

November 2, 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 Regarding the Department’s Internal Decisions and External Communications on Self-Certification of Income for Student Loan Debt Cancellation**  
(DFI FOIA No. 100-32-22)

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. DFI includes former U.S. Department of Education (“Department” or “ED”) and other federal agency officials who are experts in education law and policy and the operation of the Department. 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.

**The Department’s student loan debt cancellation program’s use of “self-certification” to verify borrower income**

On August 24, 2022, President Biden and the Department announced a massive, three-part plan to cancel outstanding student loan debt, including a “one-time” “cancellation” of up to \$20,000 in debt for Pell Grant recipients with loans held by the Department and up to “\$10,000 for non-Pell Grant borrowers, if their individual annual adjusted gross income is less than \$125,000 or, for married couples, less than \$250,000.”<sup>1</sup> The White House boasted that “[n]o one with federally-held loans has had to pay a single dollar in loan payments since President Biden took office” and

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<sup>1</sup> See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.



added that there would be a “final” extension of the student loan pause (for repayment and collections) through December 31, 2022.<sup>2</sup>

On October 14, 2022, the Department released its “beta” version of the application on its website and the application appears to require only that borrowers self-certify their income.<sup>3</sup> Explaining the minimal requirements for the student loan debt cancellation application, “[s]enior administration officials [had] released a preview of the application that most borrowers [would] be required to fill out to receive the loan forgiveness” containing what POLITICO described as “only a handful of questions that seek basic information about borrowers: name, social security number, date of birth, phone number and email address. Borrowers will be required to check a box that ‘certifies under penalty of perjury’ that they meet the income threshold for the debt relief program.”<sup>4</sup>

Federal Student Aid (“FSA”) has, indeed, simplified the Department’s debt cancellation qualification process: in “Step 1: Check if you’re eligible,” FSA notes that “[y]ou’re eligible for student loan debt relief if your annual federal income was below \$125,000 (individual or married, filing separately) or \$250,000 (married, filing jointly or head of household) in 2020 or 2021.”<sup>5</sup> FSA notes that borrowers who “meet the income requirements and have eligible loans” will receive “debt relief” depending on outstanding loan balances and whether the borrower received a Pell Grant.<sup>6</sup> No further income or other verification is required. If a borrower applies, the Department will simply “cancel” a large amount of that borrower’s debt.

An unnamed senior administration official assured POLITICO that “the application process will contain ‘strict fraud prevention measures’ that are ‘risk-based,’” without identifying what such measures will entail.<sup>7</sup> Based on DFI’s review of the application released on October 14, 2022, it is not apparent what, if any, “strict fraud prevention measures” are part of the Department’s simplistic self-certification of income scheme nor has the Department further described what, if any, additional fraud prevention measures it has implemented.

It appears that the Department is now offering the greatest single cancellation of taxpayer-funded student loan debt in history in exchange for these minimal application safeguards, although on

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<sup>2</sup> *Id.*

<sup>3</sup> See <https://studentaid.gov/debt-relief/application>.

<sup>4</sup> Michael Stratford, “White House unveils application form for Biden’s student debt relief [:] Borrowers will self-certify that they meet the income threshold for the program,” POLITICO (October 11, 2022), <https://www.politico.com/news/2022/10/11/student-debt-relief-application-unveiled-00061197> (emphasis added).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Michael Stratford, “White House unveils application form for Biden’s student debt relief [:] Borrowers will self-certify that they meet the income threshold for the program,” POLITICO (October 11, 2022), <https://www.politico.com/news/2022/10/11/student-debt-relief-application-unveiled-00061197>.



October 21, 2022, the United States Court of Appeals for the Eighth Circuit issued an administrative stay, still in place, temporarily preventing the Department from discharging student loans under the cancellation program pending further review of the appeal by the court.<sup>8</sup> The White House responded to the court’s order by urging borrowers to continue submitting applications for debt cancellation, noting that the program would “continue to move full speed ahead” in reviewing “applications and preparing them for transmission to loan servicers.”<sup>9</sup>

The financial consequences of the debt cancellation program to the American people are enormous. In announcing the program, the White House stated that its plan would provide “relief to up to 43 million borrowers, including cancelling the full remaining balance for roughly 20 million borrowers.”<sup>10</sup> A reliable non-partisan estimate puts the cost (excluding the costs of loan forbearance and the new income-driven repayment program) at up to \$519 billion.<sup>11</sup> The Department “estimates the total cost in today’s dollars [at] \$379 billion,”<sup>12</sup> while the Congressional Budget Office estimates a \$400 billion cost to the American people.<sup>13</sup> Even giving credence to the Department’s estimates, the costs to the American people are staggering.

