

RESOLUTION OF INQUIRY DIRECTING THE SECRETARY OF EDUCATION TO TRANSMIT CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE DEPARTMENT OF EDUCATION'S COST ESTIMATES FOR THE SECRETARY'S WAIVERS RELATED TO PUBLIC SERVICE LOAN FORGIVENESS AND INCOME-DRIVEN REPAYMENT

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. 1295]

The Committee on Education and Labor, to whom was referred the resolution (H. Res. 1295) of inquiry directing the Secretary of Education to transmit certain documents to the House of Representatives relating to the Department of Education's cost estimates for the Secretary's waivers related to public service loan forgiveness and income-driven repayment, having considered the same, report unfavorably thereon with an amendment and recommends that the resolution not be agreed to.

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The amendment is as follows:

Strike all after the resolving clause and insert the following:

That the Secretary of Education, Miguel Cardona, is directed to transmit to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, 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 Secretary and refer or relate to the following:

(1) Impact analyses, cost benefit analyses, eligibility determinations, and budget estimates generated by the Department of Education, including any estimates and assumptions used to generate each analysis or estimate, relating to the public service loan forgiveness waiver announced on October 6, 2021, and the income-driven repayment waiver announced on April 19, 2022.

(2) Meetings and conversations that included discussions of the number of borrowers potentially eligible to benefit and the amount of outstanding debt potentially affected, budget estimates, impact analyses, and other related discussions regarding the public service loan forgiveness waiver announced on October 6, 2021, and the income-driven repayment waiver announced on April 19, 2022, including any formal or informal discussions held between the White House officials, the Department of Education, Members of Congress, researchers and academics, and any group or organization advocating for such waivers.

(3) Budget estimates, impact analyses, cost benefit analyses, and related estimates regarding the public service loan forgiveness waiver announced on October 6, 2021, and the income-driven repayment waiver announced on April 19, 2022, arising from or used for purposes of discussions held between the Executive Office of the President, the Department of Education, the Department of the Treasury, and the Bureau of Consumer Financial Protection.

(4) Discussions and deliberations between Department of Education employees and officials, including political appointees and career staff, relating to making public budget estimates, impact analyses, and the number of borrowers potentially eligible to benefit and the amount of outstanding debt potentially affected under the public service loan forgiveness waiver announced on October 6, 2021, and the income-driven repayment waiver announced on April 19, 2022.

(5) Budget estimates, impact analyses, cost benefit analyses, and the number of borrowers potentially eligible to benefit and the amount of outstanding debt potentially affected under the public service loan forgiveness waiver announced on October 6, 2021, and the income-driven repayment waiver announced on April 19, 2022.

PURPOSE AND SUMMARY

The stated purpose of H. Res. 1295 is to direct the Secretary of Education to transmit certain documents to the U.S. House of Representatives relating to the Department of Education's (Department's) cost estimates for the Secretary's waivers related to public service loan forgiveness (PSLF) and income-driven repayment (IDR). While H. Res. 1295 is a resolution of inquiry designed to compel production from the Department in the name of congressional oversight, the purpose and content of the resolution falls short of that stated purpose. Instead, The Committee believes H. Res. 1295 was introduced in an attempt to upend the Majority's agenda, bog down the Department in unnecessary production requests, and throw cold water on efforts this Administration is taking to provide legal, sensible solutions to the student loan debt crisis. As such, the Committee reported H. Res. 1295 unfavorably to the House with the recommendation that it do not pass.

COMMITTEE ACTION

116TH CONGRESS

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.

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, the *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–19 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.

117TH CONGRESS

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. Kolokotronis 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. 1295 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. 1295 in legislative session and reported it unfavorably, as amend-

ed, to the House of Representatives by a vote of 28–21. The Committee considered one amendment to H. Res. 1295, an amendment offered by Chairman Bobby Scott (D–VA–03) that made a minor technical edit, identifying the Secretary of Education 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 Congress²—which included nearly 50 hours of hearings with several Biden-Harris Administration officials, such as: the Secretary of Education, Miguel Cardona³; the Undersecretary of the Department of Education, James Kvaal⁴; 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

¹Todd Garvey & Walkter J. Oleszek, CONG. RSCH. SERV., IF10015, Congressional Oversight and Investigations (2014) (emphasis added).

²See 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]”).

³Examining 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).

⁴Examining 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).

⁵Examining 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).

