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117TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 117–550

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING THE SECRETARY OF EDUCATION TO TRANSMIT, RESPECTIVELY, CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE LEGAL AUTHORITY TO FORGIVE FEDERAL STUDENT LOAN DEBT

NOVEMBER 10, 2022.—Referred to the House Calendar and ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 1296]

The Committee on Education and Labor, to whom was referred the resolution (H. Res. 1296) of inquiry requesting the President and directing the Secretary of Education to transmit, respectively, certain documents to the House of Representatives relating to the legal authority to forgive Federal student loan debt, having considered the same, reports unfavorably thereon with an amendment and recommends that the resolution as amended not be agreed to.

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The amendment is as follows:

Strike all after the resolving clause and insert the following:

39–008

That the President, Joseph R. Biden, is requested, and the Secretary of Education, Miguel Cardona, is directed, to transmit, respectively, to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, unredacted copies of all documents, memoranda, legal opinions, notes from meetings, records (including telephone and electronic mail records), correspondence (electronic or otherwise), and other communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of the President or the Secretary, respectively, and refer to the following:

(1) Any request by the President, Executive Office of the President, or the staff of the Department of Education (including any political appointees and career employees) to draft a memo regarding the authority to forgive any Federal student loan debt.

(2) Meetings held between the Executive Office of the President and the Department of Education relating to the forgiveness of Federal student loan debt.

(3) Meetings and conversations, both formal and informal, held between White House officials and any group or organization advocating for Federal student loan debt forgiveness and Department of Education staff, including political appointees and any group with interests relating to student loan forgiveness.

(4) Meetings held between the Executive Office of the President, the Department of Education, the Department of the Treasury, the Department of Justice, or the Bureau of Consumer Financial Protection relating to the forgiveness of Federal student loan debt.

(5) Discussions between Department of Education employees and officials, including political appointees and career staff, relating to the drafting of any memoranda related to the forgiveness of Federal student loan debt.

(6) Any legal opinions sought by the Department of Education related to the forgiveness of Federal student debt.

PURPOSE AND SUMMARY

The stated purpose of H. Res. 1296 is to direct the President and the Secretary of Education to transmit certain documents to the U.S. House of Representatives relating to the legal authority to forgive Federal student loan debt. While the Committee supports and promotes Congress' Article I authority to conduct rigorous oversight, including the requests for related documents, H. Res. 1296 is a resolution of inquiry that falls short of this endeavor. Rather, H. Res. 1296 was introduced in an attempt to upend the Majority's agenda, bog down the Department in unnecessary production requests, and dissuade this Administration's effort to provide legal, sensible solutions to the student loan debt crisis. As such, the Committee reported H. Res. 1296 unfavorably to the House with the recommendation that it do not adopt this resolution.

COMMITTEE ACTION

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On March 13, 2019, the Committee held a bipartisan hearing entitled "The Cost of College: Student Centered Reforms to Bring Higher Education Within Reach." The Committee heard from researchers, administrators, and students who described the causes and consequences of rising college costs and presented recommendations on reforms to the system that make college more affordable. The Committee heard testimony from Dr. Douglas Webber, Professor at Temple University; Dr. Alison Morrison-Shetlar, Interim Chancellor at Western Carolina University; Jenae Parker, student at Franklin University; Dr. Elizabeth Akers, senior fellow at the Manhattan Institute; and James Kvaal, President of The Institute for College Access and Success.

On April 3, 2019, the Subcommittee on Higher Education and Workforce Investment (HEWI Subcommittee) held a bipartisan hearing entitled "Strengthening Accountability in Higher Education to Better Protect Students and Taxpayers." The hearing focused on the role of states, accreditors, and the federal government to hold colleges accountable and needed improvements to the accountability system. The Committee heard from Dr. Nicholas Hillman, Associate Professor at the University of Wisconsin-Madison; Melissa Emrey-Arras, Director at the U.S. Government Accountability Office; Noe Ortega, Commissioner of Postsecondary and Higher Education for the Pennsylvania Department of Education; and Dr. Barbara E. Brittingham, President of the New England Commission of Higher Education.