### **The Department is proceeding with insufficient safeguards despite significant warnings regarding reliance on self-certification**

Despite the vastness and unprecedented scale of the student loan debt cancellation plan, award of debt cancellation relies largely on self-certification of income eligibility. As the Department is acutely aware, borrower misrepresentations of qualifications have, historically, been problematic at best. As the Government Accountability Office (“GAO”) reported to Congress in June 2019 with regard to Income-Driven Repayment (“IDR”) plans, disturbingly large numbers of federal

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<sup>8</sup> Andrew C. McCarthy, “Eighth Circuit Slams the Brakes on Biden Student-Loan Debt Cancellation,” NATIONAL REVIEW (Oct. 22, 2022), <https://www.nationalreview.com/corner/eighth-circuit-slams-brakes-on-biden-student-loan-debt-cancellation/>.

<sup>9</sup> Michael Stratford, “Federal appeals court temporarily halts Biden’s student debt relief program,” POLITICO (Oct. 21, 2022), <https://www.politico.com/news/2022/10/21/federal-appeals-court-temporarily-halts-bidens-student-debt-relief-program-00063021>.

<sup>10</sup> See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

<sup>11</sup> “The Biden Student Loan Forgiveness Plan: Budgetary Costs and Distributional Impact,” Wharton School of the University of Pennsylvania (August 26, 2022), <https://budgetmodel.wharton.upenn.edu/issues/2022/8/26/biden-student-loan-forgiveness>.

<sup>12</sup> See <https://www.ed.gov/news/press-releases/us-department-education-estimate-biden-harris-student-debt-relief-cost-average-30-billion-annually-over-next-decade#:~:text=The%20Department%20estimates%20that%20one,loan%20payments%20in%20January%202023>.

<sup>13</sup> See <https://www.cbo.gov/publication/58494#:~:text=CBO%20estimates%20that%20the%20cost,executive%20action%20canceling%20some%20debt>.



student loan borrowers with approved income-driven repayment plans had “misrepresented or erroneously reported their income or family size.”<sup>14</sup> GAO noted that “[w]eaknesses in Education’s processes to verify borrowers’ income and family size information limit its ability to detect potential fraud or error in IDR plans” and recommended that the Department should avoid such fraud by systematically implementing certain data analytic practices and combining them with follow-up procedures to verify information . . .”<sup>15</sup> The same safeguards should apply to the current, significantly larger, student loan debt cancellation program.

The risks associated with self-certification of income in order to receive federal benefits have also been highlighted by multiple official government watchdogs. For example, the Inspectors General of several federal agencies, including the Department of Labor and the Small Business Administration, raised alarms about the risks of self-certification within weeks of the first wave of COVID disbursements.<sup>16</sup> More recently, several investigations have confirmed that self-certification invites fraud and abuse from a small number of people.<sup>17</sup> With a program as large as the student loan debt cancellation plan, fraud by even a small number of borrowers would constitute significant costs to the American people.

Another red flag for the Department concerning its reliance on self-certification of income came from its Office of Inspector General (“OIG”), which recently found serious deficiencies in the Department’s compliance with the Payment Integrity Information Act of 2019 (“PIIA”) for fiscal year 2021, including insufficient risk assessment methodologies leading to “the Department . . . reporting an improper payment estimate for its two high-priority programs,” the Pell and Direct Loan programs.<sup>18</sup> OIG’s investigation revealed that certain of the Department’s risk assessments were unreliable and failed to reflect the “true level of [fraud] risk in the population because the improper payment estimates for the Pell and Direct Loan programs were unreliable.”<sup>19</sup> OIG also found that the Department “did not comply with the requirement to report improper payment rates of less than 10 percent for all applicable programs” and “reported an improper payment estimate of 14.77 percent for the Title I, Part A programs, which is above the 10 percent threshold . . . .”<sup>20</sup>

PIIA was implemented to identify and reduce improper payments by the Department<sup>21</sup> and was created in response to massive improper payments by the federal government, estimated by GAO

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<sup>14</sup> See <https://www.gao.gov/assets/gao-19-347.pdf>.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> See <https://www.pandemicoversight.gov/news/articles/self-certification-procedures-may-increase-fraud-risk-pandemic-response-programs>.

<sup>17</sup> See, e.g., <https://www.nytimes.com/2022/08/16/business/economy/covid-pandemic-fraud.html?searchResultPosition=3> and <https://www.washingtonpost.com/us-policy/2022/02/17/stimulus-aid-oversight-fraud/>.

<sup>18</sup> *Id.*

<sup>19</sup> See <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2022/a22ga0050.pdf>.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> 31 U.S.C. §§ 3351-3358.



to have been at least \$281 billion in FYI 2021.<sup>22</sup> OIG’s findings do not inspire confidence in the Department’s own compliance efforts: “we found that the high-priority programs’ improper payment estimates may not reflect the true level of risk in the population because the improper payment estimates for the Pell and Direct Loan programs were unreliable . . .”<sup>23</sup> Self-certification of income clearly ignores these proven fraud risks.

