

information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

*Title of Collection:* Health Education Assistance Loan (HEAL) Program Regs.

*OMB Control Number:* 1845-0125.

*Type of Review:* Extension without change of a currently approved collection.

*Respondents/Affected Public:* Individuals and Households; State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 129,945.

*Total Estimated Number of Annual Burden Hours:* 24,120.

*Abstract:* This is a request for an extension of OMB approval of information collection requirements associated with the Health Education Assistance Loan (HEAL) Program regulations for reporting, recordkeeping and notifications, currently approved under OMB No. 1845-0125. There has been no change to the regulatory language. The previous filing totals were incorrectly summed and the correct totals are presented here.

Dated: August 24, 2022.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022-18591 Filed 8-29-22; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Notice Inviting Publishers To Submit Tests for a Determination of Suitability for Use in the National Reporting System for Adult Education

**AGENCY:** Office of Career, Technical, and Adult Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Education invites publishers to submit tests for review and approval for use in the National Reporting System for Adult Education (NRS) and announces the date by which publishers must submit these tests. This notice relates to the approved information collection under OMB control number 1830-0567.

**DATES:** *Deadline for transmittal of applications:* October 1, 2022.

**ADDRESSES:** Submit your application by email to [NRS@air.org](mailto:NRS@air.org).

**FOR FURTHER INFORMATION CONTACT:** John LeMaster, U.S. Department of Education, 400 Maryland Avenue SW, Room 11152, Potomac Center Plaza, Washington, DC 20202-7240. Telephone: (202) 245-6218. Email: [John.Lemaster@ed.gov](mailto:John.Lemaster@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:** The Department's regulations for Measuring Educational Gain in the National Reporting System for Adult Education, 34 CFR part 462 (NRS regulations), include the procedures for determining the suitability of tests for use in the NRS.

There is a review process that will begin on October 1, 2022. Only tests submitted by the due date will be reviewed in that review cycle. If a publisher submits a test after October 1, 2022, the test will not be reviewed until the review cycle that begins on October 1, 2023.

*Criteria the Secretary Uses:* In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in 34 CFR 462.13.

#### *Submission Requirements:*

(a) In preparing your application, you must comply with the requirements in 34 CFR 462.11.

(b) In accordance with 34 CFR 462.10, the deadline for transmittal of applications in this fiscal year is October 1, 2022.

(c) You must retain a copy of your sent email message and the email attachments as proof that you submitted

your application by 11:59 p.m. local time on October 1, 2022.

(d) We do not consider applications submitted after the application deadline date to be timely for the October 1, 2022, review cycle. If an application is submitted after the October 1, 2022, deadline date, the application will be considered timely for the October 1, 2023, deadline date.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and an application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*Authority:* 29 U.S.C. 3292.

**Amy Loyd,**

*Assistant Secretary for Career, Technical, and Adult Education.*

[FR Doc. 2022-18624 Filed 8-29-22; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Notice of Debt Cancellation Legal Memorandum

**AGENCY:** Office of the General Counsel, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department publishes this memorandum on the Secretary's legal authority to cancel student debt on a categorical basis.

#### **FOR FURTHER INFORMATION CONTACT:**

Brian Siegel, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW,

room 6E-105, Washington, DC 20202. Telephone: (202) 987-1508. Email: [brian.siegel@ed.gov](mailto:brian.siegel@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:** The Department publishes this memorandum on the Secretary's legal authority to cancel student debt on a categorical basis. The debt relief memorandum is in Appendix A of this notice.

*Accessible Format:* On request to the program contact person listed above under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotope, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Miguel A. Cardona,**  
Secretary of Education.

## Appendix A—Debt Cancellation Legal Memorandum

TO: Miguel A. Cardona Secretary of Education  
FROM: Lisa Brown General Counsel  
DATE: August 23, 2022  
SUBJECT: The Secretary's Legal Authority for Debt Cancellation

### Introduction

For the past year and a half, the Office of General Counsel (“OGC”), in consultation with our colleagues at the Department of Justice Office of Legal Counsel, has conducted a review of the Secretary's legal authority to cancel student debt on a categorical basis. This review has included assessing the analysis outlined in a publicly disseminated January 2021 memorandum

signed by a former Principal Deputy General Counsel. As detailed below, we have determined that the Higher Education Relief Opportunities for Students (“HEROES”) Act of 2003 grants the Secretary authority that could be used to effectuate a program of targeted loan cancellation directed at addressing the financial harms of the COVID-19 pandemic. We have thus determined that the January 2021 memorandum was substantively incorrect in its conclusions.