On May 9, 2019, the HEWI Subcommittee held a bipartisan hearing entitled "The Cost of Non-Completion: Improving Student Outcomes in Higher Education." The Committee heard from witnesses about the reasons for and consequences of non-completion on students and society, differences in non-completion across sectors, and successful strategies to improve completion. The Committee heard from Dr. Susan Dynarski, Professor at the University of Michigan; Dr. David Rudd, President of the University of Memphis; Dr. Pam Eddinger, President of Bunker Hill Community College; and Kyle Ethelbah, Director of TRIO programs at the University of Utah.

On September 19, 2019, the HEWI Subcommittee held an oversight hearing entitled, "Broken Promises: Examining the Failed Implementation of the Public Service Loan Forgiveness Program." This oversight hearing examined the problematic implementation of PSLF that resulted in a 99 percent application rejection rate. The Subcommittee heard testimony from Kelly Finlaw, a New York City teacher and PSLF applicant; Dr. Matthew Chingos, Vice President for Education Data and Policy of the Urban Institute; Yael Shavit, J.D., Assistant Attorney General of the Office of the Massachusetts Attorney General; Melissa Emery-Arras, Director of Education, Workforce, and Income Security at GAO; and Jeff Appel, Director of Policy Liaison and Implementation of the Department's Office of Federal Student Aid.

Following the series of higher education hearings, on October 15, 2019, Chairman Bobby Scott (D–VA–03) introduced H.R. 4674, *The College Affordability Act*, a reauthorization of the *Higher Education Act of 1965*. On October 29, 2019 the Committee began consideration of H.R. 4674, in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 28–22 on October 31, 2019.

Other Legislative Action

On January 24, 2019, Rep. Joe Courtney (D–CT–02) introduced H.R. 748, *Middle Class Health Benefits Tax Repeal Act of 2019* in the House. The bill passed the House on July 17, by a vote of 419–6. H.R. 748, was renamed the *CARES Act* and served as the first comprehensive bill to respond to the COVID–10 pandemic. Section 3513 of the *CARES Act*, negotiated in a bipartisan fashion by the Committee and the Senate Committee on Health, Education, Labor, and Pensions, directed the Secretary of Education to suspend payments, interest accrual, and involuntary collection on federal student loans owned by the Department of Education until September 30, 2020. On March 25, the Senate passed the *CARES*

Act by a vote of 96–0. On March 27, the House agreed to the Senate amendments to H.R. 748 by voice vote, and President Trump signed the *CARES Act* into law as Public Law 116–136.

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On March 17, 2021, the HEWI Subcommittee held a hearing entitled, "Rising to the Challenge: The Future of Higher Education Post COVID–19." The Subcommittee heard testimony from Mr. Keith Thornton, Jr., Student, Florida International University, Miami, FL; Mr. Eloy Ortiz Oakley, Chancellor, California Community Colleges, Corona Del Mar, CA; Dr. Lindsey M. Burke, Ph.D., Director, Center for Education Policy & Mark A. Kolokotrones Fellow in Education, The Heritage Foundation, Washington, DC; and Mr. Daniel A. Zibel, Vice President & Chief Counsel, National Student Legal Defense Network, Takoma Park, MD.

On April 28, 2021, the Committee held a hearing entitled, "Building Back Better: Investing in Improving Schools, Creating Jobs, and Strengthening Families and our Economy". The Committee heard testimony from Mr. Rasheed Malic, M.P.P., Senior Policy Analyst, Early Childhood Policy, Center for American Progress, Arlington, VA; Mr. Neal McCluskey, Ph.D., Director, Center for Educational Freedom, Cato Institute, Washington, DC; Mr. Mark Mitsui, President, Portland Community College, Portland, OR; Mr. Bob Lanter, Executive Director, California Workforce Association, Sacramento, CA; Mr. Brian Riedl, Senior Fellow in Budget, Tax, and Economics, The Manhattan Institute, Alexandria, VA; and Ms. Mary W. Filardo, Founder and Executive Director, 21st Century School Fund, Washington, DC.

