

VIRGINIA FOXX, NC
Chairwoman

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ROBERT C. "BOBBY" SCOTT, VA
Ranking Member

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COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

January 12, 2023

President Joe Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Biden:

The Members of the 118th Congress were recently sworn in and, with this new Congress, we have new leadership in the House of Representatives. As the newly elected Chair of the Committee on Education and the Workforce, it is my responsibility to ensure accountability and transparency from federal agencies under the Committee's jurisdiction. With this letter, I am officially putting you on notice that your administration has an obligation to provide timely and complete responses to inquiries and requests made by the Committee.

During the first two years of the Biden administration, agencies have failed to comply fully with congressional oversight letters. I hope that this will end and we can expect robust responses from you in a timely manner to every letter sent from the Committee or its members.

Enclosed is a copy of a May 19, 2022, letter Committee Republicans sent seeking information about your administration's continuation of the designation of a public health emergency. The Committee expects your administration to provide timely and complete responses to the enclosed letter. You are instructed to respond in writing by no later than January 27, 2023, with your plans for responding to this letter. Enclosed is a copy of the Committee's instructions to be followed for responses to oversight requests. You are expected to comply with them as you respond to this letter, the enclosed letter, and all others issued by the Committee during the 118th Congress. Failure to do so may result in the Committee taking more robust actions to ensure compliance with its oversight requests.

Sincerely,

A handwritten signature in blue ink that reads "Virginia Foxx".

Virginia Foxx
Chairwoman

Enclosures

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VACANCY

May 19, 2022

President Joe Biden
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20050

Dear President Biden:

We write to express our concerns regarding the Biden administration's continuation of the COVID-19 public health emergency (PHE) declaration and to call on the administration to release its plan to wind down the PHE and begin transitioning the purchasing, distribution, and coverage of COVID-19 vaccines, treatments, and tests to the private market. We further call on the administration to work with employers, health care plans, and states to help Medicaid enrollees, who may no longer qualify for Medicaid when the PHE expires, transition to employer-sponsored plans when eligible. We also question the requests for new COVID-19 spending measures when the administration has acknowledged the pandemic is over. Lastly, we encourage the administration to provide consistent and factual information regarding the end of the pandemic.

Need for Offramp Plan

As the federal government looks to wind down the COVID-19 PHE and transition away from purchasing all COVID-19 vaccines, the Biden administration should quickly inform the American public and private insurers of the planned offramp. In the White House's letter to Speaker Pelosi requesting \$22.5 billion in emergency funding, the administration states the consequences of a lack of funding include "no additional purchases of monoclonal antibodies sent to states, fewer tests made in America, fewer treatments for the immune-compromised, and a risk of running short on vaccines."¹ Many of the funding issues raised by the letter can and should be addressed by the commercial health care market. We, therefore, encourage the

¹ Letter from Shalanda D. Young, Acting Dir., Off. of Mgmt. & Budget, & Jeffrey D. Zients, White House Coordinator for COVID-19 Response, to Speaker Nancy Pelosi (Mar. 15, 2022), <https://www.politico.com/f/?id=0000017f-8e53-d4fc-a1ff-bef76b0b0000>.

administration to take the following actions:

- allow the commercial market, states, and localities to procure and distribute COVID-19 vaccines and boosters;
- allow the commercial market, states, and localities to procure and distribute medical countermeasures, including monoclonal antibody treatments, oral antiviral pills, and preventative treatments for immunocompromised individuals; and
- fully transition the responsibility of COVID-19 testing of privately insured individuals—and maintaining the testing capacity for this population—to the commercial market.