Given the significant public interest in this issue, and the potential for public confusion caused by the public availability of the January 2021 memorandum, I recommend making this memorandum publicly available and publishing it in the **Federal Register**, so as to provide the general public with notice of the Department's interpretation of the HEROES Act, consistent with statutory requirements. See 5 U.S.C. 552(a).<sup>1</sup>

### I. The Secretary's HEROES Act Authority

The HEROES Act, first enacted in the wake of the September 11 attacks, provides the Secretary broad authority to grant relief from student loan requirements during specific periods (a war, other military operation, or national emergency, such as the present COVID-19 pandemic) and for specific purposes (including to address the financial harms of such a war, other military operation, or emergency). The Secretary of Education has used this authority, under both this and every prior administration since the Act's passage, to provide relief to borrowers in connection with a war, other military operation, or national emergency, including the ongoing moratorium on student loan payments and interest.<sup>2</sup>

Specifically, the HEROES Act authorizes the Secretary to “waive or modify any statutory or regulatory provision applicable to the student financial assistance programs” if the Secretary “deems” such waivers or modifications “necessary to ensure” at least one of several enumerated purposes, including that borrowers are “not placed in

<sup>1</sup> The Office of Legal Counsel has made its own analysis of the Secretary's authority, which will be published in tandem with this memorandum's recommended publication.

<sup>2</sup> See Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, William D. Ford Federal Direct Loan Program, and Federal-Work Study Programs), 85 FR 79,856, 79,856 (Dec. 11, 2020) (“Secretary [DeVos] is issuing these waivers and modifications under the authority of the HEROES Act[.]”); Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and the Federal Direct Loan Program), 77 FR 59,311, 59,312 (Sept. 27, 2012) (“In accordance with the HEROES Act, . . . Secretary [Duncan] is providing the waivers and modifications of statutory and regulatory provisions applicable to the student financial assistance programs[.]”); Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Direct Loan Program, Federal Family Education Loan Program and the Federal Pell Grant Program), 68 FR 69,312, 69,312 (Dec. 12, 2003) (“Secretary [Paige] is issuing these waivers and modifications under the authority of section 2(a) of the Higher Education Relief Opportunities for Students (HEROES) Act of 2003[.]”).

a worse position financially” because of a national emergency. 20 U.S.C. 1098bb(a)(1), (2)(A).

Several provisions of the HEROES Act indicate that Congress intended the Act to confer broad authority under the circumstances, and for the purposes, specified by the Act. First, the Act grants authority “[n]otwithstanding any other provision of law, unless enacted with specific reference to this section.” *Id.* § 1098bb(a)(1). Second, the Act authorizes the Secretary to waive or modify “any” statutory or regulatory provision applicable to the student financial assistance programs. *Id.* § 1098bb(a)(1), (a)(2). Third, the Act expressly authorizes the Secretary to issue such waivers and modifications as he “deems necessary in connection with a war or other military operation or national emergency.” *Id.* § 1098bb(a)(1). The Supreme Court has recognized that, in empowering a federal official to act as that official “deems necessary” in circumstances specified by a statute, Congress has granted the official broad discretion to take such action.<sup>3</sup> This authority is not, however, boundless: it is limited, *inter alia*, to periods of a war, other military operation, or national emergency (*id.* § 1098bb(a)(1)), to certain categories of eligible individuals or institutions (*id.* § 1098ee(2)), and to a defined set of purposes (*id.* § 1098bb(a)(2)(A)–(E)).

