

Congress of the United States

Washington, DC 20515

May 31, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Cardona:

We write to demand that the Department of Education (Department) immediately comply with all Government Accountability Office (GAO) record requests pertaining to the Biden Administration's rollout of the simplified Free Application for Federal Student Aid (FAFSA). GAO is investigating the FAFSA rollout at our request, and by stonewalling, the Department is interfering with our ability to carry out our constitutionally-mandated oversight responsibilities.

As we stressed in our January 24 and February 7 letters to Comptroller General Gene Dodaro requesting the GAO investigation, the Department's repeated delays and technical problems with the FAFSA rollout have created significant difficulties for students attempting to file applications, delays for schools trying to determine financial aid package amounts, and uncertainty for students trying to make informed decisions about which colleges to attend.¹ If not fully identified and addressed, ongoing problems with the FAFSA will create complications for schools and college students for at least the next two academic years.

The American people should not have to bear the consequences of the Department's blunders. According to a recent report published in The New York Times, Department staff warned the Biden transition team in advance that it would be challenging to implement the technical changes required by the FAFSA Simplification Act, which became law on December 27, 2020.² A December 3, 2020 e-mail from Department staff to future Deputy Under Secretary of Education Benjamin Miller stressed that the Federal Student Aid (FSA) office was concerned that the

¹ Letter from Hon. Bill Cassidy, MD (R-LA), Ranking Member, Senate Committee on Health Education, Labor and Pensions, Hon. Virginia Foxx, Chairwoman, House Committee on Education and the Workforce, et al. to Hon. Gene L. Dodaro, Comptroller General of the United States (Jan. 24, 2024),

https://www.help.senate.gov/imo/media/doc/letter_to_gao_re_fafsa.pdf; Letter from Hon. Bill Cassidy, MD (R-LA), Ranking Member, Senate Committee on Health Education, Labor and Pensions, and Hon. Virginia Foxx, Chairwoman, House Committee on Education and the Workforce, to Hon. Gene L. Dodaro, Comptroller General of the United States (Feb. 7, 2024), https://www.help.senate.gov/imo/media/doc/final_bc_it_final_letter.pdf.

² Zach Montague, *Top Education Officials Were Warned of FAFSA Overhaul Hurdles in 2020* THE NEW YORK TIMES (May 20, 2024), <https://www.nytimes.com/2024/05/20/us/politics/fafsa-application-education-department.html>; Pub. L. No. 116-260.

effective date Congress set for rollout of a new FAFSA would be “too aggressive for FSA to meet.”³

Instead of taking these concerns seriously, the Biden Administration proceeded to channel extensive resources *away* from congressionally mandated responsibilities, including the return to repayment and FAFSA simplification, and toward projects that were not sanctioned by Congress at all, including the Biden Administration’s illegal loan forgiveness scheme, which the Supreme Court has since ruled exceeded the authority of the Higher Education Relief Opportunities for Students Act of 2003.⁴ The New York Times also reported that “[c]urrent and former officials who worked on the FAFSA simplification once the scale of problems became clear have said that the department’s leaders often failed to check in on the [FAFSA simplification] project along the way, and were overly focused on other priorities such as the Biden administration’s loan forgiveness plans.”⁵

Instead of owning up to its mistake, the Biden administration is hiding evidence relating to its botched FAFSA rollout from Congress and the American people. According to two May 20, 2024, letters from Comptroller General Dodaro to you, GAO met with the Department “numerous times” and offered “accommodations” to allow the Department to gather the information GAO requested in connection with its investigation.⁶ Nevertheless, GAO “still [has] not received many of the requested items.”⁷ According to Comptroller General Dodaro, “[t]he continued delays have impacted [GAO’s] progress on the work and [its] ability to meet [its] expected timeframe for issuance [of its findings] this summer ahead of the fall FAFSA cycle.”⁸

The Department’s ongoing failure to comply with GAO’s requests is unacceptable. GAO is a part of the Legislative Branch, and by preventing GAO from doing its job, the Department is interfering with our efforts to address concerns with FAFSA and pursue transparency and accountability on behalf of the American people. The Department’s stonewalling of GAO’s investigation also conflicts with the explicit commitment that you made during your February 3, 2021, confirmation hearing before the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP).⁹

³ E-mail from Ian Foss to Benjamin Miller (Dec. 3, 2020),

<https://static01.nyt.com/newsgraphics/documenttools/10e81e68cbe9b9c2/31dafd43-full.pdf>.

⁴ See Letter from Hon. John Thune, U.S. Senator, Hon. Bill Cassidy, U.S. Senator, and Hon. Shelley Moore Capito, U.S. Senator to Hon. Miguel Cardona, Secretary, U.S. Department of Education (June 7, 2023),

[https://www.thune.senate.gov/public/_cache/files/ace48b5d-043a-4ce5-a097-](https://www.thune.senate.gov/public/_cache/files/ace48b5d-043a-4ce5-a097-68a1988f7f4e/463CE35DC2961AC3A635F3CC71F8C62A.awslf.pdf)

[68a1988f7f4e/463CE35DC2961AC3A635F3CC71F8C62A.awslf.pdf](https://www.thune.senate.gov/public/_cache/files/ace48b5d-043a-4ce5-a097-68a1988f7f4e/463CE35DC2961AC3A635F3CC71F8C62A.awslf.pdf); *Biden v. Nebraska*, 600 U.S. 143 S.Ct. 2355, 216 L.Ed.2d 1063 (2023).

⁵ Zach Montague, *Top Education Officials Were Warned of FAFSA Overhaul Hurdles in 2020* THE NEW YORK TIMES (May 20, 2024), <https://www.nytimes.com/2024/05/20/us/politics/fafsa-application-education-department.html>.

⁶ Letter from Hon. Gene L. Dodaro, Comptroller General of the United States, to Hon. Miguel Cardona, Secretary, U.S. Department of Education (May 20, 2024) (on file with Committee staff); Letter from Hon. Gene L. Dodaro, Comptroller General of the United States, to Hon. Miguel Cardona, Secretary, U.S. Department of Education (May 20, 2024) (on file with Committee staff).

⁷ *Id.*

⁸ *Id.*

⁹ Nomination of Miguel Cardona to serve as Secretary of Education: Hearing before the U.S. Senate Committee on Health, Education, Labor and Pensions, 110 Cong. (2021) (Testimony of Miguel Cardona).

During HELP’s hearing, then-Ranking Member Burr asked if you would “commit to providing the Department of Education Inspector General and the [Government Accountability Office] with any information, briefings, and documents that they may request[.]” In response, you answered, “yes.”¹⁰

We demand that you honor your commitment without further delay. Accordingly, please produce all records that GAO has requested in connection with its investigation no later than June 7, 2024. At the same time, please produce identical copies of those same records to the U.S. House Committee on Education and the Workforce and to the Senate Health, Education, Labor, and Pensions Committee.

Thank you for your prompt attention to this important matter.

Sincerely,

Virginia Foxx

Virginia Foxx
Chairwoman
House Committee on Education
and the Workforce

Bill Cassidy, M.D.

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

¹⁰ *Id*