On October 27, 2021, the HEWI Subcommittee held a hearing entitled, Examining the Policies and Priorities of the Office of Federal Student Aid". The Subcommittee heard testimony from The Honorable Richard Cordray, Chief Operating Officer, U.S. Department of Education Office of Federal Student Aid.

On May 26, 2022, the Committee held a hearing entitled, Examining the Policies and Priorities of the U.S. Department of Education". The Committee heard testimony from The Honorable Miguel Cardona, Secretary, U.S. Department of Education.

On July 28th, 2022 H. Res. 1296 was introduced by Ranking Member Virginia Foxx (R–NC–05). The bill was referred solely to the Committee on Education and Labor.

On September 15th, 2022, the Committee considered H. Res. 1296 in legislative session and reported it unfavorably, as amended, to the House of Representatives by a vote of 28–21. The Committee considered one amendment to H. Res. 1296, an amendment offered by Chairman Bobby Scott (D–VA–03) that made a minor technical edit, identifying the Secretary of Education and President by name. The amendment was adopted by voice vote.

COMMITTEE VIEWS

Oversight and its attempted politicization

The power of Congressional oversight authority at the Committee level is vested solely with the Chair and the majority party, per House and Committee rules. The Congressional Research Service summarizes the oversight power of the Committee thusly:

> Ranking Members and individual Members are not authorized by house or committee rules to start official committee investigations or issue subpoenas. Individual Members may seek the voluntary cooperation of agency officials or private persons. **However, no judicial precedent has directly recognized a right in an individual Member, other than a committee chair, to exercise a committee's oversight authority without the permission of a majority of the committee or its chair.**[1]

The Committee takes its responsibility to conduct oversight very seriously and views this work as a critical constitutional function of Congress. To that end, the Committee has held 16 oversight hearings during the 117th Congress[2]—which included nearly 50 hours of hearings with several Biden-Harris Administration officials, such as the Secretary of Education, Miguel Cardona[3]; the Undersecretary of the Department of Education, James Kvaal[4]; and the Chief Operating Officer of the Office of Federal Student Aid, Rich Cordray.[5]

The Minority claims that the Committee's oversight of the Biden Administration has not been sufficient and three separate resolutions of inquiry (ROIs) have been recently introduced and referred to the Committee. Resolutions of Inquiry (ROIs) are a tool of the House to obtain information from the Executive Branch. As an ROI can be introduced by any Member they reflect one of the few opportunities for the Minority to exert oversight authority within the confines of the House rules.

Further, as ROIs retain privilege of consideration in the House if they are not reported out of Committee in a timely fashion, it has become established practice Committees to considered them fully to eliminate this privilege. Recognizing this fact, House Republicans made a concerted effort to hijack the Committee process by introducing a flood of 23 resolutions of inquiry at the end of July, timing which would necessitate the relevant Committees of jurisdiction to take up and report out these ROIs before September 30, the last scheduled legislative day before the 2022 midterm elections. This all but guaranteed that multiple Committees would have to spend precious time on agenda items chosen by the Minority.

When faced with an ROI from a Democratic minority in 2005, the Committee's Republican leadership determined that the resolution was similarly designed to derail the Majority's agenda,[6] not-

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[1] Todd Garvey & Walkter J. Oleszek, Cong. Rsch. Serv., IF10015, Congressional Oversight and Investigations (2014) (emphasis added).

[2] See H. Comm. on Educ. & Lab., Committee Activity, (last visited Sept. 27, 2022), https://edlabor.house.gov/hearings-and-events (outlining all hearings in the 117th Congress. Oversight hearings are generally styled "Examining the Policies and Priorities of [Overseen Agency or Department]).

[3] Examining the Policies and Priorities of the U.S. Department of Education Before the H. Comm. on Educ. & Lab., 117th Cong. (May 26, 2022); Examining the Policies and Priorities of the U.S. Department of Education Before the H. Comm. on Educ. & Lab., 117th Cong. (June 24, 2021).

