

Congress of the United States

Washington, D.C. 20515

January 6, 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:

On October 29, 2021, we wrote to you about the Department of Education's (Department) October 6 announcement of "Transformational Changes to the Public Service Loan Forgiveness Program."¹ When announcing these changes, the Department claimed a liberal reading of a statute to find the executive authority to move forward. In light of this overtly political reading of the statute, we requested the production of various documents to understand the Department's rationale for its decision and the supposed authority to change unilaterally statutory requirements prescribed by Congress. We also requested a briefing with Under Secretary James Kvaal and General Counsel Lisa Brown to hear directly from the two Senate confirmed individuals who are charged with overseeing these actions. While the briefing with Mr. Kvaal was finally scheduled months after our request, your staff refused to include the General Counsel in that briefing. We appreciate the Under Secretary's time and the Department accommodating our busy schedules, even helping us reschedule once due to floor votes, but noticeably absent was General Counsel Brown. Because of her absence, there are several questions that were not answered in that briefing.

For example, Mr. Kvaal was asked multiple times why the Department believes it has the authority to waive existing statutory requirements. He continued to point to the *Higher Education Relief Opportunities for Students Act of 2003* (HEROS Act).² Mr. Kvaal explained that the Office of the General Counsel (OGC) was consulted during the development of the policy and that OGC advised that the language of the HEROS Act allowed the Department to carry out the Public Service Loan Forgiveness (PSLF) waiver. We suspected this would be the answer, which is why our October 29 letter requested that General Counsel Brown be present at the briefing in addition to the production of "any and all legal analyses conducted by the Department." In further proof that Ms. Brown's absence was detrimental to our oversight effort, when Mr. Kvaal was asked to provide a copy of the legal memorandum from OGC, Mr. Kvaal

¹ <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>

² P.L. 108-76

declined to provide a direct answer and asked that we submit this request in writing, despite this request being among the many that remain outstanding from the letter.

As such, we are once again submitting our request for the following information to be submitted in writing no later than two weeks after the date of this letter:

- 1) Any and all legal analyses conducted by the Department as well as all documents and communications related to such legal analyses;
- 2) Any and all budget analyses of the costs related to the announced policy change;
- 3) The total number of borrowers who have received PSLF, organized by year and average amount forgiven, as well as the minimum and maximum amount forgiven for borrowers for each year;
- 4) The total number of borrowers registered under PSLF and the aggregate debt of those registered;
- 5) Any and all analyses of the potential number and aggregate debt of borrowers with ineligible student loans who work in public service who this policy aims to cover;
- 6) Any and all analyses of the potential number and aggregate debt of borrowers in ineligible repayment plans who work in public service who this policy aims to cover;
- 7) Any and all analyses of the potential number and aggregate debt of borrowers with ineligible student loans who are also in ineligible repayment plans who this policy aims to cover;
- 8) All documents and communications related to the announced changes to the PSLF program via executive powers;
- 9) Any and all basis for creating an affected individual class under the HEROS Act of persons who have not been in compliance with 20 U.S.C. 1087(m) prior to the beginning of the national emergency; and
- 10) An in-person briefing by General Counsel Lisa Brown and Under Secretary James Kvaal about the legal basis for the Department's action.

We would like to remind the Department that Under Secretary Kvaal, General Counsel Brown, and yourself all provided personal assurances during the confirmation process that each of you would be responsive to all Congressional oversight requests. Continued failure to work with Congress simply serves to further diminish possibilities of working together in the future.

Please contact Sandra Sawan Lara (sandra_sawanlara@help.senate.gov) of Ranking Member Burr's staff and Mandy Schaumburg (mandy.schaumburg@mail.house.gov) of Ranking Member Foxx's staff should you have any questions about the request. Thank you for your attention to this matter and we look forward to your timely reply.

Sincerely,



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



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