

May 20, 2022

VIA ELECTRONIC MAIL

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Ave. SW, LBJ 7W106A
Washington, D.C. 20202-4536
EDFOIAManager@ed.gov
ATTN: FOIA Public Liaison

Re: FOIA REQUEST: Records Related to the U.S. Department of Education's Communications with Outside Interest Groups Regarding Title IV Student Loan Program Policies
(DFI FOIA No. 100-24-22)

Dear FOIA Public Liaison:

The Defense of Freedom Institute for Policy Studies, Inc. (“DFI”) is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. For the benefit of the public, DFI’s mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

Since January 20, 2021, the U.S. Department of Education (“ED”) has embarked on profound revisions to its student loan debt policies,¹ is considering an unprecedented effort to “forgive” student loan debt,² and has repeatedly suspended its obligation to collect student loan debt,³ already

¹ Marina Pitofsky, “Millions closer to student debt forgiveness under new Biden administration changes,” USA TODAY (April 19, 2022), <https://www.usatoday.com/story/news/politics/2022/04/19/immediate-student-loan-forgiveness-biden/7373220001/>.

² Nancy Cook, Jarrell Dillard, and Emma Kinery, “Biden Eyes Student-Loan Forgiveness Starting at \$10,000,” BLOOMBERG (April 29, 2022), <https://www.bloomberg.com/news/articles/2022-04-29/biden-eyes-targeted-student-loan-forgiveness-starting-at-10-000>.

³ Zach Friedman, “Education Department Halts Collection Action on Student Loans Through November,” FORBES (February 17, 2022), <https://www.forbes.com/sites/zackfriedman/2022/02/17/education-department-halts-collection-of-student-loans-through-november/?sh=43e02a6c38f7>.



costing American taxpayers more than \$100 billion.⁴

Indicative of ED's plans to re-shape its student loan debt regulatory policies, pursuant to its Negotiated Rulemaking for Higher Education 2021-22,⁵ ED's Affordability and Student Loans Committee⁶ held three weeks of virtual meetings between October and November 2021 to consider far-reaching regulatory changes for programs authorized by Title IV of the Higher Education Act of 1965, as amended.⁷ The review included proposals for dramatically altering twelve of ED's student financial assistance program regulatory policies, including those related to "Improving Public Student Loan Forgiveness" ("PSLF"), "Income Driven Repayment" ("IDR"), "Debt Collection Practices," and "Borrower Defense to Repayment" ("BDR").⁸

Despite the committee reaching consensus on only four of the twelve proposals,⁹ ED forged ahead with its own aggressive student loan debt forgiveness agenda, as advocated by various well-organized outside interest groups.

On February 16, 2022, for instance, ED approved \$415 Million in borrower defense claims, thereby discharging the repayment obligations of more than 16,000 borrowers.¹⁰ That discharge followed ED's August 2021 elimination of more than \$1.1 Billion in student loan debt under the Closed School Discharge program.¹¹ ED's actions followed a joint letter from twenty-four outside interest groups to Secretary Cardona calling for "aggressive measures" in creating expansive new BDR policies.¹²

On April 19, 2022, ED announced dramatic changes to the PSLF program and its IDR policies, which it estimated will impact more than 3.6 million borrowers through immediate debt

⁴ Gabriel T. Rubin, "Government Losses on Student Debt Climb Above \$100 Billion Amid Pause on Payments," THE WALL STREET JOURNAL (January 12, 2022), <https://www.wsj.com/articles/government-losses-on-student-debt-climb-above-100-billion-amid-pause-on-payments-11642029455>.

⁵ See <https://www.ed.gov/news/press-releases/department-educations-office-postsecondary-education-announces-public-hearings-protections-students-loan-repayment-targeted-loan-cancellation-programs-and-other-higher-education-regulations>.

⁶ See <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/revcommistdec.pdf>.

⁷ See <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

⁸ See <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html#loans>.

⁹ Michael Stratford, "Biden administration's higher education rulemaking agenda moves ahead," POLITICO (December 13, 2021), <https://www.politico.com/newsletters/weekly-education/2021/12/13/biden-administrations-higher-education-rulemaking-agenda-moves-ahead-799426>.

¹⁰ See <https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students>.

¹¹ See <https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness>.