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 noting, "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. 1295, in part, asks the Secretary of Education to provide,

"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 Secretary and refer or relate to. . . . Meetings and conversations that included discussions of the number of borrowers potentially eligible to benefit and the amount of outstanding debt potentially affected, budget estimates, impact analyses, and other related discussions regarding the public service loan forgiveness waiver announced on October 6, 2021, and the income-driven repayment waiver announced on April 19, 2022, including any formal or informal discussions held between the White House officials, the Department of Education, Members of Congress, researchers and academics, and any group or organization advocating for such waivers."

This is just one of the five prongs of inquiry made in H. Res. 1295. On its face, 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. 1295, minority members suggested that the request was merely for a cost estimate, 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

While ROIs are, in theory, an oversight tool, and the Committee recognizes every Member has the right to introduce an ROI, it was

⁶While 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.

⁷H. Rpt. 109-258, 6, 109th Cong., 1st sess. (2005).

⁸*Id.*

disappointing to spend time considering H. Res. 1295, a resolution so obviously designed to derail serious legislative work and re-task a Department committed to responding to the student loan debt crisis into responding to frivolous political missives.

The facts regarding IDR Payment Count Revision and PSLF Waiver

On October 6, 2021, the Department announced a time-limited waiver of rules under the Public Service Loan Forgiveness (PSLF) program. On April 19, 2022, the Department announced a one-time payment count revision of payments made under income driven repayment (IDR) plans. The Department has provided legal justification for both actions.⁹

Department regulations require that borrowers who are having trouble making their payment get clear and accurate information about their options for staying out of delinquency.¹⁰ Unfortunately, we know from a recent Government Accountability Office Report that, in many cases, borrowers were inappropriately steered into long-term forbearance, delaying loan forgiveness under IDR, when there were better options available to them.¹¹ Going case-by-case through the multimillion-borrower portfolio to rectify these errors in servicing would be both extremely difficult and costly to administer. Instead, the Department, utilizing information it had about borrowers and servicer behavior through enforcement agencies, announced the one-time payment count revision. Under the terms of the adjustment, borrowers may have their payment history reviewed and revised if necessary to determine payment counts for IDR, which may also have implications for their required payment counts under PSLF as well.

The time-limited PSLF waiver in place through October 31, 2022, includes changes designed to address persistent issues with the program and allow student borrowers to count payments that would have otherwise not qualified for PSLF. Although this program was intended to encourage borrowers to remain in public service employment by providing eventual relief from the financial burden of student loan debt, in practice this program was largely failing borrowers. A 2017 Consumer Financial Protection Bureau (CFPB) report highlighted multiple issues related to the administration of the PSLF program, including borrowers receiving misinformation from their servicer about whether they are on track for PSLF; delays in processing IDR repayment plan certification and consolidation requests; failure to inform borrowers that consolidation will result in lost payments; servicer errors during loan trans-

⁹See generally Alexandra Hegji, Cong. Rsch. Serv., IF12136, Student Loans: A Timeline of Actions Taken in Light of the COVID-19 Pandemic (2022) (chronicling actions taken to date to ease student loan burden in midst of the pandemic); Edward C. Liu & Sean M. Stiff, Cong. Rsch. Serv. LSB10818, Statutory Basis for Biden Administration Student Loan Forgiveness (2022) <https://www.crs.gov/reports/pdf/LSB10818>.

¹⁰See Press Release, U.S. Dep't of Educ., Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs (Apr. 19, 2022), <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

¹¹See U.S. Gov't Accountability Off., GAO-22-103720, Federal Student Aid: Education Needs to Take Steps to Ensure Eligible Loans Receive Income-Driven Repayment Forgiveness 22 (2022) <https://www.gao.gov/products/gao-22-103720>.

fer to PHEAA; and inaccurate counts of qualifying payments they made towards PSLF.¹²

H. Res. 1295 seeks to review documents related to the cost estimates for the payment count revision and the PSLF waiver. This request is unnecessary at this time. While the Department has yet to formally release cost estimates, the Committee notes that the Department regularly publishes costs of administration of the federal student loan program in end of the year financial statements, and those estimates are recalculated in advance of the release of the President’s yearly budget. These statements are not given just to Committees of jurisdiction in Congress—they are released to the general public, in accordance with multiple laws including the *Higher Education Act of 1965*.¹³ Without any Congressional request, the cost estimates will be published twice in the next six months. At no point during the deliberation on H. Res. 1295 did the Minority acknowledge these facts, as doing so would refute rhetoric that the Department was hiding the cost of these actions, and further obviate the need for this ROI.