Medicaid Transition after the PHE

Medicaid enrollment is at a record high due to COVID-19 policy changes, with nearly 18 million enrollees added in the past two years and a nearly 17 percent annual increase since the pandemic began.² When the PHE ends, millions of Americans may learn that they no longer qualify for health coverage under Medicaid. The *Families First Coronavirus Response Act* required states to suspend Medicaid eligibility terminations and maintain coverage for nearly all existing enrollees for the duration of the PHE.³ One study estimates that 65 percent of Americans who will no longer qualify for Medicaid will qualify for employer-sponsored coverage. Only 1.6 percent of individuals are expected to have no health coverage options.⁴

We are concerned that the Biden administration is not offering clear guidance to plans, employers, navigators, and brokers on informing patients of their employer-sponsored coverage options. The administration should also include information about individuals' employer-sponsored coverage options in its public health care coverage and access documents, outreach, and advertisements. When asked at a Committee hearing about how the administration plans to address the Medicaid redetermination cliff and ensure individuals on Medicaid are aware of their private coverage options other than ACA exchanges, Secretary Becerra stated only that the administration is working with states. He did not mention engagement with employer groups, private businesses, plans, third-party administrators, or navigators.⁵ The Biden administration should ensure that any offramp for Medicaid beneficiaries includes private plans and employers so that individuals on Medicaid are informed of their employer-sponsored coverage options.

² JONATHAN BAIN & JONATHAN INGRAM, FOUND. FOR GOV'T ACCOUNTABILITY, HOW THE BIDEN ADMINISTRATION'S PLAN WOULD TIGHTEN THE MEDICAID HANDCUFFS (Mar. 15, 2022), <https://thefga.org/paper/bidens-plan-would-tighten-the-medicaid-handcuffs/>.

³ Pub. L. No. 116-127, § 6008 (2020).

⁴ MATTHEW BUETTGENS & ANDREW GREEN, URBAN INST., WHAT WILL HAPPEN TO UNPRECEDENTED HIGH MEDICAID ENROLLMENT AFTER THE PUBLIC HEALTH EMERGENCY?, (Sept. 2022), https://www.urban.org/sites/default/files/publication/104785/what-will-happen-to-unprecedented-high-medicaid-enrollment-after-the-public-health-emergency_0.pdf.

⁵ *Examining the Policies and Priorities of the U.S. Department of Health and Human Services: Hearing Before H. Comm. on Educ. & Lab.*, 117th Cong. (2022).

Concerns with New COVID-19 Emergency Spending Measures

Dr. Anthony Fauci, Chief Medical Advisor to the President, recently announced that the United States is now “out of the pandemic phase.”⁶ Any American over the age of five can receive a vaccine, and more than 250 million Americans have had at least one dose of a safe, effective COVID-19 vaccine.⁷ The federal government has spent over \$5 trillion fighting this pandemic, and more emergency supplemental packages are unlikely to change the endemic nature of this disease.⁸ Emergency government intervention and appropriations may have been appropriate during the chaotic and uncertain times of the early pandemic; however, these kinds of measures are no longer smart or fiscally responsible. This includes further extensions of the \$5 billion per month federal student loan repayment moratorium and hundreds of billions in proposed loan forgiveness when college graduates have near-record low unemployment and less than one percent of private student loan borrowers are receiving emergency relief. Further, new emergency COVID-19 funding and broad-based federal student loan forgiveness will only worsen inflation, cost taxpayers even more, delay the inevitable return to pre-COVID-19 health care operations, and further complicate the resumption of student loan payments.

Inconsistent Information

Lastly, we encourage the Biden administration to provide consistent information regarding the end of the pandemic. COVID-19 case counts, hospitalizations, and deaths have experienced sharp declines compared to a few months ago.⁹ Mask and vaccine mandates have been dropped. Nearly all schools are full-time and in-person.¹⁰ The Biden administration contradicts itself by indicating the pandemic is over for illegal immigrants by lifting Title 42 while also maintaining federal mask mandates for children over 2 in Head Start, despite a majority of the Senate voting to strike down the mandate. The administration also maintains masking in transportation, increasing Obamacare subsidies, and expanding Medicaid eligibility. Americans are increasingly frustrated by the administration’s response to the COVID-19 pandemic and are eager to return to normal.¹¹

To understand the administration’s plans for transitioning out of the PHE, please provide responses to the following questions by no later than June 3, 2022.

⁶ Dr. Fauci on why the U.S. is ‘out of the pandemic phase,’ PBS NEWS HOUR, Apr. 26, 2022, <https://www.pbs.org/newshour/show/dr-fauci-on-why-the-u-s-is-out-of-the-pandemic-phase-2>.