¹² See https://www.nclc.org/images/pdf/student_loans/Cardona_Borrower_Defense_Ltr.pdf.



cancellation for some and by adding three additional years of credit for payments (that didn't occur) towards "forgiveness" even when the borrower's payments were in forbearance during that time.¹³

ED's PSLF changes followed a September 22, 2021, joint letter from about 200 outside interest groups to Secretary Cardona calling for immediate retroactive relief – which relief was provided in abundance by ED's April 2022 changes.¹⁴

ED's changes to its IDR policies followed a February 9, 2022, joint letter from 104 outside interest groups to Secretary Cardona calling for significant changes to ED's administration of the program,¹⁵ many of which changes appear to have been incorporated into ED's policies, as reflected in its April 19, 2022, announcement.¹⁶ ED's IDR policy changes have been described as an additional step towards debt "forgiveness" for millions of students.¹⁷

ED's other ongoing student loan debt policy changes appear to have similarly followed intense lobbying efforts by particular outside interest groups, despite the President's dubious authority to engage in such cancellation of student debt.¹⁸

For example, on June 24, 2021, 128 outside interest groups sent a joint letter to President Biden, urging large-scale changes to ED's administration of the student loan system, including "debt relief" for tens of millions of borrowers before ED should resume student loan debt collection efforts.¹⁹ ED's subsequent policies appear to closely track the timing and substance of changes in ED's student loan debt policies advocated by the organizations.

¹³ See <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

¹⁴ See <https://protectborrowers.org/wp-content/uploads/2021/09/FINAL-SIGNERS-Coalition-PSLF-RFI-Letter.pdf>.

¹⁵ See <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/coalition-letter-idr-waiver-9feb2022.pdf>.

¹⁶ See <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

¹⁷ Erik Ortiz, "Education Department moves millions of borrowers closer to student debt forgiveness," NBC NEWS (April 18, 2022), <https://www.nbcnews.com/news/education/lawmakers-call-education-department-overhaul-broken-student-loan-progr-rcna24838>.

¹⁸ Gabriel T. Rubin, "Mass Student Debt Cancellation Legally Risky, Says Top Obama Education Lawyer," THE WALL STREET JOURNAL (May 4, 2022), https://www.wsj.com/articles/mass-student-debt-cancellation-legally-risky-says-top-obama-education-lawyer-11651689489?mod=hp_listb_pos1.

¹⁹ See https://www.nclc.org/images/pdf/student_loans/Payment-Pause-Coalition-Letter-6-23-2021.pdf.



By December 8, 2021, the group’s second letter calling for a student loan collection pause included over 200 organizational signatories, repeating the call for President Biden to extend the pause on student loan payments and debt collection efforts.²⁰

ED again met the demands of the signatories and, on April 6, 2022, issued its most recent “extension of the pause on student loan repayment, interest, and collections through August 31, 2022,” citing the pandemic as its justification²¹ (contradicting Secretary Cardona’s August 2021 declaration that the previous extension on federal student loan payments would be the last extension²²).

The public has a right to know about the influence of outside organizations on ED’s policies, particularly as ED acts unilaterally to discharge student loan debts and prepares to impose significant new rulemaking related to its Borrower Defense and other student loan debt policies.

DFI thus seeks ED’s expedited processing of records related to ED’s communications with particular outside interest groups regarding ED’s student loan debt policies since January 20, 2021.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED at 34 C.F.R. Part 5 (“Availability of Information to the Public”), DFI makes the following request for records within your possession and/or control:

Requested Records

DFI requests that ED produce the following records within twenty (20) business days:

1. All records, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation *to ED Officials* (see *Custodians, infra*) from the following entities and associated individuals from January 20, 2021, through the date the search is conducted, which reference “student loan cancellation” or “student loan moratorium” or “student loan pause” or “blanket forgiveness” or “forgiveness” or “BD” or “BDR” or “borrower defense rule” or “2019 Rule” or “DeVos Rule” or “borrower defense” or “borrower defense process” or “borrower defense applications” or “unresolved borrower defense claims” or “borrower defense process” or “gainful

²⁰ See <https://protectborrowers.org/wp-content/uploads/2021/12/Student-Loan-Payment-Pause-December-Coalition-Letter-to-Biden.pdf>.