In addition to the scheduled release of official cost estimates, it should be noted the Department is providing the Committee with regular updates of *real data* on both the number of loans and dollar amounts forgiven under these actions. Again, this information has not been hidden, but is in fact publicly available. A few hours after H. Res. 1295 was considered in Committee, Department Secretary Miguel Cardona tweeted out to approximately 80,000 followers that over 170,000 borrowers had received loan forgiveness totaling over \$10 billion.¹⁴ The combination of regular actual updates, anticipated cost estimates, and public statements all suggest the Committee need not take any further action to obtain the costs of the IDR payment count revision and the PSLF waiver. Further, if some intervening action was needed to obtain this data, the Committee need not demand every note from every meeting at the Department to do so. As such, the Committee reported H. Res. 1295 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. 1295 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.

¹²U.S. Consumer Financial Protection Bur., *Staying on track while giving back: the cost of student loan servicing breakdowns for people serving their communities 6–8* (2017), https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf.

¹³U.S. Dept of Educ., *Fed. Student Aid FY21 Annual Report viii* (Nov. 2021) (containing a list of the various statutory requirements satisfied by the report) <https://studentaid.gov/sites/default/files/fy2021-fsa-annual-report.pdf>.

¹⁴@SecCardona, Twitter (Sept. 15, 2022, 3:31 PM), <https://twitter.com/SecCardona/status/1570495463379587072>.

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. 1295 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. 1295 contains no unfunded mandates.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H. Res. 1295 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. 1295:

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. 1295 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. 1295 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. 1295 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 President Biden's announcement on October 6, 2021, to alter and expand the law governing the Public Service Loan Forgiveness (PSLF) program and the April 19, 2022, announcement to rewrite the statutory requirements governing income-driven repayment (IDR) plans, Committee Republicans requested information regarding these actions, including the legal authority to carry them out by executive action and the cost of these waivers that significantly expand these programs beyond what is authorized under the law.¹ The administration repeatedly failed to provide any substantial information. Therefore, Ranking Member Virginia Foxx introduced H. Res. 1295. This resolution requests that the Secretary of Education provide the House of Representatives with five distinct sets of documents that informed the Secretary's waivers related to PSLF and IDR.

First, the resolution requests the Secretary of Education to produce any estimates and assumptions used by the Department of Education to generate an analysis of the expected cost for the PSLF waiver and the IDR waiver. Second, the Secretary of Education is asked to provide documents detailing the meetings and conversations among White House officials, the Department of Education, Members of Congress, and outside stakeholders who discussed these policy decisions and who may have helped to determine the scope of eligible borrowers and the amount of debt potentially affected through the PSLF waiver and IDR waiver. Third, the resolution requests any related budget estimates that came as a result of the discussions held between the Executive Office of the President, Department of Education, Department of Treasury, and the Bureau of Consumer Financial Protection. Fourth, the Secretary of Education is requested to share any documentation regarding the discussions and deliberations between Department of Education employees, including political appointees and career staff, relating to making public any budget estimates, impact analyses, and the number of borrowers potentially eligible to benefit and the amount of potential debt affected through the PSLF waiver and IDR waiver. Lastly, the resolution requests the Secretary of Education to provide final budget estimates, impact analyses, cost benefit analyses and the number of borrowers potentially eligible to benefit as well as the amount of outstanding debt potentially affected under the administration's PSLF waiver and IDR waiver.

¹ CITE our letters that we are referring to here.

The Congressional History of Conducting Oversight over PSLF and IDR

First authorized under the *College Cost Reduction and Access Act of 2007*, the PSLF program was created to encourage individuals to enter and continue working in public service professions and to counter the financial deterrent of perceived lower wages in public service jobs than in other occupations.² Congress created this PSLF benefit for Direct Loan borrowers only. In 2007, the first year eligibility for PSLF would count, Direct Loan borrowers only accounted for 21 percent of outstanding federal student loans.³ Most federal loans in 2007 were disbursed through the old Federal Family Educational Loan (FFEL) program. Because the subsidies provided to the lenders and guarantors operating the FFEL program were more costly to the federal government than direct lending at the time, CBO's initial estimate of PSLF projected the federal government would save approximately \$30 million dollars from 2008 to 2017 as a small portion of borrowers switched from FFEL to the Direct Loan program.⁴ The criteria to receive the PSLF benefit was specifically laid out in the law:

- The loan must be a Direct Loan, but not a Parent PLUS Direct Loan.
- The borrower must make 120 qualifying monthly payments on or after October 1, 2007. Those payments must be on-time, full, scheduled, separate, and monthly.⁵
- The monthly payments must be made in a qualifying repayment plan, which only includes the standard plan or one of the income-driven repayment (IDR) plans. Borrowers in extended or graduated repayment plans are not eligible.
- The borrower must be employed full-time for a qualifying “public service” employer while making the payments, while applying for loan cancellation, and when forgiveness is granted.⁶

Any payment made on a FFEL loan prior to consolidation into the Direct Loan Program does not count as a qualifying payment toward the 120 total payments required for PSLF eligibility. In 2008, the Department published regulations clarifying certain points about the program, including definitions of public service organizations and “full-time.”⁷ But it was not until 2018, over 10 years after the program's enactment, that federal entities outside of the Department of Education took notice on implementation of the program. In 2018, the Department of Education began regularly publishing data on the loan forgiveness amounts⁸ and by September 2018, the Government Accountability Office (GAO) pub-

²“Public Service Loan Forgiveness Program: Selected Issue”, CRS Report (R45389), Alexandra Hegji, October 29, 2019.

³<https://www.forbes.com/sites/prestoncooper/2018/09/25/everyone-calm-down-about-rejected-student-loan-forgiveness-applications/#314370397f6f>.

⁴ <https://cbo.gov/sites/default/files/cbofiles/ftpdocs/82xx/doc8282/higheredurecon.pdf>.

⁵“Public Service Loan Forgiveness Program: Selected Issue”, CRS Report (R45389), Alexandra Hegji, October 29, 2019.

⁶“Public Service Loan Forgiveness Data” <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data>.

⁷<https://www.federalregister.gov/documents/2008/10/23/E8-24922/federal-perkins-loan-program-federal-family-education-loan-program-and-william-d-ford-federal-direct>.

⁸<https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

lished its first report on PSLF implementation.⁹ This report noted that approximately 1 percent of applicants were granted forgiveness. However, the reports were clear that borrowers' applications for PSLF were denied for legitimate, legal reasons, such as not making the correct number of payments in a qualifying repayment plan.¹⁰ This led to the creation of the Temporary Extended Public Service Loan Forgiveness (TEPSLF) program in 2018 and appropriated a total of \$700 million over two years for borrowers to re-apply under, again, specific parameters, such as that a borrower's last 12 months of payments had to be as much as they would have paid under a PSLF qualifying IDR plan to receive a second review for PSLF eligibility.¹¹ GAO released a report on the implementation of TEPSLF on September 5, 2019,¹² stating that the primary reason applicants were denied TEPSLF was because of statutory requirements that applicants must first apply for and be denied PSLF. Of the denied TEPSLF applications, 71 percent were denied because they had not first submitted a PSLF application. It is also important to note that nowhere in the GAO report did they find evidence that the Department of Education was not following the law. GAO also did not find that the Department was improperly denying borrowers forgiveness or slow walking the implementation process.

Similar to the level of engagement over the PSLF program, Congress has not amended the *Higher Education Act* to modify the law around income-based or income-contingent repayment plans, except for the *Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act of 2019*, which allowed the Department to receive federal tax information directly from the Internal Revenue Service for the purposes of better administrating IDR plans.¹³ However, under the Obama administration, the Department of Education engaged in rulemaking to create the Pay-as-You-Earn (PAYE) repayment plan in 2012 and the Revised Pay as You Earn (REPAYE) in 2015, both allowing the borrower to pay less monthly and reach forgiveness faster. IDR plans have skyrocketed in enrollment with 24 percent of undergraduate borrowers and 39 percent of graduate Direct Loans borrowers enrolled in IDR by 2017 and an estimated \$200 billion in loans set to be forgiven between 2020–2029 alone.¹⁴ Vastly expanding this cost through illegal waivers that allow millions of ineligible borrowers to receive relief only increases the cost of these programs further, and Congress has every right to know by exactly how much.

The Necessity of Resolutions of Inquiry for these Programs

Now that the Biden administration has chosen to unilaterally change the rules of two forgiveness programs, Congress must engage in oversight of the impact of the executive actions. H. Res. 1295 would provide Congress with insight into the administration's

⁹ <https://www.gao.gov/products/gao-18-547>.

