

June 3, 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 State Attorneys General Regarding Title IV Student Loan Program Policies**  
(DFI FOIA No. 100-25-22)

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,<sup>1</sup> is considering an unprecedented effort to “forgive” student loan debt,<sup>2</sup> and has repeatedly suspended its obligation to collect student loan debt,<sup>3</sup> already

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<sup>1</sup> 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/>.

<sup>2</sup> 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>.

<sup>3</sup> 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.<sup>4</sup>

Indicative of ED's plans to re-shape its student loan debt regulatory policies, pursuant to its Negotiated Rulemaking for Higher Education 2021-22,<sup>5</sup> ED's Affordability and Student Loans Committee<sup>6</sup> 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.<sup>7</sup> 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").<sup>8</sup>

Despite the committee reaching consensus on only four of the twelve proposals,<sup>9</sup> ED has since forged ahead with an aggressive student loan debt forgiveness agenda, as advocated by several particular state Attorneys General.

ED's recent significant student loan debt policy changes include:

- On October 6, 2021, ED announced an "overhaul" to the PSLF program,<sup>10</sup> which included a "time-limited waiver" for previously ineligible loan types to qualify under the program, resulting by May 2022 in cancellation of an average of nearly \$60,000 in debt per borrower for over 110,000 borrowers (i.e., an additional \$6.8 billion in loan "forgiveness").<sup>11</sup>

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<sup>4</sup> 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>.

<sup>5</sup> 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>.

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

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

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

<sup>9</sup> 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>.

<sup>10</sup> See <https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul>.

<sup>11</sup> Annie Nova, "Education Department forgives loans of more than 110,000 people in public service," CNBC (May 4, 2022), <https://www.cnbc.com/2022/05/04/education-department-forgives-loans-of-over-110000-in-public-service-.html>.



- On February 16, 2022 ED approved \$415 Million in borrower defense claims, thereby discharging the repayment obligations of more than 16,000 borrowers.<sup>12</sup> That discharge followed ED’s August 2021 elimination of more than \$1.1 Billion in student loan debt under the Closed School Discharge program.<sup>13</sup>
- On April 6, 2022, ED announced its most recent “extension of the pause on student loan repayment, interest, and collections through August 31, 2022,” citing the pandemic as its justification<sup>14</sup> (contrary to Secretary Cardona’s August 2021 declaration that the previous extension on federal student loan payments would be the final extension<sup>15</sup>).
- 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 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.<sup>16</sup> ED’s IDR policy changes have been described as an additional step towards debt “forgiveness” for millions of students.<sup>17</sup>
- On June 1, 2022, ED announced its largest-ever student loan cancellation by using the borrower defense discharge to eliminate approximately \$5.8 billion in outstanding student loan debt for more than 560,000 borrowers.<sup>18</sup> In so doing, ED

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<sup>12</sup> See <https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students>.

<sup>13</sup> See <https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness>.

<sup>14</sup> See <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31#:~:text=Biden%2DHarris%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>.

<sup>15</sup> 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>.

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

<sup>17</sup> 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>.

<sup>18</sup> Morgan Smith, “The Biden administration just canceled \$5.8 billion in student loans – and more borrowers could see relief soon,” CNBC (June 2, 2022), <https://www.cnbc.com/2022/06/02/biden->



even eliminated the requirement for qualifying borrowers to submit an application to ED to receive debt cancellation.<sup>19</sup>

ED's student loan debt policy changes appear to have followed intense lobbying efforts by several particular state Attorneys General, despite the President's (and ED's) dubious authority to engage in such cancellation of student debt.<sup>20</sup>

For example, on February 19, 2021, Democratic Attorneys General Association ("DAGA") Co-Chairs Maura Healey (Attorney General for the Commonwealth of Massachusetts) and Letitia James (Attorney General for the State of New York) sent a letter to U.S. House and Senate leadership demanding support of resolutions "[c]alling on the President of the United States to take executive action to broadly cancel Federal student loan debt."<sup>21</sup> The seventeen signatories, all Democratic Attorneys General, called for Congress to endorse their view that the President had the authority to "cancel up to \$50,000 in Federal student loan debt for all Federal student loan borrowers."<sup>22</sup>

On July 29, 2021, Massachusetts AG Healey and California Attorney General Rob Bonta, joined by twenty other Democratic state Attorneys General, filed an amicus brief in the U.S. Court of Appeals for the Second Circuit Court challenging ED's historical borrower defense policies<sup>23</sup> in an effort to dramatically broaden ED's administration of the BDR program.

On September 24, 2021, California AG Bonta, joined by twenty-one other Democratic state Attorneys General, submitted comments to Secretary Cardona, requesting that ED take dramatic action to expand the eligibility of government employees to receive student loan debt forgiveness through the PSLF program.<sup>24</sup> On December 6, 2021, AG Bonta issued a statement praising ED's October 6, 2021, "fix" to the PSLF,<sup>25</sup> which "fix" enabled him to dismiss the California-led June 2020 lawsuit against ED (regarding administration of the Temporary Expanded Public Service

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[administration-cancels-5point8-billion-in-student-loans-more-borrowers-could-see-relief-soon.html](#).

<sup>19</sup> See <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges>.

<sup>20</sup> 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](https://www.wsj.com/articles/mass-student-debt-cancellation-legally-risky-says-top-obama-education-lawyer-11651689489?mod=hp_listb_pos1).

<sup>21</sup> See <https://www.mass.gov/news/ag-healey-calls-for-cancellation-of-federal-student-loan-debt>.

<sup>22</sup> See <https://www.mass.gov/doc/multistate-letter-in-support-of-student-debt-cancellation/download>.

<sup>23</sup> See <https://www.mass.gov/doc/amicus-brief-supporting-challenge-to-borrower-defense-rule/download>.

<sup>24</sup> See <https://oag.ca.gov/system/files/attachments/press-docs/PSLF%20RFI%20Comment%20Letter%20%289-24-21%29.pdf>.

<sup>25</sup> See <https://studentaid.gov/announcements-events/pslf-limited-waiver>.



Loan Forgiveness program).<sup>26</sup> Despite the victory, on May 18, 2022, AG Bonta sent another letter to Secretary Cardona expressing his desire for still more “fix” of the PSLF (“I hope these actions represent a floor not a ceiling for the changes to come”).<sup>27</sup>

On May 2, 2022, New York AG James, joined by seven other Democratic state Attorneys General, wrote to President Biden that current student loan debt relief was insufficient and called on him to “immediately exercise [his] authority to cancel [all] federal student loan debt for every borrower,” noting that cancellation of all student loans “will reduce stress and mental fatigue” and “provide countless opportunities.”<sup>28</sup>

The public has a right to know about the influence of powerful state Attorneys General<sup>29</sup> on ED’s policies, particularly as ED acts unilaterally to discharge student loan debts and prepares to impose significant new rulemaking and other student loan debt policies.

DFI thus seeks ED’s records related to ED’s communications with particular state Attorneys General 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 governmental email addresses, 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

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<sup>26</sup> See <https://oag.ca.gov/news/press-releases/attorney-general-bonta-biden-administrations-sweeping-overhaul-public-service>.

<sup>27</sup> See <https://oag.ca.gov/news/press-releases/attorney-general-bonta-calls-department-education-improve-access-public-service>.

<sup>28</sup> See [https://www.ag.state.mn.us/Office/Communications/2022/docs/Ltr\\_CancelingStudentLoanDebt.pdf](https://www.ag.state.mn.us/Office/Communications/2022/docs/Ltr_CancelingStudentLoanDebt.pdf).

<sup>29</sup> Stef W. Kight, “Democratic state AGs are leading the Resistance,” AXIOS (July 31, 2019), <https://www.axios.com/2019/07/31/democrat-state-attorney-general-fighting-trump>.



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 “Corinthian” or “CCI”:

- a. Email addresses ending in “mass.gov”
  - b. Email addresses ending in “ag.ny.gov”
  - c. Email addresses ending in “oag.ca.gov”
  - d. Email addresses ending in “coag.gov”
  - e. Email addresses ending in “portal.ct.gov”
  - f. Email addresses ending in “attorneygeneral.delaware.gov”
  - g. Email addresses ending in “oag.dc.gov”
  - h. Email addresses ending in “ag.hawaii.gov”
  - i. Email addresses ending in “illinoisattorneygeneral.gov”
  - j. Email addresses ending in “iowaattorneygeneral.gov”
  - k. Email addresses ending in “maine.gov”
  - l. Email addresses ending in “msa.maryland.gov”
  - m. Email addresses ending in “michigan.gov”
  - n. Email addresses ending in “ag.state.mn.us”
  - o. Email addresses ending in “ag.nv.gov”
  - p. Email addresses ending in “njoag.gov”
  - q. Email addresses ending in “nmag.gov”
  - r. Email addresses ending in “ncdoj.gov”
  - s. Email addresses ending in “doj.state.or.us”
  - t. Email addresses ending in “attorneygeneral.gov”
  - u. Email addresses ending in “riag.ri.gov”
  - v. Email addresses ending in “usvidoj.com”
  - w. Email addresses ending in “ago.vermont.gov”
  - x. Email addresses ending in “atg.wa.gov”
  - y. Email addresses ending in “doj.state.wi.us”
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 governmental email addresses 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 “Corinthian” or “CCI”.





## Custodians

The search for records described in Items 1 and 2 should be limited to “ED officials” within the Office of the General Counsel who are classified as any of the following, referenced with the following job titles, or assigned to its Postsecondary Education Division:

- a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
- b. “PA” (Presidential Appointments Not Requiring Senate Confirmation)
- c. “NC-SES” (Non-Career Senior Executive Service)
- d. “SC” (Schedule C Confidential or Policymaking Positions)
- e. Any attorney of any classification assigned to the Postsecondary Education Division in the Office of the General Counsel

## 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 requestor<sup>30</sup> 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.”<sup>31</sup> Upon request, ED must “promptly” make the requested records available to the requester.<sup>32</sup> Notably, covered agency records include materials provided to ED by both private and governmental

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<sup>30</sup> 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).

<sup>31</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>32</sup> 5 U.S.C. § 552(a)(3)(A).



organizations.<sup>33</sup> 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,<sup>34</sup> ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.<sup>35</sup> 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.”<sup>36</sup>

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.<sup>37</sup>

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

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<sup>33</sup> *Id.* at 144.

<sup>34</sup> 5 U.S.C. § 552(a)(3)(A)(i).

<sup>35</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>36</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>37</sup> 5 U.S.C. § 552(a)(6)(A)(i).





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 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”<sup>38</sup> 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.

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<sup>38</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



### **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 particular state Attorneys General 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).

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).

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.”<sup>39</sup> 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 (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 particular state Attorneys General 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.

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<sup>39</sup> See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



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](mailto:paul.moore@dfipolicy.org).

Sincerely yours,

*/s/ Paul R. Moore*

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.