTABILITY OFFICE, RESTRICTED REPORTS, <https://www.gao.gov/reports-testimonies/restricted>.

³ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, OUR CORE VALUES, <https://www.gao.gov/about/what-gao-does/our-core-values>.

3. 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.
4. Does GAO believe that the CUI designations applied by the Executive Branch to this report are necessary and appropriate? If not, please explain why not.
5. Has GAO made any changes to this report that it believes are unnecessary? If yes, please explain why GAO made the changes.
6. As a general matter, does GAO believe it has an obligation to alter content in public release versions of its reports when requested by the Executive Branch, even in cases where GAO does not believe the request is justified?
7. Please provide all communications between GAO and ED relating to ED's sensitivity review of the report.

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