As indicated by OIG’s previous findings and due to the enormity of the student loan debt cancellation program, DFI believes the Department has not implemented adequate safeguards to correctly anticipate and prevent improper debt cancellation.

In light of the GAO and OIG reports and the rushed nature of the Department’s student loan debt cancellation program, DFI is concerned that external influences on the Department may have unduly impacted its questionable decision to rely largely on self-certification of income by applicants to qualify for student loan debt cancellation paid for by the American people.

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

### **Requested Records**

DFI requests that ED produce the following records within **twenty (20) business days** as required by statute:

1. All decision memoranda, directives, policy interpretations, or policy guidance related to the self-certification of income provision of the student loan debt cancellation program (discussed and identified *supra*), signed, approved, or otherwise adopted by any of the following ED officials:
  - a. Secretary Miguel Cardona
  - b. The Deputy Secretary
  - c. The Under Secretary
  - d. The Assistant Secretary for Postsecondary Education
  - e. The Deputy Assistant Secretary for Higher Education Programs
  - f. The Deputy Assistant Secretary for Policy, Planning, and Innovation
  - g. The Assistant Secretary for Career, Technical, and Adult Education
  - h. The General Counsel
  - i. The Deputy General Counsel for Postsecondary Education
  - j. Chief Operating Officer, Federal Student Aid
  - k. Deputy Chief Operating Officer, Federal Student Aid
  - l. Chief Enforcement Officer, Federal Student Aid

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<sup>22</sup> See <https://www.gao.gov/improper-payments>.

<sup>23</sup> *Id.* at 21.



- m. Chief Financial Officer, Federal Student Aid
  - n. Executive Assistant to the Chief Operating Officer, Federal Student Aid
  - o. Chief of Staff, Federal Student Aid
  - p. Senior Advisor for Management, Federal Student Aid
  - q. Senior Advisor, Federal Student Aid
  - r. Ombudsman, Federal Student Aid
  - s. Congressional Team Lead, Federal Student Aid
  - t. Any other political appointee, SES employee, or person holding an administratively determined position in the Office of the Secretary, Office of the Deputy Secretary, Office of the Under Secretary, Office of the Assistant Secretary for Postsecondary Education, Office of Higher Education Programs, Office of Policy, Planning, and Innovation, Office of Career, Technical, and Adult Education, or the Office of the General Counsel, and
  - u. Anyone acting on behalf of any of the individuals listed above, to include administrative assistants or chiefs of staff
2. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation regarding the self-certification of income provision of the student loan debt cancellation program (discussed and identified *supra*), between the ED officials listed in **Item 1** and any individual(s) in the Executive Office of the President, to include **anyone using an eop.gov email address**, from January 20, 2021, through the date the search is conducted.
3. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation regarding the self-certification of income provision of the student loan debt cancellation program (discussed and identified *supra*), between the ED officials listed in **Item 1** and any individual(s) in the Office of Management and Budget, an office within the Executive Office of the President, to include **anyone using an omb.eop.gov email address**, from January 20, 2021, through the date the search is conducted.
4. All calendar entries for the ED officials listed in **Item 1** that relate to the Department’s student loan debt cancellation program and include any individual(s) from the Executive Office of the President and/or the Office of Management and Budget (including anyone using an eop.gov or omb.eop.gov email address) as an invitee or participant, from January 20, 2021, through the date the search is conducted.
5. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation between the ED officials listed in **Item 1** and non-governmental third parties (identified *infra*) regarding the self-certification of income requirement for student debt cancellation applications, from January 20, 2021, through the date the search is conducted, which in combination with the search terms “loan forgiveness” or “debt





relief” or “debt cancellation” or “eligible borrowers” or “eligible loans” includes any of the following terms:

- a. Income requirement
- b. Income verification
- c. Self-certification
- d. Self-certify
- e. Fraud prevention
- f. Fraud measures
- g. Risk-based fraud prevention

### **Non-governmental Third Parties**

The search for records described in Items 5 should include searches for communications and correspondence with the following non-governmental third parties (to include any email addresses from anyone using the email address listed, where an email address is available):