⁷ See *How Vaccinations Are Going in Your County and State*, N. Y. TIMES, Apr. 29, 2022, <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html>.

⁸ Alicia Parlapiano et al., *Where \$5 Trillion in Pandemic Stimulus Money Went*, N. Y. TIMES, Mar. 11, 2022, <https://www.nytimes.com/interactive/2022/03/11/us/how-covid-stimulus-money-was-spent.html>.

⁹ *Coronavirus in the U.S.: Latest Map and Case Count*, N. Y. TIMES, <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

¹⁰ Lauren Camera, *Nearly 100% of Students Back to School Full Time and In Person*, U.S. NEWS & WORLD REPORT, Dec. 15, 2021, <https://www.usnews.com/news/education-news/articles/2021-12-15/nearly-100-of-students-back-to-school-full-time-and-in-person#:~:text=Ninety%2Dnine%20percent%20of%20public,a%20new%20Education%20Department%20portal>.

¹¹ Nate Cohn, *Americans Are Frustrated With the Pandemic. These Polls Show How Much*, THE NEW YORK TIMES, Feb. 8, 2022, <https://www.nytimes.com/2022/02/08/us/politics/covid-restrictions-americans.html?msclkid=59a91089c0d011ecbc101a51e689904c>.

Questions—Procurement and Distribution of COVID-19 Vaccines, Treatments, and Testing

1. What is the administration’s strategic plan to wind down the federal government’s purchase of vaccines, treatments, and tests?
2. Can products approved under an Emergency Use Authorization (EUA) be purchased in the commercial market?
3. The Pfizer vaccine is fully approved for individuals above the age of 16 but is under an EUA for other age groups. Can these “mixed-status” products be purchased in the commercial market?
4. Does the administration plan to move to a hybrid model in which some products are still purchased by the government while private purchases are also allowed?
5. If there are additional COVID-19 appropriations, what is the plan for the private purchase of COVID-19 medical countermeasures in the future?
6. When the federal government transitions the purchase and distribution of COVID-19 medical countermeasures to the private sector, insurers will need time to establish new contracts and negotiate prices to purchase products. Does the administration have a plan to provide advanced notice to stakeholders when certain supplies will no longer be provided free of charge?
7. The *American Rescue Plan Act* (ARPA) made \$350 billion available to state and local governments for their COVID-19 response. Much of this funding remains unspent by states.¹² Does the administration plan to allow states to use unspent COVID-19 funds to purchase COVID-19 medical countermeasures?

Questions—Medicaid Redetermination

8. Please describe outreach efforts made by the Department of Labor and the Department of Health and Human Services to engage with private employers, commercial plans, and others regarding individuals’ employer-sponsored health care options and state Medicaid redeterminations.
 - a. How does the administration plan to inform ineligible Medicaid enrollees of their private health coverage options, including employer-sponsored coverage?
 - b. How is the administration advising states to engage with employers and commercial plans when providing guidance to individuals who no longer qualify for Medicaid? How should employers and plans inform these individuals of their private health coverage?
 - c. How is the administration advising navigators and private health brokers to engage with Medicaid beneficiaries who are no longer eligible for the program? How should navigators and brokers inform these individuals of their private health coverage?
9. Please describe any assistance navigators currently provide to individuals seeking to enroll in employer-sponsored health coverage.

¹² Sheryl Gay Stolberg, *As Biden Pleads for More Covid Aid, States Are Awash in Federal Dollars*, N.Y. TIMES, Apr. 1, 2022, <https://www.nytimes.com/2022/04/01/us/politics/covid-relief-funds.html>.

10. Will plans be required to create a special enrollment period for Medicaid beneficiaries who are no longer eligible for the program?
11. Will a beneficiary's unenrollment in Medicaid be considered a qualifying life event for the purposes of reenrollment in an employer-sponsored plan?
12. Does the administration have a communications plan specifying what plan flexibilities will be revoked at the end of the PHE?