²¹ See <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31#:~:text=Biden%20Harris%20Administration%20Extends%20Student%20Loan%20Pause%20Through%20August%2031,-April%206%2C%202022&text=Today%2C%20the%20U.S.%20Department%20of,collections%20through%20August%2031%2C%202022..>

²² Katie Lobosco, “Biden extends student loan payment pause to January 31,” CNN (August 6, 2021), <https://www.cnn.com/2021/08/06/politics/student-loan-pause-extended/index.html>.



employment” or “GE” or “negotiated rulemaking” or “neg reg” or “PSLF” or “Public Service Loan Forgiveness” or “collecting” or “collections” or “default” or “extensions” or “student loan payment pause” or “cancellation” or “student borrowers” or “defrauded borrowers” or “partial relief” or “discharge” or “Pell Grants”:

- a. Student Borrower Protection Center
- b. Adasina Social Capital
- c. American Federation of Teachers – Vermont (AFT-VT)
- d. Affordable Homeownership Foundation Inc.
- e. Alaska PIRG
- f. Alliance for Youth Action
- g. American Association of University Professors
- h. American Baptist Home Mission Society
- i. American Civil Liberties Union
- j. American Federation of State, County and Municipal Employees (AFSCME)
- k. American Federation of Teachers
- l. American Psychological Association
- m. Americans for Financial Reform
- n. Association of Young Americans
- o. Bend the Arc: Jewish Action
- p. Blue Future
- q. California Alliance for Consumer Education (CACE)
- r. California Association of Nonprofits
- s. Californians for Economic Justice
- t. California Association for Micro Enterprise Opportunity (CAMEO)
- u. Campaign for America’s Future
- v. Campus Action for Democracy
- w. Carolina Jews for Justice
- x. Center for Economic Integrity
- y. Center for LGBTQ Economic Advancement & Research (CLEAR)
- z. Center for Responsible Lending
- aa. Chapter 335 NTEU
- bb. Charlotte Center for Legal Advocacy
- cc. Chicago Consumer Coalition
- dd. Chicago Foundation for Women
- ee. Columbia Consumer Education Council
- ff. Community Service Society of New York
- gg. Consumer Federation of America
- hh. Consumer Federation of California
- ii. Consumers for Auto Reliability and Safety
- jj. Council on Social Work Education
- kk. Debt Collective
- ll. Debt-Free MD, Inc.
- mm. Economic Mobility Pathways (EMPath)
- nn. Faith in Action



- oo. Forward Montana
- pp. Fossil Fuel Divest Harvard
- qq. Fosterus
- rr. Franciscan Action Network
- ss. Fresno Building Healthy Communities
- tt. Generation Hope
- uu. Greenpeace US
- vv. HBCU Collective
- ww. HEAL (Health, Environment, Agriculture, Labor) Food Alliance
- xx. Hildreth Institute
- yy. Hope Center for College, Community, and Justice at Temple University
- zz. Housing and Economic Rights Advocates
- aaa. Indivisible
- bbb. Investor Advocates for Social Justice
- ccc. Jain Family Institute (JFI)
- ddd. JANUS LLC
- eee. Kentucky Center for Economic Policy
- fff. Land for Good
- ggg. League of United Latin American Citizens
- hhh. Legal Action Chicago
- iii. Legal Aid at Work
- jjj. Legal Aid Foundation of Los Angeles
- kkk. Legal Aid Society of Milwaukee
- lll. Louisiana Budget Project
- mmm. Maine Center for Economic Policy
- nnn. Maryland Consumer Rights Coalition
- ooo. Massachusetts Affordable Housing Alliance
- ppp. Media Voices for Children
- qqq. Minority Veterans of America
- rrr. Mississippi Center for Justice
- sss. Mobilization for Justice
- ttt. NAACP, Youth & College
- uuu. NASW-CA
- vvv. NASW-NM
- www. National Action Network
- xxx. National Association of Consumer Advocates
- yyy. National Association of Graduate-Professional Students
- zzz. National Association of Pediatric Nurse Practitioners
- aaaa. National Association of Social Workers
- bbbb. National Association of Social Workers – Alabama Chapter
- cccc. National Association of Social Workers – Alaska Chapter
- dddd. National Association of Social Workers – Arizona Chapter
- eeee. National Association of Social Workers – Arkansas Chapter
- ffff. National Association of Social Workers – California Chapter
- gggg. National Association of Social Workers – Colorado Chapter



- hhhh. National Association of Social Workers – Connecticut Chapter
- iiii. National Association of Social Workers – DC Metro Chapter
- jjjj. National Association of Social Workers – Delaware Chapter
- kkkk. National Association of Social Workers – Florida Chapter
- llll. National Association of Social Workers – Georgia Chapter
- mmmm. National Association of Social Workers – Guam Chapter
- nnnn. National Association of Social Workers – Hawaii Chapter
- oooo. National Association of Social Workers – Idaho Chapter
- pppp. National Association of Social Workers – Illinois Chapter
- qqqq. National Association of Social Workers – Indiana Chapter
- rrrr. National Association of Social Workers – Iowa Chapter
- ssss. National Association of Social Workers – Kentucky Chapter
- tttt. National Association of Social Workers – Louisiana Chapter
- uuuu. National Association of Social Workers – Maine Chapter
- vvvv. National Association of Social Workers – Maryland Chapter
- wwww. National Association of Social Workers – Massachusetts Chapter
- xxxx. National Association of Social Workers – Michigan Chapter
- yyyy. National Association of Social Workers – Mississippi Chapter
- zzzz. National Association of Social Workers – Missouri Chapter
- aaaaa. National Association of Social Workers – Montana Chapter
- bbbbbb. National Association of Social Workers – Nebraska Chapter
- cccc. National Association of Social Workers – Nevada Chapter
- dddddd. National Association of Social Workers – New Hampshire Chapter
- eeee. National Association of Social Workers – New Jersey Chapter
- ffff. National Association of Social Workers – New Mexico Chapter
- ggggg. National Association of Social Workers – New York City Chapter
- hhhhh. National Association of Social Workers – New York State Chapter
- iiii. National Association of Social Workers – North Carolina Chapter
- jjjjj. National Association of Social Workers – North Dakota Chapter
- kkkkk. National Association of Social Workers – Ohio Chapter
- llll. National Association of Social Workers – Oklahoma Chapter
- mmmmm. National Association of Social Workers – Oregon Chapter
- nnnnn. National Association of Social Workers – Pennsylvania Chapter
- ooooo. National Association of Social Workers – South Carolina Chapter
- ppppp. National Association of Social Workers – South Dakota Chapter
- qqqqq. National Association of Social Workers – Texas Chapter
- rrrrr. National Association of Social Workers – Tennessee Chapter
- sssss. National Association of Social Workers – Utah Chapter
- ttttt. National Association of Social Workers – Vermont Chapter
- uuuuu. National Association of Social Workers – Virginia Chapter
- vvvvv. National Association of Social Workers – Washington Chapter
- wwwww. National Association of Social Workers – West Virginia Chapter
- xxxxx. National Association of Social Workers – Wisconsin Chapter
- yyyyy. National Association of Social Workers – Wyoming Chapter
- zzzzz. National Consumer Law Center



aaaaaa. National Disability Rights Network (NDRN)
bbbbbb. National Education Association (NEA)
ccccc. National Equality Action Team (NEAT)
dddddd. National League for Nursing
eeeeee. National Young Farmers Coalition
ffffff. Navigate Student Loans
gggggg. New Era Colorado
hhhhhh. New Hampshire Youth Movement
iiiiii. New Jersey Citizen Action
jjjjjj. New Mexico Crisis and Access Line
kkkkkk. New York Public Interest Research Group (NYPIRG)
llllll. NextGen California
mmmmmm. Nonprofit Professional Employees Union, IFPTE Local 70
nnnnnn. OCA- Asian Pacific American Advocates
oooooo. Ohio Student Association
pppppp. Our Revolution
qqqqqq. Partnership for College Completion
rrrrrr. People's Parity Project
ssssss. Physician Assistant Education Association
tttttt. Progressive Change Campaign Committee
uuuuuu. Project on Predatory Student Lending
vvvvvv. Public Citizen
wwwwww. Public Counsel
xxxxxx. Public Good Law Center
yyyyyy. Public Higher Education Network of Massachusetts (PHENOM)
zzzzzz. Public Justice Center
aaaaaaa. Public Law Center
bbbbbbb. Rachel Carson Council
ccccccc. Rise
ddddddd. San Francisco Office of Financial Empowerment
eeeeeee. SEIU Local 500
ffffff. SEIU Local 509
ggggggg. Service Employees International Union (SEIU)
hhhhhhh. Sisters of St. Francis of Philadelphia
iiiiiii. Southern Echo Inc.
jjjjjjj. SparkAction
kkkkkkk. Student Action
lllllll. Student Debt Crisis
mmmmmmm. The Arc of the United States
nnnnnnn. The Education Trust
ooooooo. The Forum for Youth Investment
ppppppp. THE ONE LESS FOUNDATION
qqqqqqq. Tzedek DC
rrrrrrr. UnidosUS
sssssss. United Church of Christ, Justice and Local Church Ministries



tttttt. Unity Fellowship of Christ Church
uuuuuuu. University of California Graduate & Professional Council
vvvvvvv. University of California Student Association
wwwwwww. UnKoch My Campus
xxxxxxx. VOCAL-NY
yyyyyyyy. Voices for Progress
zzzzzzz. Women Employed
aaaaaaa. Young Invincibles
bbbbbbbb. Zero Debt Massachusetts

2. All records, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation *from ED officials* (see Custodians, *infra*) to any and all of the entities and associated individuals listed in Item 1 from January 20, 2021, through the date the search is conducted, which reference “student loan cancellation” or “student loan moratorium” or “student loan pause” or “blanket forgiveness” or “forgiveness” or “BD” or “BDR” or “borrower defense rule” or “2019 Rule” or “DeVos Rule” or “borrower defense” or “borrower defense process” or “borrower defense applications” or “unresolved borrower defense claims” or “borrower defense process” or “gainful employment” or “GE” or “negotiated rulemaking” or “neg reg” or “PSLF” or “Public Service Loan Forgiveness” or “collecting” or “collections” or “default” or “extensions” or “student loan payment pause” or “cancellation” or “student borrowers” or “defrauded borrowers” or “partial relief” or “discharge” or “Pell Grants”.

Custodians

The search for records described in Items 1 and 2 should be limited to “ED officials” within the Office of the Secretary, Office of the Deputy Secretary, Office of the Under Secretary, Office of Legislation and Congressional Affairs, Office of Communications and Outreach, Office of Postsecondary Education, Office of Federal Student Aid, and Office of the General Counsel, who are classified as any of the following or referenced with the following job titles:

- a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
- b. “PA” (Presidential Appointments Not Requiring Senate Confirmation)
- c. “NC-SES” (Non-Career Senior Executive Service)
- d. “SES” (Career Senior Executive Service)
- e. “SC” (Schedule C Confidential or Policymaking Positions)
- f. Chief Operating Officer, Federal Student Aid
- g. Deputy Chief Operating Officer, Federal Student Aid
- h. Chief Enforcement Officer, Federal Student Aid
- i. Chief Financial Officer, Federal Student Aid
- j. Executive Assistant to the Chief Operating Officer, Federal Student Aid
- k. Chief of Staff, Federal Student Aid
- l. Senior Advisor for Management, Federal Student Aid



- m. Senior Advisor, Federal Student Aid
- n. Ombudsman, Federal Student Aid
- o. Congressional Team Lead, Federal Student Aid

Definitions

Absent contrary statutory directives, words and phrases contained herein should be accorded their usual, plain, and ordinary meaning. Please note the following statutory definition:

“**Records**” are defined at 44 U.S.C. § 3301(a)(1-2) as including “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them” and further “includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form, such as emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

Identification and Production of the Requested Records

FOIA imposes a burden on ED, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor²³ if ED (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”²⁴ Upon request, ED must “promptly” make the requested records available to the requester.²⁵ Notably, covered agency records include materials provided to ED by both private and governmental organizations.²⁶ Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with ED’s published rules regarding the time, place, any fees, and procedures to be followed,²⁷ ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.²⁸ In addition, the records produced by ED are required to be provided in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”²⁹

²³ FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

²⁴ *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

²⁵ 5 U.S.C. § 552(a)(3)(A).