In present circumstances, this authority could be used to effectuate a program of categorical debt cancellation directed at addressing the financial harms caused by the COVID-19 pandemic. The Secretary could waive or modify statutory and regulatory provisions to effectuate a certain amount of cancellation for borrowers who have been financially harmed because of the COVID-19 pandemic. The Secretary's determinations regarding the amount of relief, and the categories of borrowers for whom relief is necessary, should be informed by evidence regarding the financial harms that borrowers have experienced, or will likely experience, because of the COVID-19 pandemic. But the Secretary's authority can be exercised categorically to address the situation at hand; it does not need to be exercised “on a case-by-case basis.” *Id.* § 1098bb(b)(3). That is, he is not required to determine or show that any individual borrower is entitled to a specific amount of relief, and he instead may provide relief on a categorical basis as necessary to address the financial harms of the pandemic.

### II. The January 2021 Memorandum

On January 7, 2021, Secretary DeVos resigned from her position as Secretary of Education, effective January 8, 2021. On January 13, a news outlet published a memorandum signed January 12 by the then-Principal Deputy General Counsel, addressed to “Betsy DeVos[,] Secretary of Education.”<sup>4</sup>

<sup>3</sup> *Webster v. Doe*, 486 U.S. 592, 600 (1988) (statute authorizing action when an agency head “shall deem such [action] necessary or advisable” “fairly exudes deference” to agency head and “strongly suggests that its implementation was ‘committed to agency discretion by law’” (second emphasis added) (some quotation marks omitted)).

<sup>4</sup> Michael Stratford, Trump Administration Tries to Hamstring Biden on Student Loan Forgiveness, Politico (Jan. 13, 2021).

Two substantively identical versions of that memorandum were posted to the website of the Office of Postsecondary Education, dated January 12 and January 18 (collectively, the “January 2021 memorandum”). Having reviewed the memorandum in consultation with the Office of Legal Counsel, we have determined that although it accurately describes the core features of the HEROES Act, its ultimate conclusions are unsupported and incorrect.<sup>5</sup> As such, it should be rescinded.

As an initial matter, the bulk of the January 2021 memorandum’s discussion of HEROES Act authority describes and quotes the key provisions of the HEROES Act. The memorandum explains that the HEROES Act provides the Secretary “authority to provide specified [6] waivers or modifications to Title IV federal financial student aid program statutory and regulatory requirements because of the declared National Emergency,” identifies that declared emergency as the COVID–19 national emergency declared on March 18, 2020, and characterizes this authority as “narrowly cabined” to achieving five enumerated purposes, including “ensur[ing] that . . . recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals.” Jan. 2021 Mem. at 5–6.

The memorandum goes on to read in purported limitations on the scope of relief that may be afforded that are contrary to the clear text of the Act. The memorandum

<sup>5</sup> In addition to determining that the conclusions contained in the January 2021 memorandum were substantively incorrect, we have determined that the memorandum was issued in contravention of then-effective Department processes for issuing significant guidance. An Interim Final Rule issued by the Department on October 5, 2020, pursuant to Executive Order 13,891, established additional procedures for the issuance of guidance documents. See Rulemaking and Guidance Procedures, 85 FR 62,597 (Oct. 5, 2020); see also Exec. Order No. 13,891, 84 FR 55,235 (Oct. 9, 2019). That rule established new requirements for the issuance of guidance and “significant guidance,” defining the latter term to include guidance documents that “[r]aise novel, legal, or policy issues arising out of legal mandates [or] the President’s priorities.” 85 FR at 62,608. The public dissemination of the January 2021 memorandum violated a number of provisions of this rule, including that guidance must be “accessible through the Department’s guidance portal,” and that, barring compelling cause, all significant guidance may be published only after a 30-day public comment period and review by the Office of Management and Budget under Executive Order 12,866 of September 30, 1993. *Id.* That rule was rescinded in September 2021, 86 FR 53,863 (Sept. 29, 2021), but it was in effect at the time of the January 2021 memorandum’s publication. Thus, OGC has determined that the January 2021 memorandum was not properly promulgated.

<sup>6</sup> We read the term “specified” as acknowledging statutory limits on HEROES Act authority, including the enumerated purposes of 20 U.S.C. 1098bb(b)(1), and not as suggesting any atextual limitations on the Act’s clear grant of authority to waive or modify “any” statutory or regulatory provision applicable to student aid programs, provided other HEROES Act requirements are met.

advances three primary arguments in support of a conclusion that “Congress never intended the HEROES Act as authority for mass cancellation, compromise, discharge, or forgiveness of student loan principal balances, and/or to materially modify repayment amounts or terms.” Jan. 2021 Mem. at 6.