- a. Project on Predatory Student Lending ([predatorystudentlending.org](http://predatorystudentlending.org) and [ppsl.org](http://ppsl.org))
- b. Legal Services Center at Harvard Law School ([legalservicescenter.org](http://legalservicescenter.org))
- c. Public Citizen Litigation Group ([citizen.org](http://citizen.org))
- d. WilmerHale Legal Services Center ([legalservicescenter.org](http://legalservicescenter.org))
- e. Student Borrower Protection Center ([protectborrowers.org](http://protectborrowers.org))
- f. Center for Responsible Lending ([responsiblelending.org](http://responsiblelending.org))
- g. National Consumer Law Center ([nclc.org](http://nclc.org))
- h. Student Debt Crisis Center ([studentdebtcrisis.org](http://studentdebtcrisis.org))
- i. Institute for Policy Integrity ([policyintegrity.org](http://policyintegrity.org))
- j. New York University School of Law ([law.nyu.edu](http://law.nyu.edu))
- k. National Student Legal Defense Network ([defendstudents.org](http://defendstudents.org))
- l. Consumers Union ([consumerreports.org](http://consumerreports.org))
- m. Americans for Financial Reform ([ourfinancialsecurity.org](http://ourfinancialsecurity.org))
- n. Columbia Legal Services ([columbialegal.org](http://columbialegal.org))
- o. Justice Catalyst ([justicecatalyst.org](http://justicecatalyst.org))
- p. American Oversight ([americanoversight.org](http://americanoversight.org))
- q. New Jersey Citizen Action ([njcitizenaction.org](http://njcitizenaction.org))
- r. Secure Democracy ([influencewatch.org](http://influencewatch.org))
- s. Center for American Progress ([americanprogress.org](http://americanprogress.org))
- t. Berkeley Center for Consumer Law & Economic Justice ([law.berkeley.edu](http://law.berkeley.edu))
- u. Young Invincibles ([younginvincibles.org](http://younginvincibles.org))
- v. Adam Pulver
- w. Adina Rosenbaum
- x. Joseph Jaramillo
- y. Natalie Lyons
- z. Claire Torchiana



aa. Jeremy Golden  
bb. Richard Revesz  
cc. Max Sarinsky  
dd. Jack Lienke  
ee. Martha Fulford  
ff. Persis Yu  
gg. Mike Pierce  
hh. Winston Berkman-Breen  
ii. Amy Czulada  
jj. Chris Hicks  
kk. Ben Kaufman  
ll. Amber Saddler  
mm. Chuck Bell  
nn. Eileen Connor  
oo. Lisa Donner  
pp. Richard Dubois  
qq. Merf Ehman  
rr. Ben Elga  
ss. Austin Evers  
tt. Kristin McGuire  
uu. Ted Mermin  
vv. Holly Petraeus  
ww. John Podesta  
xx. Ed Mierzwinski  
yy. Charley Olena  
zz. Angela Peoples  
aaa. Nick Rathod  
bbb. Beverly Brown Ruggia  
ccc. Jay Urwitz  
ddd. Dan Zibel  
eee. Aaron Ament  
fff. James Cole, Jr.  
ggg. Alex Elson  
hhh. Emily Goldman  
iii. Kirin Jessel  
jjj. Abigail Moats  
kkk. Eric Rothschild  
lll. Isabel Tessier  
mmm. Libby DeBlasio Webster  
nnn. Mohamed Abdel-Kader  
ooo. Saba Bireda  
ppp. Jacek Pruski  
qqq. John Robinson  
rrr. Joy Silvern





## 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>24</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>25</sup> Upon request, ED must “promptly” make the requested records available to the requester.<sup>26</sup> Notably, covered agency records include materials provided to ED by both private and governmental organizations.<sup>27</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>28</sup> ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.<sup>29</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>30</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

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<sup>24</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>25</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>26</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>27</sup> *Id.* at 144.

<sup>28</sup> 5 U.S.C. § 552(a)(3)(A)(i).

<sup>29</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>30</sup> 5 U.S.C. § 552(a)(3)(B).



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>31</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 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

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<sup>31</sup> 5 U.S.C. § 552(a)(6)(A)(i).



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>32</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.

### **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 ED’s student loan debt cancellation program, involving important ED policy matters that are highly relevant to the interests of American students, families, teachers, and taxpayers. Disclosure of the requested materials will illuminate ED’s policies and planning (*e.g.*,

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<sup>32</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



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, a March 2022 analysis of DOJ policies distributed by a leading news magazine, multiple widely-published analyses and news stories involving recent ED policy announcements regarding the student loan repayment program and Title IX proposed rulemaking. 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>33</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

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<sup>33</sup> 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, and several more recent published and widely distributed news stories regarding DFI's analyses of ED's Title IX rulemaking and student loan debt cancellation program, among other news stories. DFI personnel also frequently appear as guests or panelists to offer commentary and analyses on radio and television news programs and in various other 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 the communications and correspondence of particular Departmental officials regarding the self-certification of income aspect of the Department's massive student loan cancellation program, which affects policy matters that are highly relevant to the interests of American students, families, teachers, and taxpayers. 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](mailto:paul.moore@dfipolicy.org).

Sincerely yours,

*/s/ Paul R. Moore*

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.