²⁶ *Id.* at 144.

²⁷ 5 U.S.C. § 552(a)(3)(A)(i).

²⁸ *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

²⁹ 5 U.S.C. § 552(a)(3)(B).



Upon receipt of this request, ED has twenty business days to “determine . . . whether to comply with [the] request” and “shall immediately notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by ED.³⁰

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- ED should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- ED should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of ED’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, ED should not rely solely on a search of a likely custodian’s files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian’s possible deletion or modification of responsive records.
- ED should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding ED’s business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. ED should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as ED’s official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by ED calculated to deflect its compliance with FOIA’s requirements.
- ED should timely provide entire records responsive to this request, broadly construing what information may constitute a “record” and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested

³⁰ 5 U.S.C. § 552(a)(6)(A)(i).



records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).

- ED should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If ED determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that ED disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by ED, ED should provide a clear and precise enumeration of those records in index form presented with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA”³¹ and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.
- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIH format on a USB drive. If it helps speed production and eases ED’s administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33 and 34 C.F.R. § 5.32(b)(1)(ii), DFI requests a waiver of all fees associated with this FOIA request for agency records.

Disclosure of the requested records is in the public interest.

Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI.

The disclosed materials are likely to contribute significant information to the public’s understanding of the involvement and impact of interested outside organizations in the formulation of important ED student loan debt policies that are highly relevant to the interests of students, families, and taxpayers. Disclosure of the requested materials will illuminate ED’s policies and planning (*e.g.*, rulemaking and enforcement decisions). Further, the requested information does not otherwise appear to be in the public domain (in duplicative or substantially identical form).

³¹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



Provision of the requested records will not commercially benefit DFI (a nonprofit, nonpartisan organization interested in the transparency of ED operations and governance), but will benefit the general public and other groups and entities with non-commercial interests in ED's operations and governance.

DFI will review and analyze the requested records and make the records and analyses available to the general public and other interested groups through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation's largest news providers in February 2022 and more recently, a March 2022 analysis of DOJ policies distributed by a leading news magazine. DFI personnel also frequently offer commentary and analyses on radio and television news programs and in various public forums).

As an organization primarily engaged in the dissemination of information to inform the public about actual or alleged Federal Government activities and the urgent (i.e., timely) need to so inform the public, **DFI satisfies the criteria for expedited processing of its request.**

Federal law makes clear that when the disclosure is in the public interest and the information contained within the disclosed records is not primarily in the commercial interests of the requester (here, DFI), statutory fee waiver is appropriate.

DFI is a representative of the news media.

In addition to the fee waiver request based upon the public interest, DFI also requests a fee waiver on the basis that DFI is a **representative of the news media**, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.32(b)(1)(ii).

FOIA (as amended) provides that a representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that to an audience."³² DFI provides exactly this service to the general public and other audiences with an interest in those materials and analyses. Upon receipt of the requested materials from ED, DFI will review and analyze those materials and will extract and otherwise distill particularly useful information from those materials for the benefit of the general public and other interested audiences.

DFI will provide its analyses to the general public and other interested audiences through publication on DFI's website and social media platforms such as Facebook and Twitter

³² See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



(distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation's largest news providers in February 2022 and more recently, a March 2022 analysis of DOJ policies distributed by a leading news magazine. DFI personnel have also offered commentary and analyses on radio news programs and in various public forums).

As a qualified non-commercial public education and news media requester with demonstrated ability to review and analyze publicly-available information and to provide insight regarding that information, DFI is thus entitled to a fee waiver under FOIA as a representative of the news media.

Conclusion

The subject of this request regards identifiable operations and activities of ED and, more specifically, the involvement and impact of outside organizations in the formulation of important ED student loan debt policy matters. Provision of the requested records will meaningfully inform the general public about significant developments in wide-ranging ED policies and rulemaking, which affect millions of American students, families, and taxpayers. These are significant policy issues with tremendous impact on the general public and worthy of transparency in service of the public's right to know.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

DFI appreciates ED's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding the formation and execution of ED's policies and related rulemaking, which are of tremendous interest to students, families, and taxpayers.

Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at paul.moore@dfipolicy.org.

Sincerely yours,

/s/ Paul R. Moore

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.