First, the memorandum recites certain statutory limits on the Secretary’s authority, including the HEROES Act’s statutory definition of individuals eligible for relief, 20 U.S.C. 1098ee(2), and the enumerated purposes for which waivers or modifications may be issued, *id.* § 1098bb(a)(2).

The memorandum is correct that such statutory provisions exist but provides no support for the suggestion that these provisions impose limitations beyond their clear terms. See Jan. 2021 Mem. at 6.

Second, the memorandum points to the HEROES Act’s references to avoiding “defaults” and a “cross-cite” to a separate provision of the Higher Education Act relating to the “return” of student loan funds, concluding that these provisions “provide a strong textual basis for concluding Congress intended loans to be repaid.” *Id.* But these provisions—which identify as allowable purposes issuing waivers or modifications to avoid defaults and granting relief from certain requirements that borrowers return certain payments—in no way impose a requirement that any exercise of HEROES Act authority must ensure that every borrower is left with a remaining balance on their loan. The reference to “defaults” authorizes the Secretary to “avoid” defaults; it does not require that he preserve their possibility. And the Higher Education Act provisions regarding the “return” of overpayments relate only to specific processes and calculations under which students are required to return grant and loan assistance if they withdraw from their school, see 20 U.S.C. 1091b; there is no conceivable reading of this provision that reflects a congressional intent that all borrowers, including those not covered by the section 1091b overpayment provisions, are required to repay their loans in full.

Third, the memorandum concludes that the authority to “waive or modify any statutory or regulatory provision” is limited to the definition of “modify” that was adopted for an unrelated telecommunications statute, and “does not authorize major changes.” Jan. 2021 Mem. at 6. The memorandum draws its definition of modify from *MCI Telecomms. Corp. v. Am. Telephone & Telegraph Co.*, 512 U.S. 218, 225 (1994). In that case, the statutory provisions under review applied no clear limiting principle to a grant of modification authority to the FCC; the statute allowed modifications “in [the FCC’s] discretion and for good cause shown.” *Id.* at 224 (quoting 47 U.S.C. 203 (1988 ed. and Supp. IV)). Here, the HEROES Act itself clearly speaks to the scope of modification authority: the Secretary may make those modifications as may be “necessary to ensure” specific enumerated purposes. 20 U.S.C. 1098bb. The Secretary may not make modifications going beyond that limit, but nor is he restricted to a degree of modifications that would fall short of “ensur[ing]” the enumerated purposes are

achieved. Moreover, the HEROES Act broadly authorizes the Secretary to act as he “deems necessary” to “waive or modify” any statutory or regulatory provision applicable to the student aid program. The January 2021 memorandum’s interpretation of “modify” would read the Act to authorize the Secretary to waive entirely or to make non-major changes in the relevant statutory or regulatory provisions, but not authorize the Secretary to do anything in between. That interpretation is illogical, and nothing in the HEROES Act’s broad grant of authority supports such a reading.

We have discussed these and other aspects of the January 2021 memorandum with the Office of Legal Counsel, and we further find persuasive the discussion of the January 2021 memorandum offered in the Office of Legal Counsel’s memorandum, which will be published in tandem with this memorandum’s recommended publication.

### Conclusion

For the reasons detailed above, I recommend that you (1) determine that the January 2021 memorandum is formally rescinded as substantively incorrect and (2) authorize publication in the **Federal Register** and public posting of this memorandum as the Department’s interpretation of the HEROES Act.

[FR Doc. 2022–18731 Filed 8–29–22; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Proposed Agency Information Collection

**AGENCY:** Bonneville Power Administration, Department of Energy.  
**ACTION:** Submission for Office of Management and Budget (OMB) review; comment request.

**SUMMARY:** The Department of Energy (DOE), Bonneville Power Administration (BPA), invites public comment on a collection of information that BPA is developing for submission to OMB pursuant to the Paperwork Reduction Act of 1995. The proposed collection, Contractor Safety, will be used to manage portions of the Safety program that are related to contractors. These collection instruments allow for compliance with Occupational Safety and Health Administration (OSHA) requirements.

**DATES:** Comments regarding this proposed information collection must be received on or before October 31, 2022. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent