

# Congress of the United States

Washington, DC 20515

May 17, 2024

## VIA ELECTRONIC TRANSMISSION

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

Dear Secretary Cardona:

The latest Notice of Proposed Rule Making (NPRM) proposed by your Department of Education (Department) on April 17, 2024<sup>1</sup>, represents the latest in a string of reckless attempts to transfer as much as \$1 trillion of student loan debt from those who willingly borrowed to those who did not or have already repaid their loans.<sup>2</sup> We strongly urge you to withdraw it.

The Biden administration describes this regulation as “targeted relief,” yet the Department’s own estimates show the opposite. This is even broader than the Department’s first attempt: at an estimated price tag of \$147 billion, taxpayers are being forced to take on the debt of nearly 28 million borrowers.<sup>3</sup> Moreover, while the Department likely does not wish to highlight how much their proposal would help the wealthy, outside estimates show that borrowers eligible for “relief” under certain provisions in this proposal will have a typical income of over \$300,000.<sup>4</sup> Unfortunately, the Department did not include its own analysis of the distributional effect of these regulations.

In addition to the fiscally irresponsible nature of this backdoor attempt to enact “free” college, the administration continues to use borrowers as political pawns knowing full well these proposed actions are illegal. The Supreme Court has made it abundantly clear that there is zero authority to write-off federal student loans en masse last June when the Department’s “Plan A” was ruled unconstitutional.<sup>5</sup>

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<sup>1</sup> Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 27564 (proposed April 17, 2024) (to be codified at 34 CFR 30, 34 CFR 682).

<sup>2</sup> Breaking the System: Examining the Implications of Biden’s Student Loan Policies for Students and Taxpayers: Hearing Before the Subcomm. On Higher Education and Workforce Development, 118 Cong. (2023) (Statement of Marc Goldwein).

<sup>3</sup> Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 27564 (proposed April 17, 2024) (to be codified at 34 CFR 30, 34 CFR 682).

<sup>4</sup> Junlei Chen & Jesus Villero, *Analysis of President Biden’s New Plans for Student Debt Relief*, Penn Wharton Budget Model (Apr. 11, 2024), <https://budgetmodel.wharton.upenn.edu/issues/2024/4/11/biden-studen-loan-debt-relief>.

<sup>5</sup> *Biden v. Nebraska*, 600 U.S. 477, 143 (2023).

Further, this regulation is only part of the Department’s “Plan B.” The Department notes that the long-anticipated regulation to “cancel” loans for borrowers facing “hardship”—a broad term defined under the NPRM to grant the Department full authority to cancel any loan it pleases—is still forthcoming.<sup>6</sup> According to budget experts, those additional changes would bring the total cost of the Department’s “Plan B” to nearly \$750 billion, at almost double the cost of “Plan A”.<sup>7</sup>

“Plan B” hinges on creating these extensive regulations based on scant statutory text written in 1965. That text, which describes how the then Commissioner of Education at the Department of Health Education and Welfare could “enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right or redemption” under the Federal Loan Insurance Program.<sup>8</sup> It is certain that drafters in 1965 through the last reauthorization in 2008, did not contemplate that these words would be used to cancel massive portions of student loan balances. This statute has no history of broad use by any previous Secretary and was previously deemed by this administration as less likely to hold up in court than “Plan A.”<sup>9,10</sup>

While the administration dedicated resources needed to draft this proposal to benefit those who already were able to attend college, it simultaneously failed to competently implement the Free Application for Federal Student Aid (FAFSA). The FAFSA is a simple 36-question form that helps the nation’s neediest current and prospective college attendees understand what federal financial aid is available to them.<sup>11</sup> Failure to make the FAFSA available to these prospective students on time will have life-long consequences for many young Americans. We already know, as of March 29, FAFSA completion for seniors in high school is down by 40 percent.<sup>12</sup> Those who do not file will likely not attend college next year and maybe never will.

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<sup>6</sup> *Proposed Regulatory Text Student Debt Relief, Negotiated Rulemaking, Session 4, February 22-23, 2024*, U.S. Department of Education, (Feb. 22, 2024), <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/sdr-negotiated-rulemaking-section-30-91-final-text-consensus-reached.pdf>.

<sup>7</sup> *Student Debt Plan Would Add Hundreds of Billions to Deficit*, Committee for a Responsible Federal Budget (Apr. 16, 2024), <https://www.crfb.org/blogs/student-debt-plan-would-add-hundreds-billions-deficit>.

<sup>8</sup> The Higher Education Act of 1965, Pub. L. No. 89-329 § 432, (1965).

<sup>9</sup> The Higher Education Opportunity Act, Pub. L. 110-315, (2008).

<sup>10</sup> Before the Biden Administration announced “Plan A” via the HEROES Act authority as an avenue for mass cancellation, Senators Charles Schumer and Elizabeth Warren urged President Biden to utilize Section 432 of the Higher Education Act of 1965 to cancel all or portions of loans. Section 432 is now your “Plan B”.

Press Release, Senate Democrats, Schumer, Warren: The Next President Can and Should Cancel Up to \$50,000 Student Loan Debt Immediately; Democrats Outline Plan for Immediate Action in 2021 (Sept. 17, 2020)

<https://www.democrats.senate.gov/newsroom/press-releases/schumer-warren-the-next-president-can-and-should-cancel-up-to-50000-in-student-loan-debt-immediately-democrats-outline-plan-for-immediate-action-in-2021>.

Eileen Connor, Deanne Loonin, & Toby Merrill, Letter to Warren regarding admin debt cancellation.pdf, Legal Services Center of Harvard Law School, (Sept. 14, 2020)

<https://www.warren.senate.gov/imo/media/doc/Ltr%20to%20Warren%20re%20admin%20debt%20cancellation.pdf>.

<sup>11</sup> FAFSA Fail: Examining the impact on students, families, and schools: Hearing Before the Subcomm. On Higher Education and Workforce Development, 118 Cong. (2024) (Statement of Burgess Owens), <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=410357>.

<sup>12</sup> Bill DeBaun, *New Data: FAFSA Completions Down 40% Through End of March*, National College Attainment Network, (April 8, 2024) <https://www.ncan.org/news/669477/New-Data-FAFSA-Completions-Down-40-Through-End-of-March.htm>.

Instead of exacerbating the problems of inflated college costs and low-value degrees, we urge you to withdraw this NPRM and work with Congress. It is past time that we fix our nation's broken higher education financing system.

Sincerely,



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Virginia Foxx  
Chairwoman  
House Committee on Education and  
the Workforce



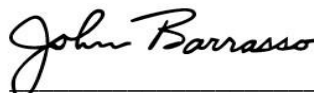
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Bill Cassidy, M.D.  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor, and Pensions



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Elise M. Stefanik  
House Republican Conference Chair



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John Barrasso, M.D.  
United States Senator



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Gary J. Palmer  
House Republican Policy Committee Chair



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Marsha Blackburn  
United States Senator



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Lisa McClain  
House Republican Conference Secretary



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Lloyd Smucker  
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Steve Daines  
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Burgess Owens  
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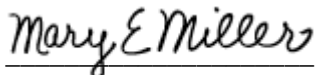
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Bob Good  
Member of Congress



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Deb Fischer  
United States Senator



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Mary E. Miller  
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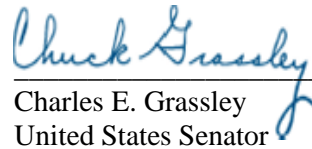
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Lindsey Graham  
United States Senator



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Michelle Steel  
Member of Congress



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Charles E. Grassley  
United States Senator



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Ron Estes  
Member of Congress



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Josh Hawley  
United States Senator



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Julia Letlow  
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John Hoeven  
United States Senator



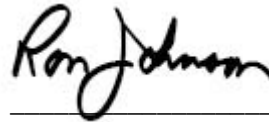
Aaron Bean  
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Eric Burlison  
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Ron Johnson  
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Erin Houchin  
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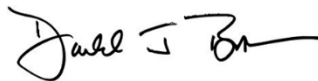
James Lankford  
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Brian Babin, D.D.S.  
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Cynthia M. Lummis  
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Don Bacon  
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Roger Marshall, M.D.  
United States Senator



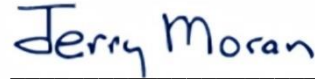
Troy Balderson  
Member of Congress



Mitch McConnell  
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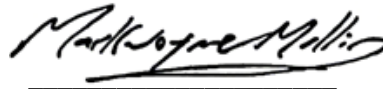
Andy Barr  
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United States Senator



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Pete Ricketts  
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Lauren Boebert  
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James E. Risch  
United States Senator



Mike Bost  
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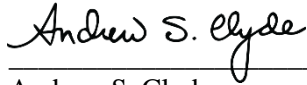
Mitt Romney  
United States Senator



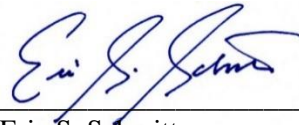
Earl L. "Buddy" Carter  
Member of Congress



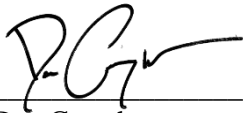
M. Michael Rounds  
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Andrew S. Clyde  
Member of Congress



Eric S. Schmitt  
United States Senator



Dan Crenshaw  
Member of Congress



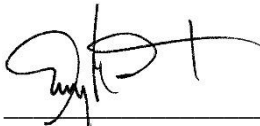
Tim Scott  
United States Senator



Scott DesJarlais, M.D.  
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Dan Sullivan  
United States Senator



Anthony D'Esposito  
Member of Congress



John Thune  
United States Senator

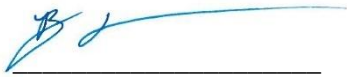


Mario Diaz-Balart  
Member of Congress

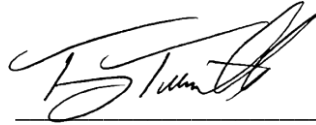


Thom Tillis  
United States Senator





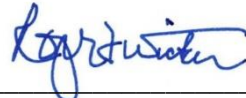
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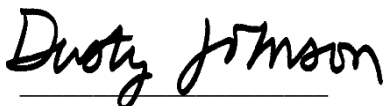
Harriet M. Hageman  
Member of Congress



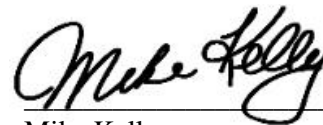
Andy Harris  
Member of Congress



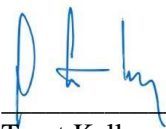
John James  
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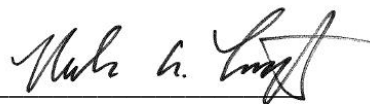
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Mike Kelly  
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Trent Kelly  
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Nicholas A. Langworthy  
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Jake LaTurner  
Member of Congress



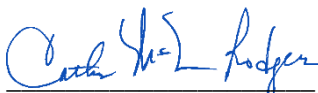
Debby Lesko  
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Barry Loudermilk  
Member of Congress



Rich McCormick, M.D., M.B.A.




Cathy McMorris Rogers  
Member of Congress



Max L. Miller  
Member of Congress



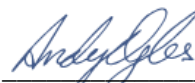
John R. Moolenaar  
Member of Congress



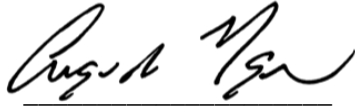
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Ralph Norman  
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Andrew Ogles  
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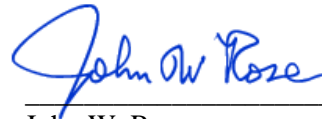
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Bill Posey  
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John W. Rose  
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John H. Rutherford  
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Austin Scott  
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Keith Self  
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Pete Sessions  
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Adrian Smith  
Member of Congress



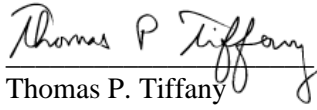
Dale W. Strong  
Member of Congress

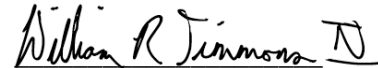



Claudia Tenney  
Member of Congress

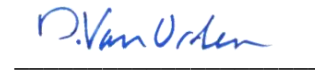


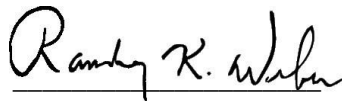
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Member of Congress


  
Thomas P. Tiffany  
Member of Congress


  
William R. Timmons, IV  
Member of Congress

  
Beth Van Duyne  
Member of Congress


  
Derrick Van Orden  
Member of Congress

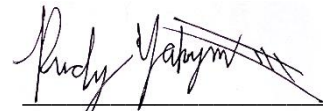
  
Randy K. Weber, Sr.  
Member of Congress

  
Daniel Webster  
Member of Congress

  
Roger Williams  
Member of Congress

  
Robert J. Wittman  
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Steve Womack  
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