¹⁰ <https://www.forbes.com/sites/robertfarrington/2018/09/13/appeal-pslf-credits/?sh=3ad27a4a3ce3>.

¹¹ <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-forgiveness>.

¹² <https://www.gao.gov/assets/gao-19-595.pdf>.

¹³ P.L. 116–91.

¹⁴ <https://www.cbo.gov/system/files/2020-02/55968-CBO-IDRP.pdf>.

agenda to cancel larger balances but would not account for the costs of such cancellation. Moreover, the Republican members of this Committee continue to be concerned about the cost of running the federal student loan program as it appears the costs of this program have been underestimated for years. According to a recent GAO report, the Department of Education’s budget for student loans was off by \$311 billion over the last twenty years.¹⁵ We do know that this budget mistake is due in large part to incorrect assumptions about the IDR and PSLF programs. It was through correspondence between the Department and congressional Democrats that it came to light that the IDR waiver alone could forgive as much as an estimated \$211 billion.¹⁶ Moreover, while the Biden administration refuses to provide this Committee with a full cost estimate for the PSLF waiver, a recent analysis estimated that as much as \$145 billion in student loans are eligible for cancellation through this unlawful waiver.¹⁷

The documents requested through this ROI will help Congress understand the true cost of Biden’s unilateral actions, what estimates the administration used to make the decision to erase these debts owed to the taxpayer, and what the impacts are to taxpayers.

Unfounded Objections of the Majority

During the debate of H. Res. 1295, Democrats made a number of other objections to the resolution of inquiry, all of which are unfounded. The Majority claimed that the administration has been responsive to letters from the minority. However, Ranking Member Foxx has sent more than 60 letters to the Department and received only 45 responses.

The Majority also claimed that H. Res. 1295 and the documents requested “will have the effect of bogging down the administration with extraordinary production requests.” The administration has prioritized work and dedicated staff to enacting both the PSLF and IDR waivers. Estimates and assumptions, deliberations and final decisions should have all occurred for the administration to move forward with the waivers. If these actions have all taken place, then the administration should be able to quickly compile key information that they relied upon.

The Majority then relied upon one GAO estimate of \$9.5 billion in cancelled loan debt through PSLF as the assumed current best estimate of costs of the program. However, this estimate came from the previously mentioned GAO report that focused on the new finding that the Department has been underestimating loan program costs for over twenty years. GAO acknowledges that the information they received from the Department had deficiencies and that until the Department replaces their model with a borrower-based microsimulation model to incorporate more sophisticated factors, the estimates will have deficiencies.¹⁸

Lastly, the Majority made an assertion that Democrats should be able to discharge more loans and that “running it [PSLF] properly

¹⁵ <https://www.gao.gov/products/gao-22-105365>.

¹⁶ <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf>.

¹⁷ <https://www.nber.org/papers/w30208>.

¹⁸ <https://www.gao.gov/assets/gao-22-105365.pdf>.

. . . actually doing discharges, as people are entitled, is going to cost some money.”¹⁹ The Minority would respond that the only measure of correctly running a program is to follow the law as written. The ultimate goal should not be to discharge the most loans possible but to administer PSLF and IDR properly by discharging the loans that are eligible and that meet the full requirements under the law.

Conclusion

Oversight is not a partisan exercise. It is a duty of the legislative branch of government. Refusing to fulfill this duty and instead to allow an administration to usurp the power of Congress is damaging to the long-term effectiveness of the loan repayment programs, our postsecondary systems, Congress, and the American people.

VIRGINIA FOXX,
Ranking Member.
 GLENN “GT” THOMPSON.
 TIM WALBERG.
 GLENN GROTHMAN.
 ELISE M. STEFANIK.
 RICK W. ALLEN.
 JIM BANKS.
 JAMES COMER.
 RUSS FULCHER.
 FRED KELLER.
 MARIANNETTE MILLER MEEKS,
 M.D.
 BURGESS OWENS.
 BOB GOOD.
 LISA C. McCLAIN.
 MARY E. MILLER.
 SCOTT FITZGERALD.
 MADISON CAWTHORN.
 CHRIS JACOBS.
 BRAD FINSTAD.

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¹⁹ <https://subscriber.politicopro.com/transcript/6edddb11-26a9-4c25-9b4d-2f88553341fc>.