Questions—COVID-19 Supplemental Request


13. In April 2021, HHS notified Congress of a transfer of \$850 million from the Strategic National Stockpile to address unaccompanied alien children (UAC) arriving at or crossing the southern border.¹³ Additionally, the administration reprogrammed 2.5 percent (\$1.2 billion) of COVID-19 ARPA funding meant for testing, contact tracing, and mitigation activities to address the influx and care of UACs. In total, \$1.9 billion of ARPA's COVID-19 funding was used to address the crisis at our border.¹⁴
 - a. Does the administration's \$22.5 billion in emergency funding request include funding for UACs?
 - b. Does HHS anticipate the need to redirect additional COVID-19 emergency relief funding to address the ongoing border crisis?
 - c. Does HHS anticipate additional funding requests to address the testing and COVID-19 mitigation needs of UACs after Title 42 has been lifted?

Any further delay in repealing the PHE declaration will make the eventual transition more difficult and cause more unintended consequences. Milton Friedman warned that “nothing is as permanent as a temporary government program,”¹⁵ and we hope for the sake of American taxpayers that this will not hold true for the Biden administration's COVID-19 policies. We encourage the Biden administration to release publicly its strategic plan to transition our health care system out of the pandemic and back to normal.

Sincerely,



Virginia Foxx
Ranking Member



Joe Wilson
Member of Congress

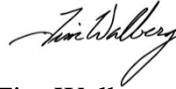
¹³ Adam Cancryn, *Biden Admin Reroutes Billions in Emergency Stockpile, COVID Funds to Border Crunch*, POLITICO, May 15, 2021, <https://www.politico.com/news/2021/05/15/hhs-covid-stockpile-money-border-migrants-488427>.

¹⁴ Letter from Dawn O'Connell, Assistant Sec'y for Preparedness & Response, Dep't of Health & Hum. Servs., to Sen. Susan Collins (Mar. 3, 2022).

¹⁵ Mark Perry, *Ten classic Milton Friedman quotes*, AEI, May 3, 2015, <https://www.aei.org/carpe-diem/ten-classic-milton-friedman-quotes/>.



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Member of Congress




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Member of Congress



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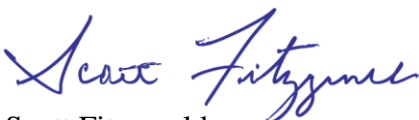
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Victoria Spartz
Member of Congress



Scott Fitzgerald
Member of Congress



Madison Cawthorn
Member of Congress

May 19, 2022

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Michelle Steel
Member of Congress



Chris Jacobs
Member of Congress

cc: Secretary Martin J. Walsh
U.S. Department of Labor

Secretary Xavier Becerra
U.S. Department of Health and Human Services

Secretary Miguel Cardona
U.S. Department of Education

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your agency's possession, custody, or control, whether held by you or other past or present employees of the executive branch, or a representative acting on your behalf. Your response should also produce documents that you have a legal right to obtain, that the agency has a right to copy or to which you have access, or that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee on Education and the Workforce (the "Committee").
2. If any entity, organization, or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., email, CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph, question number, or request number in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity—either inside or outside of the executive branch—also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), the agency's staff should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
12. In the event that a document or portion of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or redaction: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or other agency employees, or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 20, 2021, to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information, not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery. Such submission shall include an explanation as to why the information was not produced originally.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. If physical documents are to be delivered, two sets of documents should be delivered, one set to the Majority Staff in Room 2176 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building during Committee office

hours (9am-5pm, unless other arrangements are made) and signed by members of the respective staffs upon delivery.

19. Upon completion of the document production, the agency's written response should include a written certification, signed by the agency head or his or her designee, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.
20. If the agency does not expect to produce all documents responsive to this letter by the date requested, the agency's staff shall consult with the Committee as soon as it is known the agency cannot meet the deadline, but no later than 24 hours before the due date to explain: (1) what will be provided by the due date, (2) why the agency believes certain materials cannot be produced by the due date, and (3) the agency's proposed timeline for providing any omitted information.
21. The agency's response to questions and request should be answered or provided in separate document and not included inside a narrative response.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or

otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
7. The term “agency” means any department, independent establishment, or corporation of the federal government. For the purposes of responding to oversight requests, the Committee expects information to be provided from all sub-agencies of an agency and not just the information that is immediately available to the addressee or the addressee’s immediate sub-agency.