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February 27, 2023

Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Cardona:

We write to express our grave concerns about the failure of the Department of Education ("Department") to provide sufficient evidence for its independent auditor, KPMG LLP ("KPMG"), to form an audit opinion on the Department's Fiscal Year (FY) 2022 consolidated financial statements.¹ This is yet another example of this administration's lack of transparency when it comes to wasteful spending of taxpayer dollars. The American people deserve better.

Your Department's "evidence" underlying the cost estimates for its massive student loan debt relief plan² fell woefully short of common auditing standards.³ As KPMG's Disclaimer of Opinion notes, the Department's internal controls "were not properly designed . . . to address the relevance and reliability of the . . . data used to develop the [loan] take-up rate assumption used in the various loan program estimates."⁴ Further, the Department did not have "sufficiently precise controls over the relevance and reliability of . . . data used in other key assumptions for [its] . . . model to develop [its] . . . cost estimates."⁵ As such, there is a high risk that the Department's financial statements are "materially misstated."⁶

Despite the statements of its independent auditor, the Department only "partially concur[red]" with the material weakness" and stated it will "implement appropriate action"⁷ to improve its

¹ KPMG LLP, *Independent Auditors' Report*, FY2022 Agency Financial Report, U.S. Department of Education (January 23, 2023) at 106.

² See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

³ KPMG LLP, *supra* note 1, at 106.

⁴ *Id.* at 110 (Exhibit A, A-1).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 117 (Exhibit C, C-1).

Student Loan Model process, “including its methodology for assessing take-up rates.”⁸ No details about the “appropriate action” the Department anticipates taking were provided. The same is true of the Department’s assertion that it will “assess the efficacy of controls in place” and “make appropriate changes *as needed*.”⁹ The loopholes in the Department’s responses, as well as their vagueness, raise substantial questions about the Department’s intentions.

Given your Department’s track record of hiding the costs of the Direct Loan and Federal Family Education Loan programs, we are greatly concerned about the lack of a sufficient evidentiary basis for the cost estimates of the President’s illegal debt relief plan. To provide clarity to Congress and the American people regarding your Department’s cost estimates and the weaknesses of your internal controls, please respond in writing to the following questions and provide the following documents requested (instructions attached) no later than 14 calendar days after receipt of this letter:

1. All documents provided to KPMG associated with the Department’s cost estimates for its student debt relief plan.
2. All documents provided to KPMG associated with the Department’s internal controls over the relevance and reliability of underlying data to make cost estimates.
3. With specificity, cite the statements in the Independent Auditors’ Report related to the “material weakness” with which the Department partially and fully, respectively, concurs. With respect to statements with which the Department only partially concurs, please describe why the Department does not fully concur.
4. With specificity, cite the statements in the Independent Auditors’ Report with which the Department does not at least partially concur, and describe the reasons for the non-concurrence.
5. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation and virtual meeting recordings of or between any of the following Department officials (during the period January 20, 2021, through the date the search for the records is conducted) involving assumptions and/or cost estimates for the Biden administration’s student loan debt relief plan:¹⁰
 - A. Secretary of Education Miguel Cardona
 - B. Under Secretary James Kvaal
 - C. Deputy Secretary Cindy Marten
 - D. Federal Student Aid Chief Operating Officer Richard Cordray
 - E. Deputy Under Secretary and Chief Economist Jordan Matsudaira

⁸ *Id.* at 118 (Exhibit C, C-2).

⁹ *Id.* (emphasis added).

¹⁰ See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

- F. Acting Assistant Secretary for the Office of Finance and Operations and Delegated to Perform the Functions and Duties of the Chief Financial Officer
Denise L. Carter
- G. Assistant Secretary for the Office of Postsecondary Education Nasser Paydar
- H. Director of Budget Service Larry Kean
- I. Chief of Staff Sheila Nix
- J. Deputy Chief of Staff for Policy and Programs Scott Sargard
- K. Deputy Chief of Staff Donna Harris-Aikens
- L. Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Communications and Outreach, Kelly Leon

We look forward to your timely response to these requests.