[4] Examining the Implementation of COVID–19 Education Funds, Before the H. Subcomm. on Early Childhood, Elem. & Secondary Educ. & the H. Subcomm. on Higher Educ. & Workforce Investment, 117th Cong. (November 17, 2021).

[5] Examining the Policies and Priorities of the Office of Federal Student Aid, Before the H. Subcomm. on Higher Educ. & Workforce Investment, 117th Cong. (Oct. 27, 2021).

[6] While current Committee leadership takes notice of this position, it does not necessarily agree with the conclusion reached by the Committee in the 109th Congress, and merely notes it here for the record.

ing, "Perhaps most importantly, as a matter of procedure, H. Res. 467 challenges the Majority's prerogatives and its right to set the legislative agenda, and for that reason alone should be rejected."[7]

H. Res. 1296, in part, asks the Secretary of Education to provide,

> "unredacted copies of all documents, memoranda, legal opinions, notes from meetings, records (including telephone and electronic mail records), correspondence (electronic or otherwise), and other communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of the President or the Secretary . . ."

that relate to any meeting or request from any combination of officials in the Executive Office of the President, the Departments of Education, Treasury, Justice, Bureau of Consumer Financial Protection, or other outside groups as it relates to both student loan forgiveness and the legal justification of such forgiveness. This inquiry is overly broad and obviously designed to bog the Department down in production of a gargantuan amount of material. Throughout debate on H. Res. 1296, the Minority suggested that the request was merely for a legal justification, but the text of the resolution belies this point. Further, as the Republican majority noted the last time it disposed of an ROI, a request for "communications" is, in itself problematic:

> A resolution of inquiry can only produce "facts." The communications encompassed by the resolution are not limited to "facts" and thus should not be subject to disclosure in response to the inquiry. At a minimum, seeking the production of these communications would chill debate between the agencies and the President on issues of national importance.[8]

The Committee has similar concerns as to whether an ROI that requests "opinions" would be considered privileged under the Rules of the House.[9] Notwithstanding that point, ROIs are, in theory, an oversight tool, and the Committee recognizes every Member has the right to introduce an ROI. However, it was disappointing to spend time considering H. Res. 1296, a resolution so obviously designed to derail serious policy work and re-task a Department to provide every jot and tittle related to a legal justification that has been publically available since the program was announced.

The facts regarding the One Time Student Loan Debt Relief Program

H. Res. 1296 was introduced in Congress on July 28, 2022, nearly a full month before any program to cancel federal student loan debt was announced by the Biden Administration. It was not until August 24, 2022 that the President and Department announced the One Time Student Loan Debt Relief Program.[10] Under the pro-

[7] H. Rpt. 109–258, 6, 109th Cong., 1st sess. (2005).
[8] *Id.*
[9] *See* Charles W. Johnson, et al., *House Practice*, Ch. 49, §4 (2015) (citing the precedent that to retain privileged status an ROI "must seek facts rather than opinion").
[10] U.S. Dep't of Educ., Press Release, Biden-Harris Administration Announces Final Student Loan Pause Extension Through December 31 and Targeted Debt Cancellation to Smooth Transition to Repayment, (Aug. 24, 2022), https://www.ed.gov/news/press-releases/biden-harris-

gram, borrowers with incomes below $125,000 ($250,000 for married couples) would receive up to $10,000 in federal student debt relief, with borrowers who qualify and received a Pell Grant during their education becoming eligible for up to an additional $10,000 in relief.[11]

At the time of the announcement, the Administration released a legal memo from the Department of Education's Office of the General Counsel and an opinion from the Department of Justice's Office of Legal Counsel outlining the legal authority for the program.[12] These memos answer the core question raised by H. Res. 1296—they are the legal justifications for the program this resolution of inquiry seeks.

During debate on H. Res. 1296, members of the Committee cited public statements, including one by Speaker Pelosi, and previous memos from the DeVos Department of Education that the President does not have the legal authority to cancel student loan debt.[13] There have also been several lawsuits filed challenging the President's legal authority to cancel student debt under various theories.[14] None of these statements or lawsuits refute the point that the Department provided its legal justification for the program when it was announced. Notwithstanding the overly burdensome production requirements designed to derail Administration efforts to reduce student loan debt, H. Res. 1296 is in essence moot.

