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EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
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December 2, 2024

Docket #(ED-2024-OPE-0123)

Delivered via E-Mail

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

Dear Secretary Cardona:

We request that you withdraw this fourth student loan debt transfer scheme put forth by the Department of Education (Department). The Department's Notice of Proposed Rulemaking (NPRM) to cancel borrowers' student loans based on "hardships" is clearly unlawful.¹

The day after the Supreme Court struck down the first Biden-Harris administration forgiveness proposal, you stood with President Biden at a press conference to announce the Department's "Plan B" for mass loan "forgiveness."² The administration chose to disregard the rule of law again and set course to concoct new schemes to transfer student debt from those who took on the responsibility of a loan agreement to the 87 percent of Americans who never attended college or paid off their loans.

¹ Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL), the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 87130 (Oct. 31, 2024) (to be codified at 34 C.F.R. pt. 30).

² Robert Barnes and Danielle Douglas-Gabriel. *Supreme Court rejects Biden student loan forgiveness plan*, Washington Post (Jun. 30, 2023), <https://www.washingtonpost.com/politics/2023/06/30/supreme-court-decision-student-loan-forgiveness/>.

Two of the Department’s forgiveness schemes are currently stopped by court injunctions.³ The Solicitor General even admitted that the administration planned to finalize and implement one scheme over the course of a weekend in an attempt to forgive loans before a court could intervene in blatant violation of the protections set forth in the Administrative Procedures Act.⁴

This fourth scheme is just as legally dubious as the prior Biden-Harris administration attempts to “cancel” student loan borrowers’ debts, but have the American taxpayer pick up the tab. The proposed rule uses the term “hardship” with great ambiguity and proposes to enact a regulation using a 17-factor artificial intelligence data model to determine who automatically receives loan forgiveness.⁵ Further, it also proposes to open an application process for borrowers to apply for forgiveness due to a hardship by making the Department the arbiter of borrowers’ subjective life circumstances.

Like the Department’s two other forgiveness schemes that are under court injunctions, this fourth scheme is likely to face a similar fate for exceeding the Secretary’s authority. Section 432 of the Higher Education Act of 1965 says not one word about hardship and has remained unchanged since 1965.⁶ The recent Supreme Court decision *Loper Bright Enterprises v. Raimondo* that built upon *West Virginia v. EPA* made clear that Congress, not the executive agencies, are responsible for writing laws.⁷ Congress has not written any enabling legislation to provide the Department the power to use artificial intelligence or a subjective application process to hear borrower stories of hardship and determine whose loans to cancel. This was certainly not the intent when the language was written in 1965, nor is it Congress’ intent for the language to be interpreted as such today.

This proposal to allow the Secretary unchecked power to define hardship and choose between borrowers' claims is one of many examples of what is wrong in Washington. It would effectively give the Secretary direct control over the \$1.7 trillion student loan portfolio and the ability to forgive any and all of the loans in it. The Department even estimates that 6 million borrowers would receive forgiveness immediately, with 2 million more receiving forgiveness via

³ *Missouri v. U.S. Dep’t of Educ.*, No. 4:24-CV-01316-MTS, 2024 WL 4426370, at *2 (E.D. Mo. Oct. 3, 2024); *Missouri v. Biden*, 112 F.4th 531, 538 (8th Cir. 2024); *Missouri v. Biden*, No. 4:24-CV-00520-JAR, 2024 WL 3104514, at *30 (E.D. Mo. June 24, 2024).

⁴ *Missouri v. United States Dep’t of Educ.*, No. CV 224-103, 2024 U.S. Dist. LEXIS 179391 (S.D. Ga. Sep. 19, 2024); 5 U.S.C. §§ 551–559.

⁵ Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL), the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 87130 (Oct. 31, 2024) (to be codified at 34 C.F.R. pt. 30).

⁶ The Higher Education Act of 1965, Pub. L. No. 89-329 § 432, (1965); 20 U.S.C. 1082.

⁷ *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024); *West Virginia v. EPA*, 597 U.S. 697, 142 S. Ct. 2587 (2022).

application.⁸ That is almost 20 percent of outstanding borrowers.⁹ The power of such a large purse is reserved fully for Congress, not the executive branch.

The Department estimates the cost of this proposed regulation is over \$100 billion.¹⁰ However, non-partisan budget estimates recognize that this vague attempt to cancel loans due to “hardship” essentially is a broad scheme to cancel almost every dollar lent. In fact, outside estimates show the true amount could be eight times higher than the Department’s estimate, bringing the full scope of Biden-Harris administration proposed cancellations to \$1.4 trillion covering almost every outstanding loan.¹¹

This latest scheme is merely a Band-Aid that forces taxpayers to shoulder the responsibility of paying off someone else’s debt. If this administration spent half as much time working to address the root causes of our broken student loan system as peddling this illegal free college agenda, college costs would be lower, the student loan repayment process would be simpler, and students and families would have been able to fill out the Free Application for Federal Student Aid on time.

Taken together, the Department has attempted to spend more on loan “forgiveness” than the federal government will spend helping families afford college through the Pell Grant over the next decade, and more than taxpayers have spent on postsecondary education in our nation’s entire history.¹²

There have been numerous proposals this Congress to lower costs and fix our broken college financing system. Unfortunately, instead of coming to the table, the Biden-Harris administration opted to act unilaterally to make false promises in the height of an election cycle, to the detriment of borrowers and taxpayers alike. On November 5th, the American people soundly rejected the Biden-Harris administration’s reckless policies. The Department would be served well to listen to them and rescind this fiscally irresponsible and blatantly illegal proposal.

⁸ Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL), the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 87130 (Oct. 31, 2024) (to be codified at 34 C.F.R. pt. 30).

⁹ *Federal Student Aid Data Center: Federal Student Portfolio Summary*, Federal Student Aid, <https://www.studentaid.gov/data-center/student/portfolio> (last visited Nov. 13, 2024).

¹⁰ Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL), the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 87130 (Oct. 31, 2024) (to be codified at 34 C.F.R. pt. 30).

¹¹ Committee for a Responsible Federal Budget, *The Total Cost of Student Debt Cancellation*, (Apr. 29, 2024), <https://www.crfb.org/blogs/total-cost-student-debt-cancellation>.

¹² Committee for a Responsible Federal Budget, *The Total Cost of Student Debt Cancellation*, (Apr. 29, 2024), <https://www.crfb.org/blogs/total-cost-student-debt-cancellation>.

Sincerely,

Virginia Foxx

Virginia Foxx
Chairwoman
Committee on Education and the Workforce