Sincerely,



Virginia Foxx
Chairwoman
U.S. House Committee on
Education & the Workforce



Lloyd Smucker
Member of Congress

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

March 16, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx:

Thank you for your February 27, 2023, letter to Secretary Cardona regarding the Department of Education's ("the Department's") annual financial statement audit. Your letter was referred to me, and I am pleased to respond on his behalf. Please note that an identical response has been provided to the co-signer of your letter.

Fiscal responsibility and careful stewardship of taxpayer dollars are top priorities for the Department and the Biden-Harris Administration. We are confident in the integrity of the Department's programs and financial operations, as well as the internal controls that are in place to ensure the reliability of the underlying data that support our financial analyses.

The Department develops and maintains a Student Loan Model (SLM), which is used to produce the official estimates of the cost of federal student loan programs published in the President's Budget and the Department's Agency Financial Report. The model is revised at least twice per year using updated data and economic assumptions. It has been in use in its current form since 1998 and is based on two decades of rigorous analysis and independent validation by third party contractors as well as the Office of Management and Budget (OMB) and other parties. Additionally, the model has been audited by multiple, independent financial statement auditors.

Over the past three years, the Department has managed a series of vital steps to address challenges facing students and borrowers due to the COVID-19 pandemic and the resulting national emergency. One of these steps was the Administration's program to provide one-time emergency student debt relief to working- and middle-class Americans as they recover from the pandemic. This step required the Department to estimate the take-up rate among eligible borrowers and integrate this variable into the agency loan estimates. The Department developed its estimate based on relevant research literature, the Department's own extensive experience of take-up rates, take-up rates from means-tested programs operated by other federal agencies, and consultation with internal and external experts.

The Department's cost estimate was reviewed by both management at the Department and the Office of Management and Budget, consistent with existing policies and procedures for modifications. Once the cost estimate was approved, appropriate budgetary resources were made

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

available through the OMB apportionment process per OMB Circular A-11. The processes and controls used to validate assumptions were properly designed and consistent with estimates used in previous years, even with the lack of data from strictly comparable federal benefits programs.

As a part of its annual audit of the Department's operations, the auditor included a disclaimer of opinion on the Department's Fiscal Year 2022 Annual Financial Report (AFR). This disclaimer opinion simply means that the auditor could neither dispute nor confirm the Department's financial estimate of its one-time student debt relief program due to an absence of data from strictly comparable programs. It is not an assessment – negative or otherwise – of the Department's finances.

The initial assumptions in the estimate were based on the best information available at the end of fiscal year 2022, at which time the application for this program had not yet launched. Subsequent court challenges to the program have prevented individuals from applying for the program. As a result, the Department does not have actual application data to fully validate the accuracy of its estimated take-up rate.

In sum, the Department's data, assumptions, and methodology are based upon the best available evidence, in line with best practices across the federal government, consistent with the estimate by the Congressional Budget Office, and subject to the Department's established governance process.

Thank you again for your letter. If you need any additional information, please contact the Department's Office of Legislation and Congressional Affairs at (202) 401-0020.

Sincerely,

A handwritten signature in black ink, appearing to read "James Kvaal", with a stylized, cursive script.

James Kvaal
Under Secretary



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF LEGISLATION AND CONGRESSIONAL AFFAIRS

May 5, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx:

The enclosed documents are a production of materials in response to your February 27, 2023, letter regarding documentation for the Department of Education's (Department's) fiscal year 2022 financial audit. Today's production bears the bates ranges: HEW-118-(23-001999)-0000001 through HEW-118-(23-001999)-0000187. This production contains 187 pages of documents in total.

The Department is delivering this production via its Microsoft SharePoint external sharing website. The Department is sharing via telephone the password that will decrypt the file containing the production.

The Department is making this production as an accommodation to the Committee and will be in touch with any remaining follow-up. Should you have any questions regarding this document production, please have your staff contact JoAnn Martinez-Shriver at JoAnn.Martinez-Shriver@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gwen Graham".

Gwen Graham
Assistant Secretary
for Legislation and Congressional Affairs

cc:

The Honorable Bobby Scott, Ranking Member
Committee on Education and the Workforce

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
<http://www.ed.gov/>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