It is clear that the legality of the One Time Student Loan Debt Relief Program will be decided in the courts. It is equally apparent to the Committee that any claim of "congressional oversight" made by a resolution of inquiry that was introduced before the program it intends to oversee was even in existence is tenuous at best. As such, the Committee reported H. Res. 1296 to the House adversely with the recommendation it do not pass. The Committee takes its oversight responsibilities seriously, and will continue to exercise meaningful oversight of policies and programs within its rule X jurisdiction, including federal student aid at the U.S. Department of Education. While the aegis of oversight rests with the Chairman and the majority of the Committee, the Committee will give any resolution of inquiry introduced by any member of the House the thoughtful consideration it is due.

SECTION-BY-SECTION ANALYSIS

The text of H. Res. 1296 is one declarative Plain English sentence directing the Secretary of Education to furnish to the House of Representatives documents or communications in his possession broadly related to cost estimates for the IDR and PSLF waivers issued by the Department in 2021 and 2022.

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administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.

[11] *Id.*

[12] *Id.*; Memorandum from Lisa Brown, General Counsel, U.S. Department of Education, to Miguel A. Cardona, Secretary, U.S. Department of Education (Aug. 23, 2022), https://www2.ed.gov/policy/gen/leg/foia/secretarys-legal-authority-for-debt-cancellation.pdf; Use of the HEROES Act of 2003 to Cancel the Principal Amounts of Student Loans, 46 Op. O.L.C.__(2022), https://www.justice.gov/olc/file/1528451/download.

[13] Memorandum from Reed D. Rubinstein, Principal Deputy Gen. Couns., Dep't of Educ., to Betsy DeVos, Sec'y of Educ. (Jan. 12, 2021).

[14] *See* Anna Helhoski, *Student Loan Lawsuits; Where Challenges to Cancellation Stand*, Nerdwallet, (Oct. 18, 2022), https://www.nerdwallet.com/article/loans/student-loans/student-loan-lawsuits.

EXPLANATION OF AMENDMENTS

The amendment in the nature of a substitute is explained in the descriptive portion of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act of 1995*, Pub. L. No. 104–1, H. Res. 1296 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4), H. Res. 1296 contains no unfunded mandates.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 1296 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call vote occurred during the Committee's consideration of H.R. 1296:

Date: 9-15-2022

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 1 Bill: H.Res 1295,1296, Amendment Number: Mtn

Disposition: Agreed to by Full Committee Roll Call Vote

Sponsor/Amendment: Levin Motion to report H.Res 1295, H.Res.1296, and H.Res 1273, unfavorably, to the House. Agreed to by Roll Call Vote 28-21.

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)		X	
Mr. SABLAN (MP)	X			Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			X
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)		X	
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)		X	
Mrs. HAYES (CT)	X			Mr. GOOD (VA)		X	
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)		X	
Ms. OMAR (MN)	X			Mrs. HARSHBARGER (TN)		X	
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)		X	
Ms. LEGER FERNÁNDEZ (NM)	X			Mrs. SPARTZ (IN)			X
Mr. JONES (NY)	X			Mr. FITZGERALD (WI)		X	
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)		X	
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)		X	
Mrs. CHERFILUS-MCCORMICK (FL)	X			Mr. FINSTAD (MN)		X	
Mr. POCAN (WI)	X			Mr. SEMPOLINSKI (NY)		X	
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						
Vacancy							

TOTALS: Ayes: 28 Nos: 21 Not Voting: 3

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goal of H. Res. 1296 is to direct the Secretary to produce records in his possession relating to cost estimates for IDR and PSLF waivers issued by the Department.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H. Res. 1296 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Pub. L. No. 111–139 or the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

The Committee has not received a cost estimate for the bill from the Director of the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H. Res. 1296 does not change existing law for purposes of clause 3(e) of rule XIII of the Rules of the House of Representatives.

MINORITY VIEWS

Introduction

In response to statements made by the Secretary of Education and other senior officials throughout the past year and a half that the Biden administration was examining widespread student loan forgiveness through executive action,[1] Ranking Member Virginia Foxx requested information from the Secretary regarding the President's plans for, and legal authority to carry out, broad-based loan cancellation by executive action. Because the responses to those requests were largely ignored, Ranking Member Foxx introduced H. Res. 1296 on July 28, 2022. This resolution of inquiry requests the President and directs the Secretary of Education to transmit, respectively, certain documents to the House of Representatives relating to the legal authority to forgive federal student loan debt. We believe that the urgency for H. Res. 1296 is even more important today, after the administration's announcement of a student bailout plan which will have negative consequences for students and families, for our nation's postsecondary education system, and for the fiscal future of our nation.

The need for this resolution of inquiry is twofold. First, the administration's supposed authority to enact broad-based loan cancellation for every borrower is dubious and was completely unknown until the day the Biden administration announced the federal student loan scheme. On August 24, 2022, while Americans were trying to understand the varied details of the announcement,[2] the Department of Education released a Notice of Debt Cancellation Legal Memorandum[3] and the Department of Justice released a legal opinion[4] which serve as this administration's only public documents claiming possible authority under the *Higher Education Relief Opportunities for Students* (HEROS) *Act of 2003*. The Department of Education's Legal Memorandum was not published in the Federal Register until a week later. Second, despite previous headlines that the administration was "ready to roll" on their loan cancellation plan and other potential program changes,[5] the Department of Education did not respond to the Ranking Member's letter requesting more details on how this executive action would be implemented.[6]

[1] https://www.cnbc.com/2021/10/26/ed-secretary-cardona-biden-administration-is-examining-loan-forgiveness.html.

[2] https://www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.

[3] https://www.federalregister.gov/documents/2022/08/30/2022-18731/notice-of-debt-cancellation-legal-memorandum.

[4] https://www.justice.gov/olc/file/1528451/download.

[5] https://subscriber.politicopro.com/article/2022/06/education-department-ready-to-roll-on-bidens-student-debt-decision-cardona-says-00036812?source=email.

[6] https://republicans-edlabor.house.gov/news/document;single.aspx?DocumentID=408346.

This resolution of inquiry is about oversight and transparency. The prior administration provided an analysis which showed that no Secretary would have this authority.[7] The current administration rescinded that memo and went forward with an analysis they refused to make public despite numerous congressional requests for that memo.

The Congressional History of the Higher Education Relief Opportunities for Students (HEROS) Act

The Biden administration is abusing the HEROS Act of 2003, a narrow and highly targeted law that has two decades of history of providing flexibilities and relief for borrowers during a limited time period. First passed in December 2001 and later signed into law,[8] the HEROS Act of 2001 was pushed through Congress in a bipartisan manner in the months after September 11, 2001, and after the beginning of Operation Enduring Freedom where American and British Forces led bombing strikes against al-Qaida and Taliban forces overseas in Afghanistan.[9] The HEROS Act of 2001 provided the Secretary of Education with specific waiver authority to respond to conditions in the national emergency declared by the President on September 14, 2001.

The HEROS Act of 2001 was set to expire near the end of 2003, but overseas military operations continued. On March 20, 2003, an American-led coalition began Operation Iraqi Freedom preemptive airstrikes[10] of Saddam Hussein's Presidential Palace and by March 25, 2003, United States troops were engaged in a ground war marching toward Baghdad.[11] On March 25, 2003, in the midst of the first days of Operation Iraqi Freedom, Representative John Kline (R–MN) introduced the HEROS Act of 2003 which he later stated during debate on the House floor:

> provides assurance to our men and women in uniform that they will not face education-related financial or administrative difficulties while they defend our Nation. The HEROS Act achieves this by granting the Secretary of Education the authority to address the specific needs of each student whose education is interrupted when they are called to military service.[12]

Specifically, the HEROS Act of 2003 was intended by Congress to provide United States Reservists, active-duty military, National Guard and affected individuals residing or employed in an area that is declared a disaster area in connection with a national emergency, with flexibility around certain requirements of financial aid programs during a war, other military operation or national emergency while they were serving the country.

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[7] https://static.politico.com/d6/ce/3edf6a3946afa98eb13c210afd7d/ogcmemohealoans.pdf?mkt_tok=NDc1LVBCUS05NzEAAAGGdHVzJZSFr4a_6xNGeCNg_zcF0NhbhJq7ZsWtj3ALb_2KNyTubzh_BhlTeW_R0mrC1g8M_kY7EF02OEXdzs_OSb9IKZO2x4L9COzfLxnCmErnV3U.

[8] P.L. 107–122.

[9] https://www.history.navy.mil/browse-by-topic/wars-conflicts-and-operations/middle-east/operation-enduring-freedom.html.

[10] https://www.history.navy.mil/browse-by-topic/wars-conflicts-and-operations/middle-east/operation-iraqi-freedom.html.

[11] https://www.nytimes.com/2003/03/26/world/nation-war-overview-march-25-2003-heavy-losses-among-iraqis-hints-uprising.html.

[12] https://www.congress.gov/108/crec/2003/04/01/CREC-2003-04-01-pt1-PgH2522-5.pdf.

This history makes clear that this law does not provide authority for the Secretary of Education to enact broad cancellation of federal student loans for a vast population of borrowers.[13] In fact, Representative Tim Ryan (D–OH) managed floor debate for the Democrats on the HEROS Act of 2003 and delivered an initial address acknowledging the limitedness of the law: he noted that, while the conflict in the Middle East could wage on longer, there were limitations in the scope of the HEROS Act of 2003 which prevented the bill from providing broader interest.[14] Former Chairman of the House Education and the Workforce's Subcommittee on 21st Century Competitiveness, Representative Buck McKeon (R–CA), addressed the bounds of the Secretary's authority under the legislation. He noted the bill gave only the Secretary of Education only narrow authority that would likely not extend to all possible instances of financial need, but the legislation was to maintain the integrity of the Title IV programs:

> Another important aspect of the HEROS Act is that it allows the Secretary of Education to act quickly should a situation arise that has not been considered. It allows him to protect the interests of our military personnel while at the same time ensuring the integrity of the Federal Student Assistance Programs. . . . While it will not solve every issue that will arise, the HEROS Act will alleviate concerns around student financial assistance and postsecondary education. It also stands as a clear indication of the commitment of this Congress to the men and women fighting to protect the freedoms of this great Nation.[15]

Several members also included statements for the congressional record further describing their intent in supporting the legislation. Representative Shelia Jackson Lee (D–TX) provided a statement for the congressional record which states her support for the HEROS Act's ability to provide relief from technical issues that arise with being a borrower:

> This discretion will empower the Secretary to drastically reduce the likelihood that enlisted men's and women's educations will be jeopardized by inadvertent, technical violations or defaults when they are called to service. It also ensures that members of our Armed Forces do not forfeit their tuition payments when they answer the call to service.[16]

Representative Rahm Emanuel (D–IL) submitted a statement in support of the HEROS Act of 2003 and its intent to help those directly engaged in war:

> This is timely, essential legislation which ensures that those brave men and women who make enormous sacrifices for our nation do not forfeit their right to an affordable and accessible education. . . . It is only right that we ensure access to higher education for those who work to

[13] P.L. 108–76.
[14] Ibid.
[15] Ibid.
[16] Ibid.

> protect the values and privileges that we enjoy as Americans. . . . It [the HEROS Act of 2003] is a symbol of support for the brave men and women involved in Operation Iraqi Freedom and for all of those who selflessly devote their lives to protecting our nation and our freedom.[17]

A review of the debate around the HEROS Act of 2003 confirms that Congress never granted or even contemplated the possibility that the executive branch was given clear congressional authorization, or even unclear authorization, to provide all student loan borrowers any relief under the authority of the HEROS Act of 2003. Further, the U.S. Supreme Court has stated that it expects Congress to be clear if it wishes to assign agency decisions of vast economic and political significance, and as a result, the Court reads statutory silence as no authority: "Congress, does not 'hide elephants in mouseholes.'"[18]

Importance of Resolutions of Inquiry in Response to Unprecedented Illegal Action

Congress has not authorized the Secretary of Education to enact mass loan cancellation. Therefore, congressional oversight and compliance with H. Res. 1296 to allow for the review of unredacted documents, memoranda, legal opinions, records from meetings, correspondence and other communications between the Department of Education, White House, Department of the Treasury, Department of Justice, and Bureau of Consumer Financial Protection relating to debt cancellation are of upmost importance. The American people and Congress deserve answers and transparency from this administration. Providing information, including a memorandum—requested repeatedly by members from both sides of the aisle—is a basic requirement of the administration, but it is a basic requirement this administration has failed to meet up to this point.

Unfounded Objections of the Majority

During the markup, Committee Democrats claimed that H. Res. 1296 is moot because the Department of Education and Department of Justice published legal memoranda describing the supposed authority that the administration is relying on to quickly transfer loan debt. However, the existence of these memoranda does not de facto demonstrate the truth of their arguments. Committee Republicans do not simply "dislike" the memorandum justifications: we are aware of the legislative history of the HEROS Act of 2003 and later extensions, and we are confident that Congress has never given this type of authority. The memoranda were published so belatedly not because the authority in question was manifest but rather as a strategy to pull the wool over Americans' eyes: in an effort to run out the clock, the Biden administration purposefully released its opinions at the same time as the plan itself was announced in order to give less time for public review before discharging loans.

The Majority also claimed that as the cost of college grows exponentially, Congress must also provide loan relief to current and fu-

[17] Ibid.
[18] *Whitman* v. *American Trucking Associations*, 531 US 457 (2001).

ture student borrowers. The problem is that "forgiveness" is a misnomer: there is no such thing as "forgiveness" of student loans. The loan debt will not go away but will simply be transferred to the taxpayer. The bailout alone is estimated to cost over $500 billion dollars,[19] a huge sum which the Biden administration has simply moved the loan debt agreed to by millions of student loan borrowers onto the backs of all American taxpayers. This mass student loan debt transfer will cost each taxpayer at least $2,500.[20]

Further, this loan forgiveness plan will do nothing to fix the corrupt postsecondary education system. The administration knows that transferring up to $20,000 per borrower will do nothing to decrease the cost of college. Both the Majority and Minority members of this Committee know that college costs have outpaced inflation for decades[21] and have voiced a commitment to solving this problem. However, economists estimate that student loan subsidies—whether mass debt cancellation or the *Lowering Obstacles to Achievement Now* (LOAN) *Act*—actually increase tuition by 60 cents for every dollar spent on student loan subsidies.[22]

Conclusion

The Biden administration's illegal student loan bailout will break the student loan program and exacerbate the problems plaguing our postsecondary education system in the process. The unprecedented nature of this politically-driven loan cancellation encourages students to borrow as much as possible because they expect taxpayers to foot the bill and enables colleges to continue to increase the cost of overpriced degrees with low returns for their students. This move by the Biden administration will have cascading consequences that will affect students, families, and taxpayers of today and of future generations. To conduct proper oversight, H. Res. 1296 is necessary to ensure the critical information is no longer shielded from Congress. We need to know who the administration met with, whether those with conflicts participated in the meetings, and whether there were other legal opinions the administration considered before acting to subvert the law. This resolution of inquiry would begin to provide those answers.

VIRGINIA FOXX,
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RICK W. ALLEN.
JIM BANKS.
JAMES COMER.
RUSS FULCHER.
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MARIANNETTE MILLER-MEEKS, M.D.

[19] https://budgetmodel.wharton.upenn.edu/issues/2022/8/26/biden-student-loan-forgiveness.
[20] https://www.ntu.org/foundation/detail/cost-of-student-debt-cancelation-could-average-2000-per-taxpayer.
[21] https://research.collegeboard.org/trends/college-pricing.
[22] https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf.

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