

Congress of the United States

Washington, DC 20510

9/8/2021

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

Secretary Cardona,

I write to express my concern about the recent appointment of Toby Merrill to serve as Deputy General Counsel at the Department of Education (Department), and her views regarding the Secretary's authority to cancel or forgive student loan balances. As the founder and former director of Harvard Law School's Project on Predatory Student Lending, Ms. Merrill argued explicitly that Congress "granted the Secretary [of Education] a more specific and unrestricted authority to create *and* to cancel or modify debt owed under federal student loan programs in the Higher Education Act itself."¹

Congress has provided limited and explicit authority to the Secretary to "compromise, waive or release any right, title, claim, lien or demand" of student loan balances, such as in the case of a total and permanent disability, the death of the borrower, or the closure of an institution.² There exists, however, no unilateral authority to do so for all student loan balances as a general rule.³ Indeed, in January 2021, the Department's General Counsel concluded that Congress has not empowered the Secretary to provide blanket student debt forgiveness.⁴ Furthermore, Article I section 9 of the Constitution states that, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." In addition, Article IV section 3 of the Constitution gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The law is clear: the Department does not have the legal authority to cancel student loan debt en masse. Any deviation from Congress's clear intention for student loan balances to be repaid, with limited and specific exceptions, would be of grave concern.

Indeed, mass cancellation of student loan debt would not only be a clear violation of the separation of powers but would also be an affront to the millions of borrowers who responsibly repaid their loan balances. I am reminded of one father who responsibly saved for his daughter's

¹ Letter from the Legal Services Center at Harvard Law School to Senator Elizabeth Warren (Jan. 13, 2020), *available at* https://assets.ctfassets.net/4ubxbgy9463z/2uD5wivUoQ0z2do0dtxMP4/26e1c137389de86cbce575e68c6f908b/Ltr_to_Warren_re_admin_debt_cancellation.pdf (emphasis in original).

² 20 U.S.C. § 1087(a)-(c), 1087e(m).

³ *See id.*

⁴ Memorandum from Reed D. Rubinstein, Principal Deputy General Counsel of the Department of Education to Betsy DeVos, Secretary of Education (Jan 18, 2021), *available at* <https://www2.ed.gov/about/offices/list/ope/ogcmemohealoans11820.pdf>.

education. After learning of Senator Warren’s proposal for mass forgiveness, he asked, “Am I going to get my money back?” Senator Warren replied, “of course not.”⁵ There are millions of Americans like this father who either saved for college or took out loans and repaid them; they should not be required to shoulder the cost for those who did not. Moreover, I think about the vast majority of Americans that do not hold a college degree. Blanket forgiveness of student debt would provide the greatest benefits to the highest earning individuals at the expense of these hardworking taxpayers.

Congress has not authorized the Secretary to provide mass cancellation of student loans. I ask for your commitment that you will not seek to usurp the will of the people and the authority Congress has delegated in cancelling student debt beyond what the law clearly allows.

Sincerely,



Ted Budd
Member of Congress



Warren Davidson
Member of Congress



Scott Perry
Member of Congress



Barry Loudermilk
Member of Congress

⁵ Nicole Brown Chau, Elizabeth Warren Responds After Angry Dad Confronts Her on Student Loans, CBS NEWS (Jan. 24, 2020), <https://www.cbsnews.com/news/elizabeth-warren-democratic-presidential-candidate-responds-after-angry-dad-confronts-her-on-student-loans/>.